

AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, January 27, 2017 - 10:00 a.m. - 3:00 p.m.

State Courts Building – Conference Room 119 A&B

- I. **Registration** - (Beginning at 9:30 A.M.)
- II. **Call to Order and Greeting**
- III. **Member and Participant Introductions**
- IV. **Approval of Minutes** (page 2)
- V. **Meeting Business**
 - A. **ICWA** (page 9)
 - 1. **Rule Petition** (page 10)
 - 2. **ICWA Roundtable – 2017** (page 35)
 - 3. **ICWA Conference – 8/11/2017**
 - 4. **Waiver of Pro Hac Vice Requirements** (page 37)
 - 5. **DCS Tribal Liason**
 - B. **Prescription Drug Abuse in Tribal Communities Presentation** (page 49)

LUNCH

- C. **Probation Supervision on Reservations** (page 50)
 - 1. **Arrest/Extradition** (page 51)
 - 2. **Reconstitute Committee?** (page 62)
 - D. **Involuntary Commitment Legislation Update** (page 64)
 - E. **Child Support Guide Development – Next Steps** (page 67)
 - F. **Statewide Self-Help Website – Arizona Bar Foundation** (page 72)
- VI. **Open Forum for Discussion of Issues of Concern**
 - VII. **Adjournment**

IV. Approval of Minutes

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
Ak-Chin Indian Community Court, Maricopa, AZ
Draft Minutes of the September 30, 2016 Meeting

Court Forum Members Present:

Hon. Ryan Andrews Salt River Pima-Maricopa Indian Com. Court	Maria Morlacci Arizona Office of the Attorney General
Yancy Jencsok for Hon. Victor Antone Gila River Indian Community Court	Hon. Jan Morris Hualapai Tribal Court
Hon. Malcolm Begay Navajo Nation Judicial Branch	Hon. David Osterfeld White Tank Justice Court
Hon. Brian Burke Ak-Chin Indian Community Court	Deanne Romo Clerk of Superior Court, Navajo County
Ashlee Brown for Hon. Victor Clyde Chinle Justice Court	Marc Goldsen for Virjinya Torres State Bar of Arizona
Hon. Randall Howe Az. Court of Appeals, Division I	Hon. Wayne Yehling Superior Court, Pima County
Hon. Lawrence King Colorado River Indian Community Court	

Administrative Office of the Courts (AOC) Staff Present:

David Withey	Brenda Lee Dominguez
Shanda Breed (via telephone)	

Participants/Visitors Present:

Joel England	Com. Myra Harris (via telephone)
Richard Herrera	Judge Kathleen Quigley (via telephone)
Shawn Sellers	Benjamin Runkle (via telephone)
Sheina Yellowhair	Carrie Imus
Hon. Ida Wilber	Edd Welsh

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

II. **Call to Order and Greeting**

Judge Andrews called the meeting to order at 10:09 a.m.

Robert Miguel, Tribal Chairman, welcomed the Court Forum.

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

III. Participant Introductions

IV. Approval of Minutes

Judge King requested the following change to the April 29, 2016 minutes in section E. Tribal Order of Protection Update on page 4: Judges Passey and King are working on obtaining ORI numbers from DPS identifying their courts as a reporting entity.

Motion: Judge Osterfeld made a motion to approve the minutes for April 29, 2016, with the amendment, Judge King second the motion, which was unanimously approved.

V. Meeting Business

A. Child Support Guide Development

1. Review of Child Support Outline

David reported on the progress of the workgroup and provided a draft of the child support outline for review and comment.

2. Which Court has Jurisdiction? – chart or other guidance

Judges King (Colorado River Indian Community Court) and Andrews (Salt River Pima-Maricopa Indian Community Court) both stated that this is not a problem for their courts. Judge Andrews reported that they have an Ordinance on-line and it is also available in hard copy. Judge Morris reported that the Hualapai Tribal Court has guidelines. Richard Herrera reported that the Gila River Indian Community Court has a tribal code section.

Judge Begay reported that his court staff travels to remote locations to assist individuals who cannot afford to travel.

Judge Burke recommends having self-help centers. David reported that Coconino County has a self-help program that is housed in local libraries.

Judge King reported that legal aid will assist with filling out forms and petitions. They will print out the documents and then the individual needs to file with the court.

3. Next Steps

David asked if the Court Forum would want to send the child support outline out to each tribe to respond to the questions and then compile the information for posting on a state wide self-help website. The State Bar Association is currently developing the website.

