

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Arizona State Courts Building
Room #230

Friday, February 25, 2000
10:00 a.m.

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

Members Present

Hon. Michael C. Nelson
Hon. Leroy S. Bedonie
Hon. William C. Canby, Jr.
Hon. Susan Ehrlich
Hon. Neil Flores, Sr.
Hon. Sherry Hutt
Frederic Kay, Esq.
James R. Redpath, Esq.
Hon. William R. Rhodes
Frederick K. Steiner, Jr. Esq.
Hon. Malcolm Escalante *for* Hon.
Lucilda J. Norris
Hon. Earl Carroll

Participants

Emery McCabe
Catherine Drezak
Stan O'Dell
Lewis Lane
Patrick Scott
David L. Withey , Staff
Margarita Aguilera, Staff

Members Absent

Hon. Cornelia Cruz
Hon. Marjorie Grimes
Hon. Gloria Kindig
Joseph Lodge, Esq.
Professor Rebecca Tsosie

The meeting was called to order at 10:25 A.M. by Judge Nelson, Chairman.

Approval of October 26, 1999 Conference Call Meeting Minutes

Minutes approved with no additions, corrections or subtractions.

Tribal Judgments Rule Petition Update

The Court continued this matter so a revised version could be circulated to twenty-two (22) practitioners and academics to comment on the need for the rules proposed and the Court's authority to adopt them. Only a few comments were submitted by the selected practitioners, academics, or experts in response to the initial request. At its last rules agenda, the Court asked staff to follow up further in order to get a better response. The Court's next rules agenda is May 23, 2000. (*Update: On May 23, the Arizona Supreme Court approved the petition with*

modifications.)

QUADRO Federal Legislative Update

David Withey reported the status of this item to the Forum. The Conference of Chief Justices State -Tribal Relations Committee decided not to recommend a resolution supporting the federal law change the Forum is proposing. SRP legal staff has indicated, if asked, SRP would support the proposed change. Mr. Withey provided information and discussed this issue with Representative Hayworth's staff. An amendment to a tax bill was the suggested approach. Judge Nelson sent a letter to Representative Hayworth requesting his assistance. Forum members suggested that Judge Nelson communicate with Senator Kyle on this issue as well.

(Update: Since the meeting, Rep. Hayworth responded favorably to the Forum's request and submitted the proposal to the House legal counsel's office which prepared a draft bill.)

Access to Courts and Forms

The Forum was advised of the availability of state court forms in WordPerfect format. These forms may be useful to tribal courts which follow state law in the absence of tribal or federal law or where tribal courts are implementing the same federal law requirements as state courts. A state child support calculator is also available on the Arizona Supreme Court website at www.supreme.state.az.us. This calculator will compute the amount of child support a state court is expected to order in a particular case. AOC staff member Patrick Scott offered assistance to tribes wishing to develop a calculator that would compute child support based upon tribal court guidelines. He also suggested that court information contained on tribal websites can be linked to the Arizona Supreme Court's website. Mr. Scott can be contacted at **602-542-9255** for further information on these matters.

State, Tribal and Federal Judges Conference

Robert Hershey, Adjunct Professor at the University of Arizona, College of Law indicated the tentative conference agenda includes: tribal sovereignty; use of international human rights law to understand the situation of American Indian tribes; use of evidence of cultural tradition; and activities of judges off the bench. Judge Carroll suggested some conference topic ideas including: tribal appellate court procedures, the bases of federal court deferral to tribal court, how litigants get to federal court from tribal court, and jurisdiction over medical malpractice on reservations. Judge Rhodes informed members that the Gila River Indian Community is establishing a supreme court. He noted problems providing for the rights of defendants due to lack of counsel despite consecutive sentences that result in several years of incarceration. *(Update: The conference is scheduled from 2 P.M. to 6 P.M. on Thursday, June 8, 2000 at Ventana Canyon Resort in Tucson.)*

Court Forum Issues Prioritization

David Withey explained that the rest of the agenda consisted of background information provided by persons who are knowledgeable about the seven highest priority issues identified by the Forum at its last meeting. This information is provided to enable Forum members to further prioritize the issues for attention by the Forum in the future.

A. Crimes by Non-Indians on Indian Reservations

Those present viewed a videotape produced by the Bureau of Indian Affairs that depicted various types of cooperative arrangements between federal, state, tribal, county and city law enforcement agencies including cross-deputizing and interagency agreements. Mr. Withey reported his efforts to obtain information about the Maricopa County Attorney's Office prosecution of non-Indians for offenses within tribal jurisdictions. The county attorney apparently does not distinguish these offenses from other offenses prosecuted in the county. He suggested that state law enforcement

authorities may be a more productive source of information. Members commented that tribes could obtain authority over non-Indians for certain offenses by decriminalizing those offenses. Judge Flores noted that crimes by non-Indians that involved loss of life by tribal members had been a cause of division between Colorado River Tribal authorities and local and state authorities.

