

AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, September 30, 2016 - 10:00 a.m. - 3:00 p.m.

Ak-Chin Indian Community Court

Maricopa, AZ

- I. Registration - (Beginning at 9:30 A.M.)**
- II. Call to Order and Greeting**
- III. Member and Participant Introductions**
- IV. Approval of Minutes**
- V. Meeting Business**
 - A. Child Support Guide Development**
 - 1. Review of Child Support Outline**
 - 2. Which Court has Jurisdiction? – chart or other guidance**
 - 3. Next Steps**
 - B. Probation Supervision on Reservations**
 - 1. Report on the Northeast AZ Community Supervision Summit**
 - 2. Cooperation/Coordination Issues**
 - 3. Reconstitute Committee?**
 - C. ICWA Committee Report**
 - 1. ICWA Developments**
 - 2. Implementation of New Regulations – 9/27/16 conference call**
 - 3. Introduction of Department of Child Safety Tribal & ICWA Liaison**

LUNCH & COURT TOUR

- D. Tribal Order of Protection Follow-up**
 - E. Involuntary Commitment Legislation Proposal**
 - F. Grant Information for Tribal Courts and State-Tribal Collaborations**
 - G. State Bar Members who are Tribal Judges Considered Judicial Members**
 - H. Judicial Response to Impaired Driving in Indian Country**
- VI. Open Forum for Discussion of Issues of Concern**
 - VII. 2017 Meeting Dates and Locations**
 - VIII. Adjournment**

IV. Approval of Minutes

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Ft. McDowell Yavapai Nation Tribal Court Draft Minutes of the April 29, 2016 Meeting

Court Forum Members Present:

Hon. Ryan Andrews Salt River Pima-Maricopa Indian Com. Court	Hon. David Osterfeld White Tank Justice Court
Hon. Victor J. Clyde Chinle Justice Court	Hon. Kerry Passey Ft. McDowell Yavapai Nation Tribal Crt
Hon. Lawrence King Colorado River Indian Community Court	Virjinya Torrez (for Jeff Harmon) State Bar of Arizona
Hon. Arthur Markham Yavapai-Prescott Tribal Court	Hon. Wayne Yehling Superior Court, Pima County

Administrative Office of the Courts (AOC) Staff Present:

David Withey	Brenda Lee Dominguez
Dori Ege	Steve Lessard (via telephone)

Participants/Visitors Present:

Hon. Malcolm Begay	Fred Lomayesva
Sheri Freemont	Kim Lough (FBI – via telephone)
Hon. Carol Gatewood-Kasey	Hon. Lucinda Nez
Com. Myra Harris (via telephone)	Allison Miller
Richard Herrera	Mitch Padilla
Verna Johnson	Allyson Thomas
Kristi Knight (FBI – via telephone)	Hon. Ida Wilber
Calvin Lee	Zach Hartzell (FBI – via telephone)

I. **Registration** - (Beginning at 9:30 A.M.)

II. **Call to Order and Greeting**

David Withey called the meeting to order at 10:05 a.m.

David thanked Judge Passey for hosting the meeting and providing lunch.

III. **Participant Introductions**

IV. **Member Additions to Agenda**

David reported on the "[Tribal-State Court Forums: An Annotated Directory](#)" issued by the Tribal Law and Policy Institute in June 2015. **Action Item:** David Withey to provide full brochure to the Court Forum. (Select link)

V. Approval of Minutes

Motion: Judge Passey made a motion to approve the minutes for January 8, 2016 and Judge Andrews second the motion, which was unanimously approved.

VI. Meeting Business

A. Child Support Guide Development

a. Additional Committee Members

The Child Support Committee working with Commissioner Harris consists of Judge Claudette White, Judge Ida Wilbur, Janet Sell, Asst. Attorney General, Judge Malcolm Begay, and an extern from the Arizona Office of the Courts. **Action Item:** David Withey to schedule a meeting with the Child Support Committee before the next September Court Forum meeting.

b. Preparation of Guide

Commissioner Harris reported on the effort and collection of information to be incorporated in the guide. She developed a series of questions for the state and each tribal court regarding enforcement of child support that would be incorporated into the Guide. The Guide would also include any forms tribes have available and the applicable child support calculator. Members and participants from tribes indicated court solicitors should be able to contribute to the Guide for each tribal court.

Mitch Padilla, Attorney General's Office, reported that they have their own internal checklist regarding subject matter jurisdiction and would share this document.

Judge Begay reported that the Navajo Court would be able to establish a staff person for the child support matters. Richard Herrera volunteered to be the contact person for Gila River Indian Community.

B. Probation Committee Report

a. N. AZ Community Supervision Summit - May 17, 2016

David Withey reported that the Summit will be held at the Twin Arrows Navajo Casino Resort in Flagstaff, Arizona on May 17, 2016. Steve Lessard, AOC Adult Probation Services Division, reported that there are openings for the tribal judges to attend. Registration closes on May 9. The Summit will explore the interaction of evidenced-based probation supervision with the tribal tradition and culture in order to improve community supervision of shared probationers on and off Arizona reservations and will involve state probation and corrections, tribal, and federal officers and other officials interested in community supervision in tribal communities.

b. Supervision of State Probationers on Reservations

David Withey reported that cooperation and collaboration are needed in supervision of tribal probationers to avoid duplicate and triplicate

supervision that may conflict and waste resources. Dori Ege, AOC Adult Probation Services, reported that interstate compact agreements for adult supervision involves 52 state and territorial jurisdictions that sometimes request return to Arizona of tribal members. Per interstate compacts the states receiving state provides supervision monitoring that the sending state imposed using the same methods used with probation ordered by Arizona courts.

Judge Begay stated that there are legal issues to getting the tribes involved with interstate supervision. He also identified practical challenges for community supervision on reservations, especially with electronic monitoring of intensive probationers in remote areas and lack of treatment services for sex offenders. Lack of funds and resources are a major issue. Steve Lessard suggested the potential to share state tribal and federal funding when supervising the same probationer. The state and the probation departments in each county have identified treatment and other resources for probationers.

It was noted the some state and tribal probation departments are communicating about state probationers residing in a tribal community, such as Maricopa County Adult Probation contacting the Gila River Indian Community Chief Probation Officer. Judge Gatewood-Casey reported that Apache County probation officers supervise probations on the reservation without contacting White Mountain Apache tribal officials. Navajo and Pinal probation officers do not supervise on the reservation. More communication is needed between federal and tribal probation as well - federal probationer completed probation while in tribal jail for a new offense. A monthly check by federal and tribal authorities for offenders in common was suggested. Presentence checks for offenses and probation in other jurisdictions was also recommended. The need for and difficulty of developing interjurisdictional MOUs was also discussed.

