

ARIZONA STATE, TRIBAL AND FEDERAL COURT FORUM REPORT

College of Business Northern Arizona University

Tuesday, June 9, 1998

The State and Tribal Court Forum met at the campus of Northern Arizona University.

Members Present

Hon. Marjorie Grimes
for Hon. Kay A. Lewis
Hon. Sherry Hutt
Joseph Lodge
Hon. Michael C. Nelson
James Redpath
Frederick K. Steiner, Jr.

Participants

Irene Barrow
Bob Brutinel
Johnny Lehi, Sr.
Terry L. Janis

Members Absent

Hon. William Canby, Jr.
Hon. Earl Carroll
Hon. Cornelia V. Cruz
Hon. Susan A. Ehrlich
Hon. Malcolm Escalante
Hon. Neil T. Flores, Sr.
Hon. Michael Irwin
Frederic F. Kay
Hon. Jay Pedro
Hon. Allen Sloan
Hon. Spenser D. Thomas
Professor Rebecca Tsosie

Approval of April 10, 1998 Meeting Minutes

Members had a few revisions. Minutes were approved as corrected unanimously.

Division of Retirement Benefits in Tribal Court Dissolution

The need for a change in federal tax law discussed at the April meeting was reaffirmed. The change would extend to tribal court domestic relations orders the same recognition as currently provided to state orders that meet federal requirements termed QUADROs (Qualified Domestic Relation Orders). This would benefit the parties in tribal court proceedings by providing the convenience and certainty of a split of the retirement benefits by the employer/payee in accordance with the court order.

David Withey reported that he had contacted Steve McQue, Senate Indian Affairs Committee majority counsel regarding how to proceed to accomplish the desired change in federal law. He noted that Mr. McQue is familiar with the work of the Arizona Court Forum due to his practice in Arizona prior to going to work for the U.S. Senate. Mr. Withey explained that Mr. McQue understood the need for the change, is receptive to working with Arizona congressmen on this matter and suggested a letter explaining the problem be sent to the Arizona delegation and the Senate Indian Affairs Committee.

Action: Members agreed that the Arizona Forum seek support for this change in

federal tax law by the Forums in other states and that staff should proceed to draft the necessary informational materials and send the appropriate letters.

Response to Recognition of Tribal Laws and Judgments Proposal

The Forum discussed a redraft of the proposed rules prepared by Judge Nelson in which alternatives 2 and 3 to proposed Rule 5 were offered based upon the Ninth Circuit Court of Appeals Marchington case. This recent case was brought to the attention of the forum at the March meeting by Fred Steiner. It was noted in discussion that Marchington provides criteria for recognition of tribal judgments by federal courts and does not necessarily apply to state court recognition. However, it was recognized that Marchington provides an indication of the current common law which is useful to frame rules that implement current Arizona common law. It was also noted that alternatives 2 and 3 only contained standards of review based upon Marchington and did not provide a presumption of enforcement or a burden of proof as had been provided in the original proposed rule 5.

Action: The Forum decided to adopt alternative 3 amended with language providing a presumption of enforcement and burden of proof based upon the original proposed Rule 5. It was agreed that the proposed rules would be redrafted and distributed to the members for review and comment; then filed with the Arizona Supreme Court as a Rule 28 petition requesting adoption of the proposed rules as Arizona rules of court.

Action: The Forum directed staff to look for a time for the next meeting at the Arizona State Courts building in an October/November time frame.

Call to Public

The chair requested any additional comments from the public. None were provided. The meeting was adjourned.