

AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, May 31, 2019 - 10:00 a.m. - 3:00 p.m.

Arizona State Court Building, Room 119

1501 West Washington, Phoenix, Arizona 85007

- I. Registration (Beginning at 9:30 a.m.)
- II. Call to Order
- III. Introductions
- IV. Vice Chief Justice Brutinel Greeting
- V. Approval of Minutes
- VI. Meeting Business
 - A. Community Supervision
 - 1. Data on evidenced-based supervision of tribal probationers in Arizona
 - 2. Reentry – discharged prisoners reengagement with community
 - 3. Third Regional Community Supervision Summit –
Tentative August 27 & 28, 2019 - Ak-Chin Community, Harrah's Casino
 - 4. Action continuum and agreements
 - B. ICWA
 - 1. Representation by tribal attorney licensed in other state - *update*
 - 2. Implementation partnerships – *three state grants-ND, OK, MN*
 - 3. ICWA IV-E reporting requirements – *comment by ITCA*

LUNCH

- C. Involuntary Commitment - State Court Recognition of Tribal Court
Guardianships – Allyson Thomas
- D. Four Corners Cross-Jurisdictional Conference
 - 1. Issues in common
 - 2. Successes to share
 - 3. Challenges
 - 4. Letter
- E. Member Reappointments
- VI. Next Meeting – September 13, 2019 - Location?
- VII. Open Forum for Discussion of Issues of Concern

REACHING FOR THE SUMMIT

COMMUNITY SUPERVISION ACROSS STATE, TRIBAL, AND FEDERAL JURISDICTIONS





Mutual Respect for Each Other as Separate Jurisdictions

Recognition of each other's sovereignty independence history, culture, values goals, objective, rules, accountability, strengths, and weaknesses.



Communication about Effective Community Supervision

- Action
 - Presentations
 - Exchange directories
 - Job exchanges / shadowing
 - Joint training – sharing best practices
 - Exchange vendor lists.
- Content
 - Organization, personnel, office location, programs, best practices, innovations, curricula, resources, contractors, stories



Coordination of Supervision Duties

- **Action**
 - Exchange probationer ID info – common probationers
 - Notification of supervision activities – avoid conflicts
 - Notification of conditions/requirements
- **Content**
 - Identity & location of probationers
 - Supervision plans



Cooperation to Work Together

- **Action**
 - Joint staffing
 - Agreement to share and use reports
- **Content**
 - Cooperative goals & objectives
 - Cooperative supervision plans
 - Cooperative supervision



Collaboration

- **Action**
 - Agreement to cross-deputation – single probation officer
 - Sharing duties, responsibilities, resources, personnel, and/or facilities
- **Content**
 - Reports to court in any jurisdiction as needed

ICWA Pro Hac Vice Chart

	<u>California</u>	<u>Michigan</u>	<u>Nebraska</u>	<u>Oregon</u>	<u>Washington</u>	<u>Wisconsin</u>
Rule # & link	Rule 9.40(g)	MCR 8.126	NRS 43-1504	UTCRC 3.170	APR 8(b)(6)	SCR 10.03(4)
Limited Appearance	court's discretion	exempt	exempt	1 case per year	court's discretion	court's discretion
Associate with active Counsel	exempt	exempt	exempt	exempt	exempt	exempt
Pay Application Fee	\$50	exempt	exempt	exempt	exempt	exempt
Comply w/ standard requirements	yes	yes	exempt	yes	yes	yes
Enacted	10/1/2018	9/1/2017	8/30/2015	8/1/2017	9/1/2018	2/12/2019

**Proposed ICWA Data Collection
Using Title IV-E CIP Funding**

Proposed ICWA Data Collection Using Title IV-E CIP Funding

...Additionally, the Court Improvement Program (CIP) requires grantees to engage in meaningful and ongoing collaboration with the state child welfare agency and tribes (section 438(b)(1)(C) of the Act). In furtherance of this statutory mandate, the next program instruction for the CIP will encourage grantees to work with the dependency courts across their jurisdictions to enhance efforts to collect and track key ICWA data indicators. This is logical because the requirements of ICWA and accompanying regulations are upon state courts. The capacity of state and county courts to collect and track data varies widely across the country. Many courts either do not track ICWA-related data currently or do so inconsistently. The forthcoming program instruction's emphasis on collecting and tracking ICWA-related data will be coupled with technical assistance through the CB's technical assistance provider for CIP grantees and the courts to help address this historic and ongoing information gap. CIP grantees will be encouraged to use CIP grant funds to assess the court's ICWA practice, support the court's data infrastructure, and train key court personnel on the importance of monitoring ICWA. Specifically, CIP grantees will be encouraged and supported to collect and monitor data on court inquiries, orders and findings related to:

- Identification of Indian children as defined in ICWA,
- Notice to Indian tribes,
- Tribal participation as parties in hearings involving Indian children,
- Tribal intervention in dependency cases,
- Transfer of ICWA cases to tribal courts, and
- Placement of Indian children according to tribal preferences.

State Recognition of Tribal Guardianship Orders

State Recognition of Tribal Guardianship Orders

Issue: Whether or not tribal court orders appointing guardians (temporary and permanent) for mentally incapacitated adults are recognized stateside and whether the following 2009 Arizona Department of Human Services recommendations for state recognition of tribal guardianships are effective:

1. Including the name and authority of guardian in the involuntary commitment order under A.R.S. § 12-136 and the Arizona Rules of Procedure for the Enforcement of Tribal Court Involuntary Commitment Orders; or
2. Filing the tribal court order appointing a guardian with the superior court through Rule 5 of the Arizona Rules of Procedure for the Recognition of Tribal Court Civil Judgments

Case Summary – Respondent, 24 year old male Community member

January 3, 2018: Office of General Counsel (OGC) filed a petition for appointment of Office of the Public Fiduciary (OPF) permanent guardian. Respondent has had a court appointed conservator since 2012. Respondent has been diagnosed with schizophrenia disorder bipolar type and antisocial personality disorder.

March 15, 2018: In a separate, related matter, the Community court found Respondent: 1) suffers from schizophrenia; 2) to be a danger to others; 3) unamenable to voluntary treatment. Respondent is ordered to be involuntarily committed to the Arizona State Hospital (ASH). Respondent enters ASH on April 2, 2018.

March 20, 2018: The Community court holds an initial hearing on petition for guardianship; Respondent appears, requests and is appointed legal counsel.

April 24, 2018: Respondent, through legal counsel, and parties stipulate to a temporary guardianship, and the Community court issues a Letter of Appointment to the Guardianship Division of the tribe's Health and Human Services (HHS) department. *See attached order and letter.*

August 13, 2018: the OGC moves to dismiss the guardianship and requests an emergency review hearing, stating that ASH staff 1) did not recognize the Community court's order designating HHS as guardian; 2) restricted the guardian's participation in staffing Respondent's treatment plan and directed the guardian to act as an observer only; and 3) did not acknowledge the guardian's requests for services for Respondent. On August 14, Respondent is discharged from ASH and voluntarily enters a supervised, unlocked behavioral health group home. Respondent is assigned a state appointed GAL.

August 15, 2018: the Community court maintains the guardianship of Respondent and sets the matter for status hearing on September 6, 2018. Respondent's legal counsel and OGC report that neither receive an explanation for ASH not recognizing the Community court appointed guardian, and ASH legal counsel informs Respondent's legal counsel that the guardianship should be recognized, but does not otherwise explain why guardian has not been recognized.