C. ICWA Committee Report

a. Committee Update

David Withey reported that the ICWA Guide is posted on the Court's website and that a webinar regarding the Guide is to be developed. **Action Item:** Send out link for the [ICWA Guide](#) to the Court Forum. (Select link)

Sheri Freemont, Senior Director with Casey Family Programs in the Child Welfare Unit, described the work that Casey does to provide support to state and tribal jurisdictions to improve outcomes for tribal children and families in the child welfare systems, as well as supporting the Indian Child Welfare Act practices in national projects and state forums. Ms. Freemont reported that they have sponsored judicial roundtables, which work on building the bridges between tribal and state. David indicated the value of this program and the need to develop a strategy to involve state judges. He

suggested that the Casey Foundation consider holding this program next year at the Arizona Judicial Conference.

b. ICWA Scenarios Prompting Litigation

Forum members discussed claims regarding ICWA filed by Goldwater Institute in U.S. District Court – Arizona.

LUNCH – Provided by Judge Passey

D. Fort McDowell Yavapai Nation Tribal Court Overview/Tour

Due to the full agenda and the fact the Court was closed for the day, we agreed the tour would not be a productive use of time.

E. Tribal Order of Protection Update

Kim Lough, Kristi Knight, and Zach Hartzell (FBI) addressed the need for tribal court orders of protection to be available to all law enforcement officers in Arizona through state and national criminal information systems. The universal avenue for entering information, including orders of protection, into criminal justice information systems is through the responsible entity in each state, called the CJIS Systems Agency. For Arizona this is the Department of Public Safety (DPS). Judges Passey and King have both obtained ORI numbers from DPS identifying their courts as a reporting entity. However, DPS has informed them only the sheriff's office can enter orders of protection under an Arizona statute. The Navajo Nation, Shiprock Agency received (COP) grant funding for CJIS access.

Ms. Lough reported that there is an ongoing pilot program called Tribal Access Program (TAP), in which the Department of Justice (DOJ) will serve as the CJIS Systems Agency for ten tribes. Three Arizona tribes, White Mountain Apache, Gila River, and Pascua Yaqui are included in this pilot program expected to conclude in September. This will allow participating tribes to access all services available on NCIC including sex offender registries and entry of orders of protection. Any tribes interested in getting access to CJIS through NCIC may contact TAP at tribalaccess@usdoj.gov. In response DOJ may request funding for expansion of such access to ACJIS by authorities of additional tribes in future fiscal years. Such access would serve to protect both tribal and non-tribal communities in Arizona through sharing of information about sex offenders, cross-jurisdictional repeat offenders and firearms purchasers as well as persons subject to orders of protection.

Agencies reporting orders of protection must provide 24/7 response to verification requests from law enforcement officers. This can be handled through an IGA with another agency. For statistical purposes DOJ requests that ORIs be obtained in the name of the tribe so these requests can be identified.

Action Item: David Withey to provide contact information for Kim Lough (per her request) and TAP to Court Forum members. (Select for email)

F. Involuntary Commitment Update

David Withey reported on the progress of the computer based training for involuntary commitment. Work group members are Sheina Yellowhair, Cenpatico, Anne Susan, ITCA, Judge Yehling, David Withey, and Brenda Lee Dominguez. Judge Andrews suggested SRPMIC Judge Achin be added as a resource. **Action Item:** David Withey to schedule a meeting this summer with the work group members to work on this project.

G. Tribal Judge Opportunity to Attend Arizona Judicial Conference

The Arizona Judicial Conference will be held June 22 – 24. Tribal judges were asked to contact David Withey if you need information regarding the conference at dwithey@courts.az.gov or by phone at 602-452-3325.

VII. Open Forum for Discussion of Issues of Concern

David Withey requested anyone interested in serving as Chair for the Court Forum contact him.

David reported that the Court Forum membership terms are expiring as of June 30, 2016 and that members will be appointed by Chief Justice Bales as of July 1, 2016 for the next three year term.

Judge King reported on court innovations regarding grants. **Action Item:** Judge King to provide David Withey information on the grants, which will be sent out to the Court Forum members.

A breakout session at the Arizona Judicial Conference on tribal courts was recommended.

VIII. Next Meeting – September 23, 2016 - Ak-Chin Indian Community Court

IX. Adjournment

Meeting adjourned at 3:00 p.m.

V. Meeting Business
A. Child Support Guide Development

This is a suggested format for child support information. I have specific child support information from the (1) Navajo Nation, (2) Hopi Tribe, (3) Quechan Tribe, (4) Salt River/Pima/Maricopa Indian Community; (5) ~~Teneh-Tohono~~ O'odham Nation (Papago), and; (6) Pasqua-Pascua Yaqui Tribe using State guidelines) nations.

The Arizona Inter-Tribal Child Support Guide- Outline

Introduction and Purpose for Guide

Useful Beginning Information for CS Cases

(Information required will vary with ~~by~~ jurisdiction)

Identifying Information and Documentation for Child: Name of child; social security #; date of birth; address; telephone; identification card; certificate of Indian Blood/tribal affiliation(s) and enrollment number; and birth certificate. Where does child attend school? Does child live with parent or with non-parent supervisory adult?

Identifying Information and Documentation for Father: Name; social security #; date of birth; address; telephone; driver's license or identification card; certificate of Indian Blood/ tribal affiliation(s) and enrollment number; Employment: (Is parent capable of working? Is parent self-employed or where employed and earnings? What bank records are available? What assets does father own?). Has paternity been established? What is the marital status?

Identifying Information and Documentation for Mother: Name; social security #; date of birth; address; telephone; driver's license or identification card; certificate of Indian Blood/ tribal affiliation(s) and enrollment number; Employment: (Is parent capable of working? Is parent self-employed or where employed and earnings? What bank records are available? What assets does mother own?). What is the marital status?

Jurisdiction

What is needed to establish jurisdiction under state law and the law of each tribe? - definition in citation to tribal code or case law?

Concurrent jurisdiction: Can more than one (1) tribe and/or both the state and a tribe have jurisdiction over the action?

How does person requesting CS establish jurisdiction for tribal court? What does the tribal code state?

Is there personal jurisdiction over party who is requested to pay CS? Where does the party reside or have tribal membership or citizenship?

Are there other existing court orders about the family?

Commented [VT1]: How is this different from the first question in this section?

Service of Process on Particular Reservations

How is service of process accomplished on each reservation? Private or court process server?

Who Is The Contact Person/Office on Particular Reservation for Obtaining and Enforcing Child Support?

Need current contact person, if any, for the specific reservations with e-mail and phone information.

When May Action Be Brought

Prior to child reaching age of majority (18 v. up to 3 yrs. after child reaches age 18)?

What does tribales code state?

Who May Bring Action

Parent; guardian; governmental agency such as IV-D; other family members who support child? Does the tribe provide services under the federal IV-D program? Do IV-D agencies from other jurisdictions enforce child support in ~~your~~ in the tribal jurisdiction?

Who Is Responsible For Paying Child Support

When parents do not live together does the tribal law presume children will live with a particular parent, relatives or parent's clan or does it depend on individual court parenting orders?