The intent is to have child support guidance for the state and each tribe available on the web so it can be accessed by state and tribal courts throughout Arizona and for anyone who needs to know how to secure or enforce child support in any Arizona jurisdiction.

Members agreed to add the following two additional questions to the outline:

- Do you have a self-help center?
- Is there civil or legal assistance available?

Action Item: Judge Andrews asked that the comments on the outline be addressed before sending out to the tribes. He requested that this matter be brought forward to the next meeting (with comments answered) for further review and discussion.

Action Item: Judges Osterfeld and King recommended utilizing law students to work on the child support outline from Arizona State University, University of Arizona, and Arizona Summit Law School. Judge King recommended inviting the law students to the next Court Forum meeting.

B. Probation Supervision on Reservations

1. Report on the Northeast AZ Community Supervision Summit

Shanda Breed provided an over view of the Summit held on May 17, 2016. Participation was impressive with 115 attendees. Goal of the Summit was for it to “start the conversation” and hope the agencies would continue with the Four C’s: collaboration, cooperation, coordination, and communication.

2. Cooperation/Coordination Issues

David reported there is still a need to clarify how state probation officers should proceed to supervise probationers residing on some reservations consistent with tribal law and the safety of officers and tribal communities. Issues to resolve include procedures for arresting and removing probationers who have avoided supervision or violated probation conditions and policies concerning carrying firearms. He described a protocol developed by CRIT, Judge King, that provides for submission of a warrant that is then recognized by the court to initiate an extradition proceeding. On completion of this process the probationer is transferred by tribal law enforcement to the custody of the state probation department.

Judge King reported that his probation staff was not permitted to attend the State Probation Academy training program. Ms. Breed to discuss this matter further with Judge King.

3. Reconstitute Committee?

Judge Andrews requested this matter be tabled until the next meeting.

C. ICWA Committee Report

1. ICWA Developments

Judge Quigley reported the committee is planning an ICWA Conference to be held in 2017 (dates to be determined). The next ICWA Committee meeting will be held on October 19, at 1:30 p.m. at the State Courts Building.

Casey Family Programs staff have offered to host a Judges roundtable in 2017. David suggested a possibility of having this program placed on the agenda of the 2017 Judicial Conference. **Action Item:** David to contact Education Services regarding an ICWA session for state and tribal judges at the 2017 Judicial Conference.

Judge Burke stated that if it is not possible to have this on the conference agenda an alternative would be to set up a meeting at a time and facility adjacent to the 2017 Judicial Conference.

2. Implementation of New Regulations – 9/27/16 conference call

David reported the ICWA Committee met on September 27, via conference call and discussed changes needed to implement the new ICWA regulations that will be effective in December.

3. Introduction of Department of Child Safety Tribal & ICWA Liaison

Shawn Sellers provided an overview of the work being done to be in compliance with the new regulations.

Mr. Sellers provided information on upcoming conference and seminar:

- 7th Annual Cultural Awareness Conference, hosted by the Fort Mojave Indian Tribe, November 9, 2016, 8:00 a.m. to 5:00 p.m., AVI Hotel & Casino, 10,000 Aha Macav Parkway, Laughlin, Nevada. Call 928-346-1550 for registration information.
- Indian Child Welfare Act Seminar, October 26-27, 2016, 8:30 a.m. to 5:00 p.m. (day 1) and 8:30 a.m. – 1:30 p.m. (day 2), Inter Tribal Council of AZ, Inc., 2214 North Central Avenue, Phoenix, Arizona. Call 602-258-4822 for registration information.

LUNCH & COURT TOUR – Judge Burke provided a tour of the Court complex

D. Tribal Order of Protection Follow-up

David reported on the proposed amendments (document provided at meeting) on § 13-3602.

Judge King reported that he and Judge Passey are still running into roadblocks in obtaining an ORI number. Running the Orders of Protection through sheriff is working, but his court needs access to the database regarding other legal matters.

E. Involuntary Commitment Legislation Proposal

Benjamin Runkle, Arizona Health Care Cost Containment System (AHCCCS), reported on the legislative proposal of § 12-136 “Indian tribal courts; involuntary commitment orders; recognition” that AHCCCS sent to the Governor’s Office. The goal of the modifications is to allow providers to rely on tribal court involuntary commitment orders to provide treatment to patients while recognition and enforcement is pending in the superior court. The Governor’s Office has not evaluated AHCCCS’ proposal.