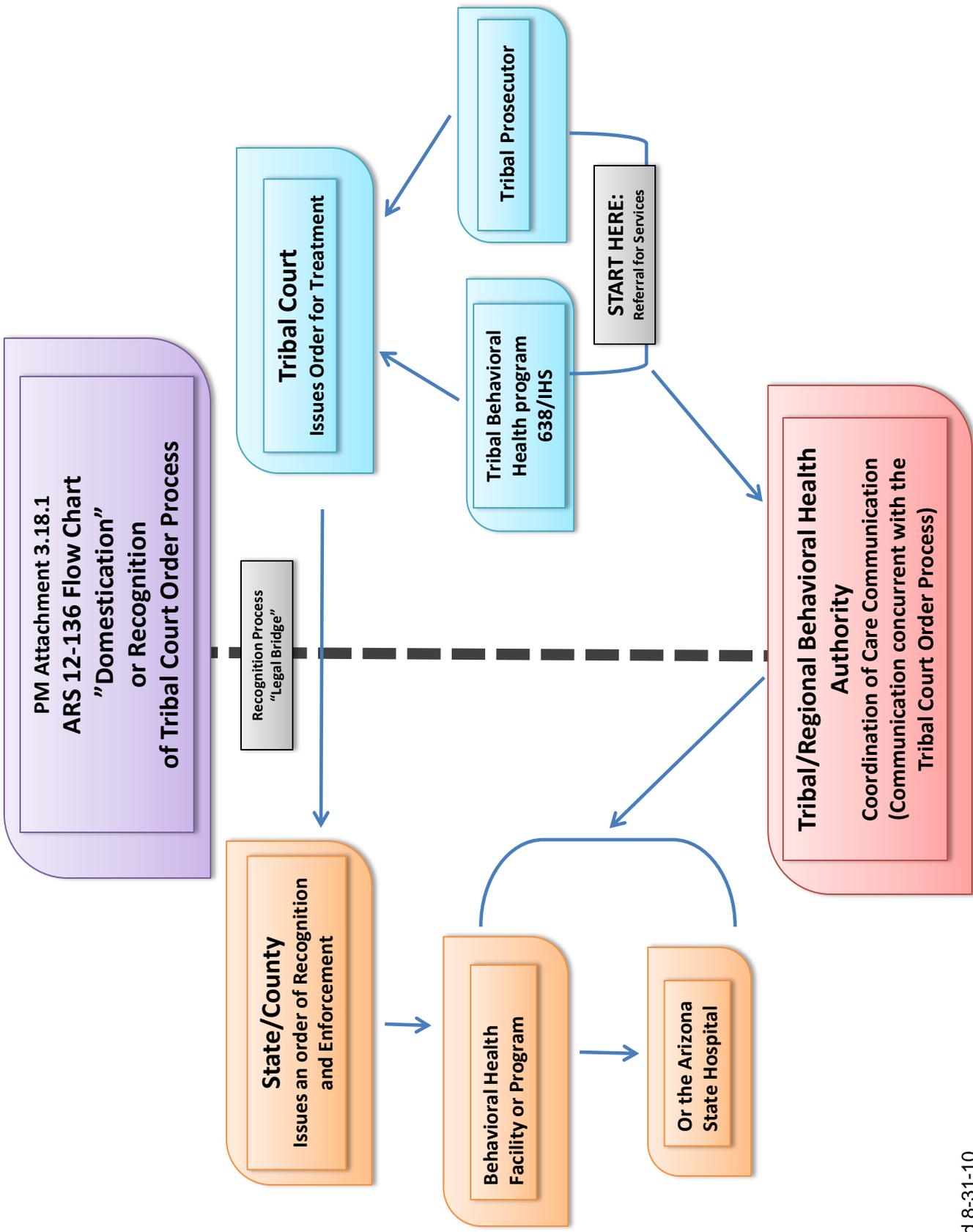
September 6, 2018: the Community court finds Respondent is mentally stable and doing well in his new placement. In step with ASH, the behavioral health group home deems Respondent's guardian, a "special advocate". OGC's motion to dismiss the guardianship is withdrawn and guardianship is maintained.

November 12, 2018: Respondent is discharged from the behavioral health group home after his second AWOL. He is deemed to be his own person through his state behavioral health service provider. Respondent returns to the Community.

December 4, 2018: the Community court convenes a status hearing. Respondent does not appear, guardian reports that Respondent is mentally stable, takes his medication and attends his appointments. The court grants OGC's motion to dismiss the guardianship.

December 28, 2018: Respondent is arrested in the Community on suspicion of domestic violence and disorderly conduct. Respondent is released from custody after a complaint is not filed.

Tribal Involuntary Commitment Flow Chart



Rules of Procedure for Recognition of Tribal Court Civil Judgments

RULES OF PROCEDURE FOR THE RECOGNITION OF TRIBAL COURT CIVIL JUDGMENTS

RULE 1. APPLICABILITY

These rules shall govern the procedures for recognition and enforcement by the superior courts of the State of Arizona of tribal court civil judgments of any federally recognized Indian tribe. Determinations regarding recognition and enforcement of a tribal judgment pursuant to these rules shall have no effect upon the independent authority of that tribal judgment. To the extent that they are not inconsistent with these rules, the Arizona Rules of Civil Procedure shall apply.