Does how much time the child spends with each parent affect child support payments?

Child Support Payment Guidelines

State guidelines and the following tribal guidelines are available on the internet (1) Navajo Nation; (2) Hopi Tribe; (3) Quechan Tribe; (4) Salt River/Pima/Maricopa Indian Community; (5) ~~Toneho-Tohono O'odham Nation (Papago); and (6) Pasqua-Pascua Yaqui Tribe using State guidelines~~). Include a copy of guidelines for each jurisdiction. How does the court consider per capita payments to the child? Does ~~this~~ per capita replace or reduce the child support obligation? Are assets and contributions of family or clan members, such as child care and other forms of in-kind support, considered?

May the Court Consider Non-Cash Assets such as land/animals in addition to earnings when calculating the child support obligation and ordering the form of payment?

Please explain how the non-cash property and payment is valued.

Commented [WD2]: Is this OK or should we separate consideration of non-cash assets in establishing the CS obligation and use of those assets to satisfy the obligation.

Commented [VT3R2]: I think this is fine. Conceivably, a tribal court could look at total net-worth in determining the child support obligation, rather than just cash assets. However, I think this question is most properly combined with the Income section.

Deviation from Guidelines?

In what circumstances are deviations allowed? (e.g. Agreement by agreement of parents)? May the court consider additional costs for special needs or advanced children? May the court consider the need for additional support for extra-curricular activities, cultural activities, and related travel arrangements about which the parents do not agree? Is deviation addressed in tribal guidelines?

Health Insurance

How is health insurance considered in child support orders including private insurance? CHIP, Medicaid, AHCCSS, or through Health Insurance Marketplace? Indian Health Services?

Are parents required to fill out form for exemption from health care law for having insurance through IHS so as to avoid any penalty for not having medical insurance?

May parents be ordered to provide post high school medical insurance?

Income

What is considered income for the purpose of ordering child support? How does the court consider military and other government benefits and per capita payments received by parents? How does the court consider income from a parent's business or self-employment? Does the court consider earning capacity for a non-working parent?—Is there a self-support reserve or some other mechanism in place to prevent poverty of -a parent required to pay child support?

Termination of Child Support

Age of termination- Can parents be required to provide post-high school education or services for a special needs child? Can a child become emancipated from parents and lose child support early if child marries or graduates early?

Modification of Child Support

What is the modification process? How soon after initial award may CS be modified? How often may CS be modified? Is there a prerequisite for modification such as substantial and continuing change in circumstances or a mandatory per cent change in amount awarded (i.e. 15% change in CS Order or some other number?)?

Enforcement of Child Support

Will tribe honor other CS Orders under FFCCSOA (Full Faith and Credit Child Support Orders Act, § 28 U.S.C. § 1738(B))?

Will Tribe accept a UIFSA (Uniform Interstate Family Support Act) transmittal for enforcement purposes? Colorado River Indian Tribe accepts UIFSA.

Commented [WD4]: What is transmitted and who does the enforcement if there is no IV-D agency? Please explain.

| What court remedies are available to collect child support? Does this include civil contempt of court? What steps are required to enforce child support from another jurisdiction?

Commented [VT5]: Perhaps there should be a section on garnishment of wages in satisfaction of child support orders. Does the tribe have garnishment? How is garnishment accomplished? Etc...

Parenting Time (Visitation) Information

How is the time a child has with each parent determined? Does the court impose a formal parenting time schedule?

| Deviations (holidays and vacations) from regular schedule.

V. Meeting Business
B. Probation Supervision on Reservations

2016 Northern Region Tribal/Probation/Parole
Summit
May 17, 2016

Morning Session

08:00 – 08:30	Opening Ceremony
08:30 – 08:45	Welcome/Introduction
08:45 – 09:15	Tribal/County Probationer Reflection
09:15 – 10:00	Hopi/Navajo/Hualapai/White Mountain Apache, Tribal Presentation
Break at 10:00 (15 min)	
10:15 – 11:30	Tribal Presentation Continued...
11:30 – 12:00	Probation/Parole, Presentation
Lunch (12:00 – 01:00)	

Afternoon Session

01:00 – 03:30	Breakouts by Tribe/Probation/Parole
Break at 3:30 (15 min)	
03:45 – 04:30	Report-out by Probation/Parole/Tribe
04:30 – 04:40	Closing Comments
Adjourn	

Reaching for the Summit

Collaboration

Sharing duties, responsibilities, resources, personnel, and/or facilities to maximize effectiveness and efficiency across jurisdictions.

Cooperation

Meetings, discussions, agreements, and joint activities to promote mutual goals and objectives.

Coordination

Communication of plans, probationer information, and activities to avoid conflict and duplication.

Communication

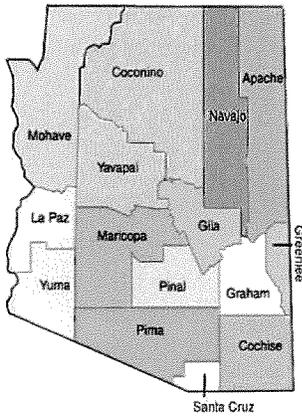
Sharing information, contacts, ideas, and training.

Mutual Respect

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

Community Safety

Officer Safety



Follow-up of NORTHERN ARIZONA TRIBAL SUMMIT: COMMUNITY SUPERVISION 05/2016

- From 27 various agencies (including numerous different districts/areas): Navajo County Adult Probation, Navajo County Juvenile Probation, Coconino County Adult Probation, Coconino County Juvenile Probation and Detention, Apache Adult and Juvenile Probation, Navajo County Juvenile Detention, Hopi Judicial Branch, Hopi Tribal Courts, Hopi Tribal Council, Navajo Nation Judicial Branch, Navajo Nation Probation and Parole Services, Arizona Department of Corrections (Parole), White Mountain Apache Tribal Court, White Mountain Tribal Police, Health Choice Integrated Care (RBHA), Community Counseling Center (local treatment provider), Arizona Supreme Court (Education Unit, Adult and Juvenile Probation Program Services, Legal), Navajo Nation Police, Navajo Nation Peacemaking, US Probation (Federal), Sunnyside Neighborhood Association, Hualapai Tribe, Hualapai Judicial Branch, Office of the US Attorney, Coconino County Board of Supervisors-Tribal Liaison, Kaibab Paiute Tribal Court, Department of Juvenile Corrections

- **Ratings:**
36-Excellent
15-Good
4-Fair
- **115 attendees out of 129 registered**

What's next?

- Debriefing occurred in August of 2016 with planning committee. Discussed the feedback, the valuable information, and the modification needed if we plan another in the future. The team agreed that we wanted this summit to “start the conversation” and hope the agencies will continue with the FOUR C’s: Collaboration, Cooperation, Coordination, and Communication.
- AOC wants to reunite the planning committee and local agencies, by way of an official meeting to share the benefits of this summit, to gather what processes have changed since the summit, to ask what feelings and perceptions have changed.

