



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title	Agenda Item Type
Family Law: New Rule for Title IV-D Case Transfers to Tribal Court	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.372	January 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 11, 2013
Hon. Jerilyn L. Borack, Cochair Hon. Kimberly J. Nystrom-Geist, Cochair	Contact
California Tribal Court/State Court Forum	Anna Maves, Senior Attorney
Hon. Richard C. Blake, Cochair Hon. Dennis M. Perluss, Cochair	916-263-8624 anna.maves@jud.ca.gov
	Ann Gilmour, Attorney
	415-865-4207 ann.gilmour@jud.ca.gov

Executive Summary

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).

Recommendation

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2014, adopt a new rule of court,

California Rules of Court, rule 5.372, to 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.

Previous Council Action

There has been no previous council action.

Rationale for Recommendation

This proposal responds to the 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. Before the passage of PRWORA, the only option available to tribal members seeking child support program services was to apply 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 start-up planning for a tribal child support program on August 1, 2011. The Yurok was required 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 information considered in developing this rule are the following:

- When tribal IV-D child support programs have been developed in other states, tribes and states 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 management responsibility for child support services.¹
- In order to allow future tribal IV-D programs to tailor their specific needs to the procedure for identifying and transferring cases from the state title IV-D program, not every operational

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

aspect or procedure of the respective IV-D agencies will be addressed by the statewide rule of court. The state title IV-D program and the Yurok Tribe IV-D program will be concurrently executing protocol agreements to set forth the agencies' respective responsibilities for the process of transferring case management responsibilities for child support services 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 given notice 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. Rule 5.372 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 initiating case transfer, the rule allows for flexibility to permit a party to request transfer where appropriate.
- Each hearing on a request for case transfer will be heard in the superior court by the child support commissioner. The court's cost for the hearing and for transferring the file to the tribal court are reimbursable by the superior court's title IV-D grant as a title IV-D function.
- The content of the first proposed protocol helped inform the committee and the forum about what should be in the proposed rule of court and what will be reserved for the protocol developed between DCSS and the Yurok tribal child support agency. In order to accommodate the various needs of tribes who will apply for title IV-D funding, the committee and the forum expects each protocol to be different. The proposed protocol between the Yurok tribal child support agency and DCSS 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 finding on whether concurrent jurisdiction exists 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 (Public Law 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 Public Law 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)) 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 has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment on the proposal was circulated for public comment from April 19, 2013, through June 19, 2013, to the standard mailing list for family and juvenile law proposals including child support professionals, as well as to the regular rules and forms mailing list.² These distribution lists include appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, child support commissioners, court administrators, attorneys, family law facilitators, court clerks, social workers, probation officers, mediators, the California Department of Child Support Services, the Child Support Directors Association's forms committee and legal practices committee, title IV-D program directors, and other family and juvenile law professionals. The invitation to comment was also circulated to California Tribal Leaders, Tribal Advocates and the Statewide Indian Child Welfare Act Working Group.

Seven written comments were received. Of these, all seven commentators agreed with the proposed rule of court. The committee and the forum reviewed and analyzed the comments and responded to a question submitted by one of the commentators. A chart of comments received and the committee and the forum's responses is attached at pages 9–11.

Several comments related to the proposed tribal transfer rule of court, including comments from the Superior Courts of Los Angeles, Orange and San Diego Counties. All three courts were supportive of the proposal. Specifically the Superior Court of Los Angeles County stated that the proposed rule is appropriate to promote the sovereignty of federal recognized tribes and provides consistency in the transfer procedure. Although neither the Superior Courts of Orange County nor San Diego County provided a specific comment regarding the proposal, both indicated they were supportive of the proposed rule. The Superior Court of San Diego County did ask whether the proposed rule applies only to cases that originated by the local child support agency or whether it also applies to dissolution cases in which a change of payee is filed and the local child support agency enforces the support order. The committee and forum revised the proposed rule to add the definition of a title IV-D case in the definition section of the rule. This definition

² As reflected in the attached comment chart, when rule 5.372 was circulated for comment, the rule number was identified as 5.380. Upon review, it was determined that there is already a rule of court with that number. Accordingly the proposed rule of court has been changed to rule 5.372 and all references to the rule number have been changed.

provides that title IV-D child support cases include all cases in which title IV-D services are being provided, whether the case originated by the local child support agency filing a summons and complaint or subsequently became a title IV-D cases when the local child support agency registered a child support order or intervened into a child support action by filing a change of payee. The committee and forum provided further clarification that under the proposed rule, at subsection (f), only the child support and custody provision of the action transfer to the tribal court.