These rules do not apply to tribal judgments for which federal law requires that states grant full faith and credit recognition or for which state law mandates different treatment.

Nothing in these rules shall be deemed or construed to expand or limit the jurisdiction either of the State of Arizona or any Indian tribe.

RULE 2. DEFINITIONS

As used throughout these rules:

(a) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including courts of Indian Offenses organized pursuant to Title 25, Part 11 of the Code of Federal Regulations.

(b) "Tribal judgment" means any final written judgment, decree or order of a tribal court duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

RULE 3. FILING PROCEDURES

(a) Documents to be Filed. A copy of any tribal judgment may be filed in the office of the clerk of the superior court in any county of this state.

(b) Notice of Filing. The person filing the tribal judgment shall make and file with the clerk of the superior court an affidavit setting forth the name and last known address of the party seeking enforcement and the responding party. Promptly upon the filing of the tribal judgment and the affidavit, the enforcing party shall serve upon the responding party a notice of filing of the tribal judgment, together with a copy of

the judgment, in accordance with Rule 4.1, Arizona Rules of Civil Procedure, or shall mail by certified mail, return receipt requested, the notice of filing and a copy of the judgment to the responding party at the last known address. If the responding party is the State of Arizona, or any of its officers, employees, departments, agencies, boards, or commissions, the notice of filing shall be mailed to the Attorney General's Office. The enforcing party shall file proof of service or mailing with the clerk. The notice of filing shall include the name and address of the enforcing party and the enforcing party's attorney, if any, and shall include the text of Rules 4 and 5(a) and (b).

RULE 4. RESPONSES

Any objection to the enforcement of a tribal judgment shall be filed within twenty (20) days of service or of receipt of the mailing of the notice of filing the judgment, or within twenty-five (25) days of the date of mailing, whichever last occurs. If an objection is filed within this time period, the superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

RULE 5. RECOGNITION OF TRIBAL JUDGMENTS

(a) Enforcement of Tribal Judgment. A tribal judgment, unless objected to in accordance with Rule 4, shall be recognized and enforced by the courts of this state to the same extent and shall have the same effect as any judgment, order, or decree of a court of this state.

(b) Certification by Clerk of Court. If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed, and the tribal judgment shall be enforceable in the same manner as if issued by the superior court.

(c) Mandatory Considerations Following Objection. A tribal judgment shall not be recognized and enforced if the objecting party demonstrates to the court at least one of the following:

1. The tribal court did not have personal or subject matter jurisdiction.
2. The defendant was not afforded due process.

(d) Discretionary Considerations Following Objection. The superior court may, in its discretion, recognize and enforce or decline to recognize and enforce a tribal judgment on equitable grounds, including:

1. The tribal judgment was obtained by extrinsic fraud.
2. The tribal judgment conflicts with another final judgment that is entitled to recognition.

3. The tribal judgment is inconsistent with the parties' contractual choice of forum.

4. Recognition of the tribal judgment or the cause of action upon which it is based is against fundamental public policy of the United States or the State of Arizona.

Comments

[Rule 5(a)] See *Leon v. Numkena*, 142 Ariz. 307, 689 P.2d 566 (App. 1984). See also, *Lofts v. Superior Court*, 140 Ariz. 407, 410, 682 P.2d 412, 415 (1984), and *Firedoor Corp. of America v. Tibshraeny Bros. Construction, Inc.*, 126 Ariz. 392, 616 P.2d 67 (App. 1980).

[Rule 5(c)(2)] The due process requirement stated in this rule does not require that a tribe utilize judicial procedures identical to those used in state courts. However, tribal court proceedings must afford the parties the basic tenets of due process established by the federal and state constitutions. See *Wilson v. Marchington*, 127 F.3d 805, 811 (9th Cir. 1997).

[Rule 5(d)(1)] See *Restatement (Third) of Foreign Relations Law of the United States*, § 482 comment e (1986).

RULE 6. STAY

If the objecting party demonstrates to the superior court that an appeal from the tribal judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the tribal judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

RULE 7. CONTACTING COURTS

The superior court shall, after notice to the parties, attempt to resolve any issues raised regarding a tribal judgment under Rule 3 or Rule 5 of these rules, by contacting the tribal court judge who issued the judgment.