So far:

- White Mountain Apache Probation has reached out and received training from the Navajo County Adult Probation Department on the statewide Offender Screening Tool (OST), which determines a supervision level based on risk of reoffending.
- Probation Officers, staff, and treatment providers who attended feel a sense of comradery and feel they can contact another agency for insight or assistance with cases. There has been a reported feeling of “we are not alone, but we have others who can help.”
- Coconino County Adult Probation’s proposal for an educational presentation on Native American Reservation and Population: Challenges, Officer Safety and Victimology at the 2017 APPA has been accepted, as they saw a need for sharing our learned information and collaborative efforts with the community supervision agencies nationwide. This Coconino County Probation team is also having the open discussion of diversity in their own agency, how that is demonstrated, if their staff reflect who they serve, and how it relates to offender success.
- Navajo County Probation has meetings set to speak with White Mountain Apache Tribe Law Enforcement regarding probation supervision on that tribe.
- Agencies have been utilizing the Summit’s contact list for assistance and have been inviting these organizations to local trainings. (Mental Health First Aid and Under 100 safety first training).
- AOC looking at local probation and tribal procedures for extradition of superior court warrants off reservations.

EVALUATIONS FOR 2016 TRIBAL SUMMIT

1. I would Rate this Training Overall as:

Excellent - **36**

Good - **15**

Fair - **4**

2. What was most valuable about the content of this training?

- The 4Cs
- Networking and open communication
- Being able to create long term and short term goals and develop a better system for our staff as well as the offenders
- Guest speaker who was probationer
- Diverse probation departments getting together communicating with each other
- Awareness of tribal traditions and their prosocial activities
- Breakout discussions
- Communication
- How many different departments have come together to share what we deal with as issues, successes and to make it a positive collaboration
- Collaborate of people working
- Meeting others face to face
- Networking
- Emphasis on culture, focuses on relationships
- Federal, state, and county info and resources
- Meeting people from other agencies
- Obtaining contact information
- The DOC process-Intake to release
- Sharing information- meeting other POs from other counties and agencies
- Making connections with tribal probation
- That it was relevant to my area (Northern Arizona) and job
- Contacts in other jurisdictions who can be contacted for information
- The personal experience of a "probationer" and the agencies involved
- All aspects of the summit provided as good insight

3. What other content would you have liked to see included that would make this training more valuable?

- More breakout sessions involving other resources
- Continued efforts to collaborate and meet
- Leaving with concrete steps
- More understanding of tribal culture and traditions
- Examples of traditional healing process
- Cultural celebrations/opening
- More probationer testimonies –very impactful
- Leadership involvement
- Maybe to have what works for them, share ideas to make working with community supervision a positive experience
- Actual role play of peacemaking
- More information about other supervision strategies
- How we are going to work together better
- How the communication will improve
- Continue to work together
- The practices that need to be continued to make these plans work
- Mock peacemaking, sweat lodge, address important topics
- Invite all tribes
- Maybe include decision making as participants who can see/hear/act on issues impacting efforts at all levels of probation by initiating efforts for agreements to ease and improve efforts
- Social and behavioral health- what role they have in the process
- 2 day event
- Training and grant resources
- How reentry can be more effective on the tribal lands
- Sex offender info/offices
- Invite Navajo Nation Council delegate for them to write MOU/MOA
- Risk assessments

4. What did the presenter do that was effective in helping you learn, understand and, if applicable, apply the content?

- The presentation was excellent
- More understanding- being able to network
- Humor
- Gratitude
- Great facility, content and food
- Liked breakout sessions
- Appreciate the cultural specifics

- Compassionate explanations of what is working and needed
- Everything
- Talked about the teaching of the Navajo culture, meanings of life etc. that was excellent. Would be good to expand more on this teaching.
- AZDOC was a great presentation
- I appreciated the client presentation
- Speak to you about traditions
- Answer questions
- Information was effective-having handouts to refer to would be helpful
- The breakouts were good. Information collaboration
- Describe what their agency does their process that we wouldn't necessarily know otherwise
- Proper communication
- Never give up on probationers-to keep on trying in providing resources
- Audio and video, flip chart use to build concepts to help develop cooperation and collaboration between jurisdictions
- Using both video and public presentations
- Introductions of all the agencies
- Joyful presentation

5. What else could the presenter do that would help you learn, understand and, if applicable, apply the content?

- Involve law enforcement and public input
- Add in cultural/tribal pieces
- To help non-tribal personnel understand
- Entertainment
- Make it a yearly event with more options of different topics, maybe some entertainment, door prizes
- This morning was a little long
- Elaborate more topics
- Too long
- More breakout sessions- More interaction with other agencies
- Tell me again-repeating information needed to remember
- Follow up emails
- Additional real life experiences
- The idea of seating arrangements
- Hands on exercises
- Focus on probation officers
- Putting these conversations into action
- Not presenters but the community should give presenters more time to present
- Tell actual stories of successes and failures

Withey, David

From: Withey, David
Sent: Thursday, August 13, 2015 3:51 PM
To: Baumstark, Mike; Waters, Kathy; Kelroy, Joseph
Cc: Preston, Nina
Subject: LA Paz Supervision on CRIT Reservation
Attachments: Procedure Used for Extradition.pdf

I just wrote this update for the Legal Services monthly report that I want to share with you. I have attached a draft procedure provided by the tribal judge today which provides for tribal officials to receive a state warrant and file it with the court which then adjudicates it and notifies La Paz probation of the result. I forgot to mention in the summary, as a result of the meeting, it is recommended that all Indian probationers be required to waive extradition from all AZ reservations. This could be a special term or added to the general terms.

- **La Paz County Probation Supervision on Colorado River Indian Tribes (CRIT) reservation.** David participated in a conference call requested by CRIT that include the CRIT AG, AZ AAG McCarthy, CPO Greene, tribal judge King and other tribal officials about state probation supervision on the CRIT reservation. This meeting was prompted by case in which a CRIT juvenile on state probation was taken into custody at the probation office located within the boundaries of the reservation for probation violations. Tribal participants assured us they do not want Indian defendants subject to state jurisdiction to be denied probation or the opportunity to live on the reservation or to be release without supervision on the reservation. They do want legal procedures to be followed in carrying out supervision. As a result of this meeting regular meetings will be held and extradition procedures will be used in the future when the state wants to take into custody of an Indian located on the reservation. We still need to resolve any need for special procedures to take an Indian probationer into custody at the probation department office.