The Yurok Child Support Services submitted a comment agreeing with the proposed rule and stated that the transfer rule is necessary because there has never been a tribal title IV-D child support program in California and the rule encourages cooperation between the state and tribe to provide child support services.

The California Judges Association also submitted a comment agreeing with the proposed rule because it will set up statewide procedures and boundaries for the transfer of child support cases from states courts to tribal courts.

Although the invitation to comment specifically requested comments on whether current title IV-D grant funding would be sufficient to address any additional costs associated with the transfer of title IV-D cases, there were no comments that responded to this question.

As an alternative to the proposed rule, the committee and the forum considered allowing each superior 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 111 federally recognized tribes working out individual agreements with local courts in the 58 counties. There needs to be a uniform statewide rule. Circulating this new rule for public comment helps to ensure that it 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 of the rule should be minimal; courts would need to transfer cases to the tribal courts even without the adoption of the rule. 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 court staff in a new case transfer procedure for those courts that will be transferring cases. These one-time operational costs should be outweighed by the benefit to individual courts of not having to individual develop and enact local rules of court. Justice partners, including the Department of Child Support Services and the tribal IV-D programs, will 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.

Attachments

1. Cal. Rules of Court, rule 5.372 at pages 7–8.
2. Chart of comments at pages 9–11.

Rule 5.372 of the California Rules of Court is adopted, effective January 1, 2014, to read:

1 **Rule 5.372. Transfer of title IV-D case to a tribal court**

2
3 **(a) Purpose**

4
5 This rule is intended to define the procedure for transfer of title IV-D child support
6 cases from a California superior court to a tribal court.

7
8 **(b) Definitions**

9
10 (1) “Tribal court” means any tribal court of a federally recognized Indian tribe
11 located in California that is receiving funding from the federal government to
12 operate a child support program under title IV-D of the Social Security Act
13 (42 U.S.C. § 654 et seq.).

14
15 (2) “Superior court” means a superior court of the state of California.

16
17 (3) “Title IV-D child support cases” include all cases where title IV-D services
18 are being provided whether the case originates from the local child support
19 agency’s filing of a summons and complaint or later becomes a title IV-D
20 cases when the local child support agency registers a child support order or
21 intervenes in a child support action by filing a change of payee.

22
23 **(c) Disclosure of related case**

24
25 A party must disclose in superior court whether there is any related action in tribal
26 court in the first pleading, in an attached affidavit, or under oath. A party’s
27 disclosure of a related action must include the names and addresses of the parties to
28 the action, the name and address of the tribal court where the action is filed, the
29 case number of the action, and the name of judge assigned to the action, if known.

30
31 **(d) Notice of intent to transfer case**

32
33 Before filing a motion for case transfer of a child support matter from a superior
34 court to a tribal court, the party requesting the transfer, the state title IV-D agency,
35 or the tribal IV-D agency must provide the parties with notice of their right to
36 object to the case transfer and the procedures to make such an objection.

37
38 **(e) Determination of concurrent jurisdiction**

39
40 The superior court may, on the motion of any party and after notice to the parties of
41 their right to object, transfer a child support and custody provision of an action in
42 which the state is providing services under California Family Code section 17400
43 to a tribal court, as defined in (a). This provision applies to both prejudgment and

1 postjudgment cases. When ruling on a motion to transfer, the superior court must
2 first make a threshold determination that concurrent jurisdiction exists. If
3 concurrent jurisdiction is found to exist, the transfer will occur unless a party has
4 objected in a timely manner. On the filing of a timely objection to the transfer, the
5 superior court must conduct a hearing on the record considering all the relevant
6 factors set forth in (f).