B. Tribal Involvement in State Court Dependency Proceedings

Problem: AOC staff member Teresa Saiz reported that historically, a dependant child has spent 3-5 years on average in foster care. (Ms. Saiz provided a flow chart of the dependency process). Arizona courts have implemented “Model Court” and the “Court Improvement Project” which streamline the dependency process by providing for a meaningful hearing in 5 to 7 days with the aim of reducing the time that a child spends in foster care. Under these programs 87% of cases are resolved at the initial hearing with 65% of children initially placed with family members and 98% of children eventually returning to parents. The most important issue for Indian children in this process is effectively identifying them.

DES Child Protective Services Specialist Lewis Lane reported that to some degree the ASFA, a federal law that mandates measures by states to achieve permanency conflicts in practice with ICWA, a federal law that assures the opportunity for tribal involvement in dependency cases concerning Indian children. Mr. Lane agreed that identification of Indian children by DES is not sufficient to meet the accelerated time frames. A fast track v. slow process are incompatible. Indian children are not identified early in the process and DES staff need to obtain more information about children who may be Indian. When notified, tribal jurisdictions are often slow to respond due to insufficient information provided about the child, poor lines of communication to and within tribes and lack of resources.

Solution: Mr. Lane suggested that the state courts and tribal and state social services agencies hold problem solving sessions and agree on workable procedures. Ms. Saiz agreed that state courts and DES need to interface with tribes to agree on procedures. Judge Nelson suggested that tribal enrollment numbers be routinely obtained by DES and provided to the tribes. JOLTS, the state court juvenile online tracking system can be set up to indicate Native American ethnicity and enrollment numbers. Ms. Saiz informed the Forum that a federally funded statewide planning meeting will be held on April 14th to create county implementation teams charged with addressing these issues. (*Update: Meetings were held on April 14, 2000 in each of the fifteen counties.*)

Enforcement of Domestic Violence Protective Orders

Problem: AOC staff member Catherine Drezak reported that February 1999 statistics show that 75% of perpetrators of domestic violence against Indian victims are non-Indian. A question was raised as to whether the Violence Against Women Act (VAWA) provide a basis for tribal court jurisdiction over non-Indians who commit acts of domestic violence. Ms. Drezak indicated that jurisdiction over these offenses and enforcement of protective orders are significant problems despite the federal requirement that state and tribal protective orders be afforded full faith and credit. She noted that the Quechans and Cocopahs have made significant progress by entering intergovernmental agreements.

Solution: Agreements between more tribes and the state are needed. Judge Ehrlich advised that protocols are

being developed for state jurisdictions which may be useful between the state and tribes and between tribes. A uniform cover sheet for protective orders can be developed that allows for the different order formats of each jurisdiction but that is recognizable to law enforcement. More cross-deputizing is needed. This topic was suggested for inclusion in the State, Tribal and Federal Judges Conference.

Enforcement of Child Support and other Domestic Relations Orders

Problem: Stan O'Dell, Assistant Attorney General, reported on Title IV A & IV D programs which establish and enforce parents child support duties. The child support system is effective because of the recovery and penalties it imposes against virtually all types of asset classes, including suspension of permits and licenses. Mr. O'Dell advised that case law (*Howe v. Ellenbecker*, 8 F.3d 1258 (8th Cir. 1993)) requires states to work out enforcement methods with tribes. Since federal law (28 U.S.C. §1738(6)) requires that state and tribal courts afford each others' child support orders full faith and credit, recognition and enforcement of orders have not been a problem. The principle problem is determining whether the state or tribal court has subject matter jurisdiction over a particular case. The unique tribal interest in domestic relations makes this a particularly important determination. Tribes have not adopted the uniform act on enforcement of child support.

Solution: Tribes can undertake Title IV A & IV D in cooperation with a state, as has the Navajo Nation, or directly with the federal government. Where this is not done, cooperative agreements are needed that allow assistant attorneys general to practice in tribal court in cases where tribal court has jurisdiction. Tribes can also adopt uniform laws like those between states. States must work out enforcement methods with tribes. Education regarding laws and procedures is needed to assist Indian families in the child support process.

Education about Tribal Courts for Attorneys and the General Public

Forum members discussed the need for more education about tribal courts. A program could be planned for the State Bar Convention through the Indian law section. Tribal codes and rules could be made readily available in a centralized location. It was noted that a recent tribal court's program for federal judges went well. New Mexico has a Judicial Consortium that conducts cross-cultural training. Information could be provided on practice of law on reservations.

Jurisdiction Over State Rights of Way on Indian Reservations

Civil jurisdiction over Indian Reservation rights of way has recently been addressed in case law. Fred Steiner suggested that a diagram of jurisdiction and responsibility may be useful.

Forum Response to Issues

Judge Ehrlich observed that virtually all of the issues considered could be addressed by education and/or intergovernmental agreements. She suggested that the Forum divide into subcommittees to address these issues. The forum voted to authorize Judge Nelson to appoint these committees.

Adjournment and Next Meeting

The meeting was adjourned and members were reminded that the next meeting is planned for June 8, 2000 following the State, Tribal and Federal Judges Conference session at the Arizona Judicial Conference in Tucson.