For more information contact
David Withey, Chief Counsel
at 602-452-3325

Procedure Used for Extradition

<u>Step</u>	<u>Action Initiated by</u>	<u>Action</u>	<u>Form Number</u>
1	CRIT Prosecutor/CRIT Police	Present a verified copy of warrant for arrest and seal of the authorities of the requesting court to Judicial Clerk	
2	Judicial Clerk	Extradition Request	
3	CRIT Prosecutor/CRIT Police	Sign Extradition Request as Authorized Representative of Jurisdiction seeking extradition. Also certification of reciprocity of the other jurisdiction.	
4	Tribal Court Judge	Review Extradition Request Approve Issuance of Arrest Warrant	
5	Judicial Clerk	Issue Arrest Warrant	
6	Judicial Clerk	Place Arrest Warrant and Extradition Request in Public Defender/Legal Aid Box (Notice)	
7	Arrest of person	Judicial Clerk shall set Hearing not less than five (5) days after arrest	
8	Court	Conducts hearing. Advises inmate of rights. Determines the validity of warrant from jurisdiction seeking extradition and that the person in custody is the person charged in the arrest warrant and other factors. –OR- Waiver by inmate.	
9	Court	Order of Extradition –OR- Release	
10	Judicial Clerk	Notify Jurisdiction seeking extradition the alleged offender is in custody and that she/he may be removed within five (5) days.	

UNIFORM CONDITIONS OF SUPERVISED PROBATION - PAGE 3 OF 3

STATE OF ARIZONA

COUNTY/DIVISION: _____

VS. _____

CR: _____

Based upon the defendant's agreement to abide by the Conditions of Supervision set forth, above, as well as my review and approval of such conditions, I hereby impose and order that these conditions are in effect, and the defendant shall comply with said conditions.

Judge of the Superior Court

Date

RECEIPT AND ACKNOWLEDGMENT: I acknowledge receipt of the conditions of probation and any attachments added. I understand that by not abiding by the conditions of probation my probation could be revoked and the Court may sentence me in accordance with the law. In addition, I waive extradition for any probation revocation proceedings in this matter.

Defendant

Date

Defendant's Address

Apt.

City

State

Zip

Phone

DISTRIBUTION: Original - Court, Copies - APD, Defendant

Revision 2010

13-3869. Extradition of persons to and from Indian jurisdiction.

A. If this state seeks the extradition of an Indian from within the jurisdiction of an Indian tribe in this state, this state shall comply with any applicable requirements of tribal extradition law.

B. An Indian tribe that permits extradition by this state of Indians from a tribal jurisdiction may request the extradition of Indians from state jurisdiction pursuant to this section.

C. An Indian tribe shall direct a demand for extradition to the county attorney of the county in which the person demanded is thought to be located, or if the location of the person is unknown, to the attorney general.

D. A written demand for extradition by an Indian tribe shall be recognized if the demand is accompanied by both:

1. A copy of a warrant issued for the person.
2. A criminal complaint or sworn statement made before a tribal judge substantially charging the person demanded with the commission of a crime under tribal law, with escape from confinement or with a violation of probation or parole.

E. The provisions of this article relating to extradition from a state that are not inconsistent with this section apply to extradition by an Indian tribe under this section. The public officer who receives the written demand under this section shall perform the functions of the governor under this article.

1994

V. Meeting Business
C. ICWA Committee Report

RESEARCH CRITERIA	REGULATIONS
Obligation or requirement imposed upon the court (continued)	§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved? § 23.129 When do the placement preferences apply? § 23.130 What placement preferences apply in adoptive placements? § 23.131 What placement preferences apply in foster-care or preadoptive placements? § 23.132 How is a determination of “good cause” to depart from the placement preferences made? § 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress? § 23.137 Who can petition to invalidate an action for certain ICWA violations? § 23.138 What are the rights to information about adoptees’ Tribal affiliations? § 23.139 Must notice be given of a change in an adopted Indian child’s status? § 23.140 What information must States furnish to the Bureau of Indian Affairs? § 23.141 What records must the State maintain?
Words incorrigibility and status offense	Incorrigibility: § 23.2 Definitions. Status Offense: § 23.2 Definitions. § 23.103 When does ICWA apply? § 23.104 What provisions of this subpart apply to each type of child-custody proceeding?
Definition of the same or similar terms to those in Rule 37	§ 23.2 Definitions. § 23.102 What terms do I need to know? <i>Note: Two terms in Rule 37 were not included in either regulation – Parties and Participants. Subsections 23.2 and 23.102 had terms that were not included in Rule 37.</i>
Notice to an Indian parent, custodian or tribe	§ 23.11 Notice. § 23.110 When must a State court dismiss an action? § 23.111 What are the notice requirements for a child –custody proceeding involving an Indian child? § 23.112 What time limits and extensions apply? § 23.113 What are the standards for emergency proceedings involving an Indian child? § 23.116 What happens after a petition for transfer is made? § 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress? § 23.139 Must notice be given of a change in an adopted Indian child’s status?

RESEARCH CRITERIA	REGULATIONS
Court/judge inquiry as to whether child is an Indian child or subject to ICWA	§ 23.107 How should a State court determine if there is reason to know the child is and Indian child? § 23-108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe? § 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe? § 23.124 What actions must a State court undertake in voluntary proceedings?
Burden of proof under ICWA	§ 23-108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe? § 23.132 How is a determination of "good cause" to depart from the placement preferences made?
Placement preferences for an Indian child	§ 23.129 When do the placement preferences apply? § 23.130 What placement preferences apply in adoptive placements? § 23.131 What placement preferences apply in foster-care or preadoptive placements? § 23.132 How is a determination of "good cause" to depart from the placement preferences made?
Adoption requirements for an Indian child	§ 23.4 Information collection. §23.71 Recordkeeping and information availability. <u><test of section effective until December 12, 2016></u> § 23.83 Assistance in locating biological parents of Indian child after termination of adoption. § 23.125 How is consent obtained? § 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved? § 23.129 When do the placement preferences apply? § 23.130 What placement preferences apply in adoptive placements? § 23.131 What placement preferences apply in foster-care or preadoptive placements? § 23.132 How is a determination of "good cause" to depart from the placement preferences made? § 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress? § 23.138 What are the rights to information about adoptees' Tribal affiliations? § 23.139 Must notice be given of a change in an adopted Indian child's status? § 23.140 What information must States furnish to the Bureau of Indian Affairs? § 23.141 What records must the State maintain?