David reported that there is an on-going project to produce a computer based training (CBT). **Action Item:** David to schedule a meeting with the committee members before the next Court Forum meeting to work on completing the CBT.

F. Grant Information for Tribal Courts and State-Tribal Collaborations

Action Item: Judge King to provide information for distribution to Court Forum members.

G. State Bar Members who are Tribal Judges Considered Judicial Members

Copy of Rule 23 provided in meeting material. Rule 23(c)(6) states clearly that State Bar members who are Tribal Judges are considered judicial members.

H. Judicial Response to Impaired Driving in Indian Country

Court Forum members voted to request a presentation on this matter from the presenter Oscar “OJ” Flores, Chief Prosecutor, Pascua Yaqui Tribe. **Action Item:** David to contact Mr. Flores regarding presenting to the Court Forum.

VI. Open Forum for Discussion of Issues of Concern

Judge King provided information on upcoming conferences:

- 2016 National Tribal Judicial and Court Personnel Conference, October 18-21, 2016, Morongo Casino Resort & Spa, 45900 Seminole Drive, Cabazon, California. To register: <https://www.regonline.com/naicja>.
- 15th National Indian Nations Conference: Justice for Victims of Crime, December 8-10, 2016, at Agua Caliente Band of Cahuilla Indians Reservation – Coachella Valley, California. To register complete the online form at www.OVCINC.org.

Judge Burke recommended juvenile delinquency dependency as a future topic for an agenda item. Specifically, status offences, alternatives to detention, and juvenile justice reform.

VII. 2017 Meeting Dates and Locations

Court Forum voted and approved the following meeting dates for 2017:

- January 27, 2017, States, Court Building
- April 28, 2017, Ak-Chin Indian Community Court, Hosted by Judge Brian Burke

- September 15, 2017, Salt River Pima-Maricopa Indian Community Court, Hosted by Judge Ryan Andrews

Judge Andrews requested that a notice be sent out in early December requesting items for the January 27 agenda. **Action Item:** David and Brenda Lee to send out a request for January 27 agenda items.

VIII. Adjournment

Meeting adjourned at 3:12 p.m.

V. Meeting Business
A. ICWA

V. Meeting Business
A.1. Rule Petition

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IN THE SUPREME COURT
 STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES 8)	
37, 48, 50, 52, 53, 54, 55, 56, 57, 58)	Supreme Court No. R-17_____
59, 60, 61, 62, 63, 63.2, 64, 65, 66,)	
68, 69, 76, 78, 79, 84, AND 85 AND)	
TO ADOPT NEW RULE 50.1 OF)	
ARIZONA RULES OF PROCEDURE)	
FOR THE JUVENILE COURT)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts respectfully petitions this Court on behalf of the Indian Child Welfare Act (ICWA) Committee of the Arizona State, Tribal, and Federal Court Forum to amend Rules 8, 37, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 63.2, 64, 65, 66, 68, 69, 76, 78, 79, 84, and 85 and to add a new Rule 50.1 of the Arizona Rules of Procedure for the Juvenile Court. These changes are proposed to incorporate recently adopted federal regulations that implement the Indian Child Welfare Act.

I. Background and Purpose of the Proposed Rule Amendments.

The United States Department of the Interior issued new regulations implementing the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963. These regulations became effective December 12, 2016. See 23 C.F.R. §§ 23.101- 44. Previously the Bureau of Indian Affairs (BIA) had issued guidelines concerning ICWA that have been considered persuasive but did not have the full force and effect of law. The Arizona Rules of Procedure for Juvenile Court make reference to ICWA at appropriate places in the rules and recognize the BIA Guidelines. These new regulations have been implemented by the Arizona Courts through education programs and reference materials provided to judges. This petition proposes implementation of the new regulations through appropriate amendments to the rules.

II. Contents of the Proposed Rule Amendments and New Rules.

The proposed changes are based on a systematic review of the current rules in order to identify all references to “ICWA” and “Indian child” and to simply add a reference to the new federal regulations or to specific regulations, where appropriate, as additional governing authority. This is a sufficient recognition of many of the new regulations that more clearly pronounce rather than make changes in the current interpretation of ICWA. However, some of the regulations require specific attention in the rules in order to prompt a change in current

practice, to address a specific conflict, or to provide required procedures or specific criteria for findings.