Court Forum Issues History

Court Forum Issues

1. Community supervision summits – probation & prison reentry
2. Four corners court forums conference
3. Tribal-State judicial roundtable on meeting the needs of Indian children
4. Overcoming Bias
5. Tribal customary Adoption/Guardianship
6. Orders of protection enforcement
7. Extradition to and from reservations
8. Tribal and state law enforcement officer cross jurisdictional authority
9. DUI Collaboration
10. Tribal Involuntary Commitment process guide and CBT
11. Specialty (wellness, veterans, drug, ICWA) court cross-jurisdictional cooperation
12. Cross jurisdictional access to conviction/order information (sex, DUI, DV offenses)
13. Service of process on reservations
14. Child support enforcement
15. ICWA regulations implementation – revised ICWA Guide
16. State judge education about tribal law and courts
17. Joint state and tribal judge and court personnel education
18. Juvenile detention alternatives for tribal youth
19. Access to justice – court web sites and forms for litigants
20. Federal tribal coordination – criminal prosecution & probation supervision
21. Recognizing and addressing trauma – family, historical, genetic

New Mexico Tribal-State
Judicial Consortium
Meeting Agenda



The New Mexico Tribal-State Judicial Consortium

STRENGTHENING RELATIONSHIPS, FOSTERING COMMUNICATIONS

Quarterly Meeting
Friday, May 10, 2019 from 9:00 a.m. – 12:00 p.m.
Indian Pueblo Cultural Center
Silver & Turquoise Banquet Room
2401 12th Street NW
Albuquerque, NM 87104

AGENDA

I. Welcome, Invocation, Introduction, and Announcements

II. Approval of Agenda

III. Action Items

- a. Approve October 2018 Quarterly Meeting Minutes
- b. Approve January 2019 Quarterly Meeting Minutes
- c. Other

IV. New Business

- a. Passage of HB 149, CYFD Notification of Tribal Juvenile at Petition Filing (J. Collins)
- b. Conference of Chief Justices Resolution: Encouraging greater collaboration between State and Tribal Courts to address the opioid epidemic (J. Torres)
- c. Tribal Customary Adoption (Donalynn Sarracino-NM ICWA Consortium, J. Collins, Bernie Teba-CYFD)
- d. ICWA Court – J. Eisenberg, J. Ward and Special Master Begaye
- e. New DV legislation on firearms prohibitions (P. Galindo)
- f. DV service of process fees and Specialty Court Policies and Procedures (J. Fox)
- g. ICWA Odyssey Codes (Patricia Galindo-AOC, Monica Rodriguez-2nd Dist. Ct.)
- h. Passage of SB 313 – Relating to Judicial Education; Including Tribal Judges in Judges Educated by the Judicial Education Center (Beth Gilia)
- i. Other

V. Committee Break-out Session

VI. Reports from Committee Chairs

- a. State Services/Full Faith and Credit (J. Collins)
- b. ICWA (J. Johnson)
- c. Drug Court (J. Fox) – Change name to Specialty Court Committee?
- d. JDAI (Melissa Clyde, Casey Foundation/Isleta)
- e. Rapport Committee Updates (J. Torres)
- f. Habeas Committee Updates (J. Eisenberg)

State, Tribal and Federal Court Forum
Current Membership Chart

State, Tribal, and Federal Court Forum 2019 Membership Chart

Position	Member Names
1. Four federal members:	
a. One Ninth Circuit Court of Appeals judge appointed by the chief judge of the circuit.	Canby
b. One District of Arizona judge appointed by the chief judge of the district.	Raves
c. The United States Attorney or designee.	Patterson
d. The Federal Public Defender or designee.	Sands
2. Eight state members:	
a. One appellate judge.	Howe
b. Five trial court judges of general and limited jurisdiction courts.	Clyde Latham Osterfeld Yehling Reed
c. A clerk of superior court or deputy clerk.	Romo
d. The attorney general or designee.	Morlacci
3. A minimum of eight tribal members:	
a. At least eight chief judges, chief justices or designees.	Andrews Antone King Leslie Passey Comanche Fields Kisto-Jones
b. Any additional chief judges, chief justices or designees who express interest in forum membership.	
4. One State Bar of Arizona, Indian Law Section member:	Torrez
5. Two public members:	Rosier (opening)

Y:\Legal\Court Forum\STFCF Appointments\2018 Appointments and Forms\STFCF Membership Chart 2018.doc