ICWA Regulation Research

25 C.F.R. 23

RESEARCH CRITERIA	REGULATIONS
<p>Obligation or requirement imposed upon the court</p>	<p>§ 23.11 Notice, § 23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts. § 23.71 Recordkeeping and information availability. <i><test of section effective until December 12, 2016></i> § 23.81 Assistance in identifying witnesses, 23.82 Assistance in identifying language interpreters. § 23.83 Assistance in locating biological parents of Indian child after termination of adoption. § 23.203 When does ICWA apply? § 23.107 How should a State court determine if there is reason to know the child is and Indian child? § 23-108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe? § 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe? § 23.110 When must a State court dismiss an action? § 23.111 What are the notice requirements for a child –custody proceeding involving an Indian child? § 23.113 What are the standards for emergency proceedings involving an Indian child? § 23.114 What are the requirements for determining improper removal? § 23.115 How are petitions for transfer of a proceeding made? § 23.116 What happens after a petition for transfer is made? § 23.117 What are the criteria for ruling on transfer petitions? § 23.118 How is a determination of “good cause” to deny transfer made? § 23.119 What happens after a petition for transfer is granted? § 23.120 How does the State court ensure that active efforts have been made? § 12.121 What are the applicable standards of evidence? § 23.122 Who may serve as a qualified expert witness? § 23.124 What actions must a State court undertake in voluntary proceedings? § 23.125 How is consent obtained? § 23.127 How is withdrawal of consent to a foster-care placement achieved?</p>

§ 23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under these regulations, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its website at www.bia.gov.

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, D.C. (see www.bia.gov).

§ 23.106 How does this subpart interact with State and Federal laws?

(a) These regulations provide minimum Federal standards to ensure compliance with ICWA.

(b) Under § 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

Pretrial Requirements

§ 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an “Indian child,” the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child” in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

§ 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

V. Meeting Business

D. Tribal Order of Protection Follow-up

Withey, David

From: Withey, David
Sent: Monday, May 02, 2016 6:23 PM
To: Dominguez, Brenda
Subject: FW: AZ Tribal Orders of Protection - USDOJ Pilot Program

Please send the email below to the Court Forum members and participants:

Via conference call with FBI CJIS staff during the Court Forum meeting Friday, we again addressed the need for tribal court orders of protection to be available to all law enforcement officers in AZ through state and national criminal information systems. We learned about an ongoing pilot program (TAP) in which the DOJ will serve as the CJIS Systems Agency for ten tribes, a role performed by the DPS for the state and its political subdivisions. This allows participating tribes to access all services available on NCIC including filing and entry of orders of protection. Requirements for handling orders of protection on CJIS are provided in the Q&A below.

As promised at our meeting, below is the email address for the TAP program. Three Arizona tribes, White Mountain Apache, Gila River, and Pascua Yaqui are included in this pilot program expected to conclude in September. Any tribes interested in getting access to CJIS through NCIC may contact the TAP program at this email address. In response DOJ may request funding for expansion of such access to CJIS by tribal authorities in future fiscal years. Such access would serve to protect both tribal and non-tribal communities in Arizona though sharing of information about sex offenders, cross-jurisdictional repeat offenders and firearms purchasers as well as persons subject to orders of protection.

From: Lough, Kimberly K. (CJIS) (FBI) [mailto:Kimberly.Lough@ic.fbi.gov]
Sent: Thursday, April 28, 2016 12:13 PM
To: Withey, David <DWithey@courts.az.gov>
Subject: Re: AZ Tribal visit - Orders of Protection

For more information on the Department of Justice Tribal Access Program (TAP) please contact tribalaccess@usdoj.gov.

*Thank you,
Kim*

Kimberly Lough
CJIS Tribal Liaison
Partner Relations and Outreach Unit
Law Enforcement Support Section
FBI CJIS Division
304-625-3855

kimberly.lough@ic.fbi.gov

From: Lough, Kimberly K. (CJIS) (FBI)
Sent: Thursday, April 28, 2016 2:08 PM
To: Withey, David
Subject: Re: AZ Tribal visit - Orders of Protection

Have you addressed before now the need for tribes to enter OPs into NCIC? This is and continues to be an issue for various tribal agencies. If so, what was the outcome? Outcome is different for different

tribes. Solutions are dependent on the CJIS Systems Agency (CSA) they work through. **What tribes are currently entering OPs into NCIC?** Approximately 31 tribes are currently entering OPs into NCIC with a tribal designation. Some tribes may have their orders entered but under an Originating Agency Identifier (ORI) of a servicing agency (state Police Department/Sheriff's Office) and I am unable to determine if that is the case.

If not, is it possible for a tribe to enter OPs into NCIC? Yes, it is possible with authorized access.

If so, what qualifications and steps are required for a tribe to be authorized to enter OPs into NCIC? A connection to CJIS Division systems (NCIC) must be established through an approved CSA. Tribal agencies either enter through a state CSA or the Department of Justice.

What personal information and order content is required for a tribe to enter OPs into NCIC?

The criteria for entry is the same for tribes as it is for all other submitting agencies:

1: Protection order entries into NCIC:

- a) Must be supported by an electronic or hard copy order
- b) Must be issued by a civil or criminal court for the purpose of preventing violent or threatening acts to another person in response to a complaint
- c) Could include any support (child custody, etc.) issued as part of a protection order authorizing the issuance of protection orders for the protection of domestic violence, etc.

2: Reasonable notice and opportunity to be heard must be given. For ex parte orders, notice and opportunity to be heard must be provided within the time required by state, local, or tribal law. These ex partes are entered as Temporary Orders.

Mandatory fields for entry into NCIC include:

Originating Agency identifier

Name

Sex

Race

Expiration Date

Protection Order Conditions

Issue Date

And at least one of the following numeric identifiers:

Date of Birth

FBI Number

Miscellaneous Number

Social Security Number

Operators License Number (Set)

License plate Number (Set)

VIN (Set)

Protected Persons Name (Set)

What availability to respond to inquiries is needed regarding OPs? NCIC Hit confirmation requirements must be met. This includes having an agency available to respond on behalf of records submitted by a given agency 24/7. If an agency does not have the resources available 24/7, they may enter into an agreement with another agency to be contacted on their behalf (through consultation with their CSA). Contact information for this agency would then be entered into the record submission.

What office or person should a tribe contact to be authorized to enter OPs onto NCIC? In order to establish an ORI, a request (from the appropriate CSO) may be sent to the FBI via ori@leo.gov.

Is there an option for a tribal court to submit OPs to some federal entity to be entered into NCIC? If a federal agency and your tribe enter into a servicing or holder of the record agreement, and record responsibilities are determined for each agency, yes, a federal agency can service a tribal agency for entry of OPs.

Are you available by phone this Friday any time between 1 PM and 6 PM your time to answer these and any other questions during our Court Forum meeting?

*Thank you,
Kim*

Kimberly Lough
CJIS Tribal Liaison
Partner Relations and Outreach Unit
Law Enforcement Support Section
FBI CJIS Division
304-625-3855

kimberly.lough@ic.fbi.gov

13-3602. Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction

A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and the minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an order of protection.

B. An order of protection shall not be granted:

1. Unless the party who requests the order files a written verified petition for an order.
2. Against a person who is less than twelve years of age unless the order is granted by the juvenile division of the superior court.
3. Against more than one defendant.

C. The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.

2. Name and address, if known, of the defendant.

3. Specific statement, including dates, of the domestic violence alleged.

4. Relationship between the parties pursuant to section 13-3601, subsection A and whether there is pending between the parties an action for maternity or paternity, annulment, legal separation or dissolution of marriage.

