

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Arizona State Courts Building
Room #230

Friday, December 4, 1998
10:00 a.m.

The State and Tribal Court Forum met at the Arizona State Courts Building in Phoenix, Arizona.

Members Present

Hon. William C. Canby, Jr.
Hon. Cornelia V. Cruz
Hon. Malcolm A. Escalante
Frederick K. Steiner, Jr.

Participants

John W. Major
Hon. Kay A. Lewis
Leroy S. Bedonie
David E. Oliver
Brad Jolly
Roy A. Mendoza
Catherine A. Arogon
Leah Meyers
Wayne Cademan ?
Faye A. Polk
Jolene Marshall
Ben Wood, Jr.
Delbert Ray, Sr.

Members Absent

Hon. Earl Carroll
Hon. Susan A. Ehrlich
Hon. Neil T. Flores, Sr.
Hon. Sherry Hutt
Hon. Michael Irwin
Frederic F. Kay
Hon. Marjorie Grimes
Joseph Lodge
Hon. Jay Pedro
Prof Rebecca Tsosie

The meeting was called to order at 10:20 A.M. by Judge Nelson, Chairman.

Approval of June 9, 1998 Meeting Report - The report was amended by adding Judge Escalante to members in attendance and was approved.

Recognition of Judgments Rule Petition - David Withey reported that the petition had been filed and would be considered by the Court for distribution for comment at the Court's January rules agenda. He explained that rule petitions are typically distributed for a 60 to 90 day period to an established list of recipients. Mr. Withey promised to mail the Court's order seeking comment and the petition to the Court Forum mailing list as soon as the order is issued. He encouraged members and participants to provide their comments. Judge Nelson reiterated the importance of public comment to the Court.

Judge Canby noted that the rule does not contain a definition of "public policy" and that the common law surrounding this term in the context of recognition of the orders of the courts of foreign nations indicates that orders are not recognized on this basis only where there have been severe differences. Mr. Withey suggested this might be noted in commentary following the rule and could be the subject of a comment to the Court.

QUADRO Federal Legislative Proposal - David Withey reported that a letter to the Arizona Congressional delegation requesting assistance with this proposed change in federal law agreed upon at the last meeting had not yet been sent. The suggestion by AOC legislative staff was that the Forum assess the sources of support and opposition for this legislation before approaching the delegation so that information could be provided to them. Chief Justice Zlaket agreed to take the issue to the Conference of Chief Justices' January meeting in an effort to get support from that body. The Forum discussed other possible sources of support including Arizona tribes, Intertribal Council of Arizona, the Native American Rights Fund, Native American Bar Association, Indian legal aid programs and the court forums in other states. The Forum discussed the alternative of state recognition of tribal court orders.

Fred Steiner moved that we approach a Congressman with the proposed legislation. The motion was adopted.

Judge Nelson asked that members identify support for the change. Members discussed approaching the chief executives of most of the tribes through the Intertribal Council Of Arizona. Judge Escalante stated that the appropriate approach for his tribe was for chief judge to communicate with the other branches of tribal government. The forum agreed that a letter would be sent to chief justices and judges of each tribe asking them to raise this issue. The Forum agreed that major reservation employers such as SRP should be consulted regarding support. Fred Steiner agreed to contact SRP.

Enforcement of Domestic Violence Orders

AOC staff person, Leah Meyers informed the Forum of state efforts to assure enforcement of domestic violence orders from other states and tribes under the full faith and credit requirements of federal law. It was noted that the Forums rule petition on recognition of judgments does not apply to these orders.

Domestic violence forms developed for state court use were shared with tribal court Forum members for possible modification and use by tribal courts. An advantage of using these forms is that Arizona law enforcement officers will be familiar with them. It was suggested that a form order providing recognition by Arizona state or tribal courts of domestic violence orders from other jurisdictions ought to be developed. This would help law enforcement officers recognize that an order is valid and enforceable in their jurisdiction. However, law enforcement officers should not be required such an order. The NCIC database can be used to validate orders but orders are not entered consistently by all jurisdictions. Tribes have been offered assistance with entry of domestic violence orders on NCIC. Each domestic violence order should state that it is valid nationwide with a citation to United States Code. Southern Arizona Legal Aid has funding to work with tribes on content of orders and to provide education to law enforcement regarding enforcement of tribal court orders.

The forum discussed the jurisdiction of tribal authorities to enforce foreign domestic violence orders against non-Indians on a reservation through contempt of court or removal from the reservation. It was noted that the federal full faith and credit provision may be a grant of jurisdiction over non-Indians to enforce foreign domestic violence orders through criminal sanctions.

Access to Courts

Beverly Boyd, program specialist at the AOC, demonstrated the materials available to the public on the Arizona Judicial Branch website. These materials include commonly used forms and a child support calculator. The website address is www.supreme.sp.state.az.us/selfserv/. Forms can be viewed and printed using Adobe Acrobat software. Tribal courts were invited to add pages or links to this website. The State Bar directory containing the names of tribal judges and locations of tribal courts will be added soon to the State Bar website. It was noted that each tribe will need to proceed at its own pace in use of the internet. Interest was expressed in securing and modifying a Quickcourt kiosk for a tribal court.

Child Support Enforcement

A problem was raised by a Forum participant regarding lack of communication between tribal and state courts concerning child support payments. Payments through tribal courts are not taken into account by state enforcement authorities even when they are enforcing tribal court support orders. It was suggested that this issue be discussed with AOC staff responsible for child support programs. This will be discussed at a future meeting.

Model Court Program

Mr. Withey noted that a problem may exist with participation of tribal social services in the Arizona court's new accelerated dependency processes. Problems have been experienced by Navajo Nation and San Carlos Apache social services staff. Judge Escalante indicated that, based on the traditions of his tribe, very rarely are parental rights terminated. The push by state courts and the federal government toward permanency through termination of parental rights may run counter to tribal extended family traditions. Mr. Withey will pass this information to Theresa Saiz at AOC who coordinates the model court program.

Future Meetings and Issues

Federal members were asked to suggest any issues the Forum might consider, particularly concerning criminal jurisdiction. It was noted that the Forum decided not to pursue the tribal jurisdiction change proposed by the Salt River Pima-Maricopa Indian Community, primarily due to the political climate. Judge Canby reported that the handling of serious misdemeanors locally by magistrates has progressed throughout the country. Mr. Withey invited members to contact him with any issues for the agenda.

The next meeting is planned for the week of June 7, 1999 at the Arizona Judicial Conference.