7
8 **(f) Evidentiary considerations**

9
10 In making a determination on the application for case transfer, the superior court
11 must consider:

- 12
13 (1) The nature of the action;
14
15 (2) The interests of the parties;
16
17 (3) The identities of the parties;
18
19 (4) The convenience of the parties and witnesses;
20
21 (5) Whether state or tribal law will apply;
22
23 (6) The remedy available in the superior court or tribal court; and
24
25 (7) Any other factors deemed necessary by the superior court.

26
27 **(g) Order on request to transfer**

28
29 The court must issue a final order on the request to transfer including a
30 determination of whether concurrent jurisdiction exists.

31
32 **(h) Proceedings after order granting transfer**

33
34 Once the superior court has granted the application to transfer, the superior court
35 clerk must deliver a copy of the entire file, including all pleadings and orders, to the
36 clerk of the tribal court.

SPR13-17**Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court** (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Lexi Howard Legislative Director	A	<p>The California Judges Association provides the following comments on the proposed rule, as specified in Invitation to Comment SPR13-17.</p> <p>This proposal is for the creation of a new CRC providing a consistent procedure for the discretionary transfer of IV-D child support cases from State Court to Tribal Courts when there is concurrent jurisdiction. The hearing of the request for the transfer would be heard in the Superior Court by the AB 1058 Child Support Commissioner with the costs of the hearing and the potential transfer reimbursable by the IV-D grant. This is a new development because up to now there has never been a Tribal IV-D agency in California.</p> <p>It will require some additional information to be disclosed in a IV-D child support proceeding in State Court and the potential for additional hearing/s if the party objects to the transfer to Tribal Court. It does however provide for a uniform statewide rule rather than a multitude of local rules.</p> <p>CJA supports SPR13-17 because it will help set the boundaries and procedures for the potential transfer of a child support case from State to Tribal Courts and make a statewide rule for all State Courts to follow if and when applicable.</p>	No response required.
2.	Child Welfare Services Corey Kissel CWS Policy Analyst	A	This proposed change does not impact Child Welfare Services.	No response required.

SPR13-17**Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court** (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Orange County Bar Association Wayne R. Gross President	A	No specific comments.	No response required.
4.	Superior Court of Los Angeles County	A	Given that there is one tribal child support agency in California which has gone through the requirements to qualify for Title IV-D funding and others are expected to follow, this CRC is appropriate to promote the sovereignty of federally recognized tribes and provide consistency in transfer procedures.	No response required.
5.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A	Is it intended that the new rule only applies to cases that originate with DCSS or would this also apply to regular dissolution cases in which a substitution of payee is filed and DCSS is enforcing support?	The committee and forum revised the proposed rule to provide further clarification in response to this comment. The rule will be revised in the definition section to provide clarification that a title IV-D child support cases include all cases where title IV-D services are being provided whether the case originated by the local child support agency filing a summons and complaint or subsequently becomes a title IV-D cases by the local child support agency registering a child support order or intervening into a child support action by filing a change of payee. Also, subsection (f) of the proposed rules specifies that only the child support and custody provisions of the action transfer.
6.	Hon. Rebecca Wightman Child Support Commissioner Superior Court of San Francisco County	A	I agree with the proposed rule, and believe it is very important to have a statewide rule that will be applicable to all courts on this subject.	No response required.
7.	Yurok Child Support Services Denise Bareilles	A	The proposed rule of court acknowledges the tribe's inherent jurisdiction over domestic	No response required.

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Staff Attorney/Program Manager		relations matters. The case transfer rule is necessary because there has never been a Title IV-D tribal child support agency in California. The rule facilitates the tribal court and associated tribal child support agency's ability to work cases that are under the tribe's jurisdiction. The rule encourages a cooperative manner for the state and tribe to work together in servicing child support cases.	