5. Name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct that is sought to be restrained.

6. Desired relief.

D. A fee shall not be charged for filing a petition under this section or for service of process. On request of the plaintiff, each order of protection that is issued by a municipal court shall be served by the police agency for that city if the defendant can be served within the city. If the defendant cannot be served within the city, the police agency in the city in which the defendant

can be served shall serve the order. If the order cannot be served within a city, the sheriff shall serve the order. On request of the plaintiff, each order of protection that is issued by a justice of the peace shall be served by the constable or sheriff for that jurisdiction if the defendant can be served within the jurisdiction. If the defendant cannot be served within that jurisdiction, the constable or sheriff in the jurisdiction in which the defendant can be served shall serve the order. On request of the plaintiff, each order of protection that is issued by a superior court judge or commissioner shall be served by the sheriff of the county. If the defendant cannot be served within that jurisdiction, the sheriff in the jurisdiction in which the defendant can be served shall serve the order. Each court shall provide, without charge, forms for purposes of this section for assisting parties without counsel. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.

E. The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the orders requested should issue without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The defendant may commit an act of domestic violence.
2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

F. For the purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

G. If a court issues an order of protection, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.

2. Grant one party the use and exclusive possession of the parties residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If the other party is accompanied by a law enforcement officer, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officers duties under this paragraph.

3. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.

4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration

of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.

6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.

7. Grant the petitioner the exclusive care, custody or control of any animal that is owned, possessed, leased, kept or held by the petitioner, the respondent or a minor child residing in the residence or household of the petitioner or the respondent, and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of section 13-2910 or otherwise disposing of the animal.

H. The court shall not grant a mutual order of protection. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.

I. At any time during the period during which the order is in effect, a party who is under an order of protection or who is restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing that is requested by a party who is under an order of protection or who is restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.

J. The order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

K. A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective on service and expires one year after service of the initial order and petition.

L. A supplemental information form that is utilized by the court or a law enforcement agency solely for the purposes of service of process on the defendant and that contains information provided by the plaintiff is confidential.

M. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order or any modified order was issued shall forward to the sheriff of the county in which the court is located a copy of the order of protection and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the sheriff shall register the order. Registration of an order means that a copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the order on the defendant.

N. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an order that is issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to an appropriate law enforcement agency. The law enforcement agency shall request that a prosecutorial agency file the appropriate charges. A violation of an order of protection shall not be adjudicated by a municipal or justice court unless a complaint has been filed or other legal process has been requested by the prosecuting agency. The provisions for release under section 13-3883, subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made pursuant to this section. For the purposes of this section, any court in this state has jurisdiction to enforce a valid order of protection that is issued in this state and that has been violated in any jurisdiction in this state.

O. A person who is arrested pursuant to subsection M of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for any other additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant. The agency with custody of the defendant shall make reasonable efforts to contact the victim and other specifically designated persons in the order of protection, if known to the custodial agency, who requested notification immediately on release of the arrested person from custody.

P. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending

between the parties. A municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the municipal court or justice court determines that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or any other record in the action, to the superior court where they shall be docketed in the pending superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. Notwithstanding any other law and unless prohibited by an order of the superior court, a municipal court or justice court may hold a hearing on all matters relating to its ex parte order of protection if the hearing was requested before receiving written notice of the pending superior court action. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for maternity or paternity, annulment, legal separation or dissolution of marriage was pending in a higher court. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, section 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. No fee may be charged to either party for filing an appeal. For the purposes of this subsection, pending means, with respect to an action for annulment, legal separation or dissolution of marriage or for maternity or paternity, either that:

1. An action has been commenced but a final judgment, decree or order has not been entered.

2. A post-decree proceeding has been commenced but a judgment, decree or order finally determining the proceeding has not been entered.

Q. A peace officer who makes an arrest pursuant to this section or section 13-3601 is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice.

R. In addition to persons authorized to serve process pursuant to rule 4(d) of the Arizona rules of civil procedure, a peace officer or a correctional officer as defined in section 41-1661 who is acting in the officers official capacity may serve an order of protection that is issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.

S. A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:

1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person. A protection order includes temporary and final orders other than support or child custody orders that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.

2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing state, a United States territory or an Indian tribe and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.

3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:

(a) The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.

(b) The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.

4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

V. Meeting Business
**G. State Bar Members who are Tribal Judges
Considered Judicial Members**

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0013
RULE 32, RULES OF THE SUPREME)
COURT)
)
) **FILED: 09/02/2016**
)
)
_____)

ORDER

AMENDING RULE 32, RULES OF THE ARIZONA SUPREME COURT

A petition having been filed proposing to amend Rule 32, Rules of the Arizona Supreme Court, and comments having been received, upon consideration,

IT IS ORDERED that Rule 32, be amended in accordance with Attachment A hereto, effective January 1, 2017.

IT IS FURTHER ORDERED that the implementation of Rule 32(e) is subject to the provisions set forth in Attachment B hereto, effective January 1, 2017.

DATED this 2nd day of September, 2016.

/s/
SCOTT BALES
Chief Justice

ATTACHMENT A*

Rule 32. Organization of State Bar of Arizona

(a) Organization

~~1. *Establishment of state bar.* In order to advance the administration of justice according to law, to aid the courts in carrying on the administration of justice; to provide for the regulation and discipline of persons engaged in the practice of law; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereon; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof may be more effectively and efficiently discharged in the public interest, and acting within the powers vested in it by the constitution of this state and its inherent power over members of the legal profession as officers of the court, the Supreme Court of Arizona does hereby perpetuate, create and continue under the direction and control of this court an organization known as the State Bar of Arizona, such organization which may be a non-profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes, and all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of Arizona in accordance with the rules of this court. The State Bar of Arizona may sue and be sued, may enter into contracts and acquire, hold, encumber, dispose of and deal in and with real and personal property, and promote and further the aims as set forth herein and hereinafter in these rules.~~

~~2. *Precedence of rules.* The qualifications of attorneys at law for admission to practice before the courts of this state, the duties, obligations and certain of the grounds for discipline of members, and the method of establishing such grounds, subject to the right of this court to discipline a member when it is satisfied that such member is not mentally or morally qualified to practice law even though none of the specific grounds for discipline set forth in these rules exist, shall be as prescribed in these rules pertaining to admission and discipline of attorneys.~~

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* Every person licensed by this Court to engage in the practice of law must be a member of the State Bar of Arizona in accordance with these rules.

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and

professionalism of lawyers practicing in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its individual members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) Definitions. [No change in text.]

(c) Membership.

1.-5. [No change in text.]

6. *Judicial Members.* Judicial members shall be justices of the Supreme Court of Arizona, judges of the Court of Appeals and Superior Court of Arizona and of the United States District Court for the District of Arizona, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Judicial membership status shall likewise be accorded to members of the ~~state bar~~ State Bar who are full-time commissioners, city or municipal court judges, tribal court judges, judges pro tempore or justices of the peace in the state of Arizona not engaged in the practice of law, or justices or judges of other courts of record of the United States or of the several states. Judicial members shall hold such classification only so long as they hold the offices or occupations entitling them to such membership or are retired from the offices or occupations entitling them to such membership, are eligible for temporary judicial assignment, and are not engaged in the practice of law. Judicial members shall be entitled to vote but shall not be entitled to hold office. Judicial members shall have such privileges, not inconsistent with the rules of this court, as the board provides. A judicial member who retires or resigns from the bench and seeks to engage in the practice of law shall must become an active member subject to all provisions of these rules.

V. Meeting Business
**H. Judicial Response to Impaired
Driving in Indian Country**

Faculty

- Oscar "OJ" Flores, Chief Prosecutor, Pascua Yaqui Tribe



Objectives

- Identify and understand community resources that integrate culture
- Appraise Tribal codes for authority, limit and cultural influences
- Understanding cultural integration in sentencing



Sentencing Considerations: Court & Culture

- Know the Court
 - Structures
 - Codes
 - Expectations
 - Services
 - Judge
 - Federal limitations
- Culture v. System Culture
- Historical trauma



Sentencing Considerations: Court & Culture

- Traditional western courts are focused on the individual
 - Defendants Rights
 - Victims Rights
 - Constitutional Rights
 - Criminal Law
 - Stare decisis
 - Sentence “the Defendant”
- Traditional tribal response to criminal behavior is holistic
 - Culture
 - Harm to the community
 - Impact on the family
 - Identify the wrong and start to address it



Sentencing Considerations: Court & Culture

- Separation of Powers
- Pretrial Services:
 - Pretrial release investigations
 - Prosecutor disposition
- Pascua Yaqui Probation Department:
 - Pre-Sentence Reports
 - Input on plea agreements
- Diversion Programs
- Public Defender Office
- Court contract/conflict counsel

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Sentencing Considerations: Court & Culture

Pascua Yaqui Tribe

- Two square mile reservation
- 7 miles from City of Tucson
- Appx 65 miles from Mexico border
- 19,000+ enrolled tribal members
- 7 off-reservation Yaqui communities
- Appx. 500 non-tribal members reside on reservation
- 799 non-Indian government and casino employees (32% of all employees)
- Two square mile reservation
- 7 miles from City of Tucson
- Appx 65 miles from Mexico border
- 19,000+ enrolled tribal members
- 7 off-reservation Yaqui communities
- Appx. 500 non-tribal members reside on reservation
- 799 non-Indian government and casino employees (32% of all employees)

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Sentencing Considerations: Court & Culture

PASCUA YAQUI TRIBE

- Tribal Law and Order Act
 - PYT Constitutional Amendment by election
 - PYT Criminal code reform
- Violence Against Women's Act
 - Formal adoption of US Constitutional protections
 - Dept. of Justice approval of pilot status



Sentencing Considerations: Court & Culture

- Pascua Yaqui Tribal Traffic Code: the Tribal Council of the Pascua Yaqui Tribe adopts as tribal law, the traffic laws of the State of Arizona as set forth in Title 28 of the Arizona Revised Statutes and any current and future amendments. 8 PYTC § 6-4-10.
- Arizona sentencing provisions:
 - 10 days (suspend 9 with counseling)
 - \$250 Fine
 - \$500 assessment
 - Ignition Interlock
 - MVD suspension/restriction
 - #2 within 7 years
 - 30/90 days (suspend 60)
 - \$500 Fine
 - \$1,500 assessment
 - \$1,200 assessment
 - 1 year license revocation
 - Ignition Interlock
- The Tribal Court will not be bound by sanctions stated in Arizona Revised Statute Title 28. The Tribal Court shall have full discretion regarding any sanctions imposed for violations of the Tribal Traffic Code established by this section.



Sentencing Considerations: Tribal Prosecutor

- Review and assess behavior
- Pascua Yaqui Tribal Court Drug Court
 - Drug Court Team
 - Public Defender
 - Prosecutor
 - Behavioral Health Liaison
 - Substance abuse assessment
 - Court monitor: Review Hearings
 - Steps of supervision: weekly, biweekly, monthly
 - Recognition of improvement
 - Incentives
 - Family input



Sentencing Considerations: Tribal Prosecutor

- | | |
|---|---|
| <ul style="list-style-type: none">• DUI sentence & Agg DUI<ul style="list-style-type: none">– 12 months supervised probation (days suspended)<ul style="list-style-type: none">• Standard conditions• Urinalysis• Regular check-ins– Alcohol abuse assessment and counseling recommendations– MADD Impact Panel– \$50 fine– Reinstate license | <ul style="list-style-type: none">• DUI #2ish<ul style="list-style-type: none">– 12 months supervised probation (10 days + suspended days)<ul style="list-style-type: none">• Standard conditions• Urinalysis• Regular check-ins– Alcohol abuse assessment and counseling recommendations– MADD Impact Panel– \$250 fine |
|---|---|



Sentencing Considerations: Court & Culture

- Alcohol/drug abuse is a disease
- Coordination of services – funding silos
- Coordinated Rehabilitation
 - Centered Spirit Program
 - Sewa U'usim
- Traditional healthy living education v. AA/DUI impact panel
- Small community allows for effective supervision – Consistent with Culture
 - Police monitoring
 - Probation monitoring
 - PreTrial monitoring
 - Prosecutor monitoring
 - Information sharing



Sentencing Considerations: Court & Culture

- Crime is unacceptable and will be addressed
- Default is incarceration
- Attorney & Counselor At Law
- Judicial desire
 - PreTrial rehabilitation
 - PreSentence information
 - Discussion/admission of behavior
 - Information about
 - Behavioral assessment(s)
 - Employment
 - Counseling
 - Family support
- Healing to Wellness Movement



Sentencing Considerations: Court & Culture

- OJ Flores, Chief Prosecutor
- Pascua Yaqui Tribe
- 520.879.6251
- Oscar.j.flores@pascuayaqui-nsn.gov



QUESTIONS?



VII. 2017 Meeting Dates and Locations

2017 Meeting Dates
State, Tribal, and Federal Court Forum

10:00 a.m. – 3:00 p.m. (approximate ending time)

January 20 or January 27, 2017

States Court Building
1501 W. Washington, Conference Room 119A/B
Phoenix, AZ 85007

April 21 (CR 119 A/B) or April 28 (CR 230)

1501 W. Washington, Conference Room 119A/B or 230
Phoenix, AZ 85007

September 15 (CR 230) or September 22 (CR 119 A/B)

1501 W. Washington, Conference Room 230 or 119A/B
Phoenix, AZ 85007

Anyone who would like to host a meeting or has questions regarding the meetings please contact David Withey 602-452-3325 or Brenda Lee Dominguez 602-452-3323.

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