The proposed changes in Rule 8(C) reflect the new requirement that when there is “reason to know” a child is an “Indian child” the child is presumed to be an “Indian child” for ICWA coverage purposes until the child is determined not to be an “Indian child.” Additionally, due to their significance, the committee proposes that the criteria stated in the regulations for “reason to know” be provided in the comment to Rule 8. Alternatively, this language could be adopted in Rule 8(C) itself. The New Mexico Children’s Court Rules Committee proposed [Rule Proposal 2016-064](#) that contains this language.

Due to the significance of jurisdiction, the committee proposes the addition of a Rule 8(D) on that subject and an additional paragraph in the comment containing the requirements stated in the federal regulations concerning the “good cause” exception to transfer of an ICWA case to tribal jurisdiction. This language could instead be included in Rule 8(D).

The comment to Rule 48 and Rule 50(A) are amended to recognize and authorize that, where appropriate under the circumstances of a case, the preliminary protective hearing may be held as an emergency hearing as provided in 25 U.S.C. § 1922 and 25 C.F.R. § 23.113.

The committee proposes replacement of the language in both Rule 50(C)(3) and Rule 52(D)(3) with the specific requirement of the new regulations regarding the responsibility to determine whether a child for whom there is reason to know the child is an “Indian child” is, in fact, an “Indian child.”

Due to the importance of foster care placement preferences under Section 1915 of ICWA, Subsection 23.132 of the regulations provide a specific process and criteria for the court to find good cause to deviate from these preferences. This process and criteria are proposed to be incorporated in the rules as a new Rule 50.1.

A few of the proposed changes are proposed as cleanup due to recognition of inconsistencies or lack of clarity in the rules in the course of implementing the new federal regulations. Rule 8(A) is clarified by recognizing incorrigibility cases are excluded from application of ICWA because these cases do not involve out of home placement and by specifying this provision refers to **criminal** transfer rather than ICWA transfer. The option of notice by certified mail has been added to the rules where relevant in order to conform to the regulations.

III. Pre-Petition Distribution and Comment.

Drafts of the proposed rules have been distributed for comment and changes to the Arizona, State, Tribal, and Federal Court Forum and participants in its

meetings and to the Forum's ICWA committee composed of state and tribal juvenile court judges, Arizona and tribal attorneys who handle dependency cases for their respective clients, state and tribal child welfare agency representatives and others, including professors, with particular expertise and interest in ICWA. Judge Quigley, Presiding Juvenile Court Judge in Pima County is a Co-chair of this committee. This petition will be presented for comment with a request for approval at the January 26, 2017 meeting of the Committee on Juvenile Court (COJC).

IV. Comment Periods and Effective Date of the Proposed New Rules.

Considering the primarily technical nature of the proposed rule changes, to implement changes in federal law, petitioner requests the Court schedule a comment period that terminates on March 17, 2017 and permit a supplemental petition to be filed by March 31, 2017 to allow petitioner to include any changes recommended by the COJC and any commenters prior to the Court's consideration of the petition. Since the motivating regulations for this petition are already in effect, petitioner requests accelerated consideration of this petition by the Court and, if the petition is approved, an effective date one week after adoption to allow time for distribution to the courts and interested parties.

Wherefore petitioner respectfully requests that the Supreme Court amend the Rules of Procedure of the Juvenile Court as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ____ day of ____, 2017.

By _____
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APPENDIX A
17B A.R.S. Juvenile Court Rules of Procedure
Proposed Rule Changes

Rule 8. Applicability of the Indian Child Welfare Act

A. The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., ~~shall~~ does not apply to delinquency, incorrigibility when there is no out-of-home placement or criminal transfer proceedings involving an Indian child.

B. **Incorporation.** All provisions of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations ~~shall be~~ are incorporated by reference, including any amendments to the Act these provisions.

C. **Findings.** If the court determines or has reason to know the child is an Indian child as defined by the Indian Child Welfare Act and regulations, the court shall make all findings pursuant to the standards and burdens of proof as required by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations and otherwise treat the child as an Indian child subject to the Act unless and until it is determined on the record that the child does not meet the definition of an Indian child under the Act.

D. **Jurisdiction.** If the court determines or has reason to know the child is an Indian child as defined by the Indian Child Welfare Act and the proceeding is for foster care placement or termination of parental rights, the court shall determine whether to grant a petition to transfer the proceeding to tribal court according to the standards required by 25 U.S.C. § 1911(b) and 25 C.F.R. §§ 23.115-119.

Committee Comment

Because of the importance of the Indian Child Welfare Act and its applicability to state court proceedings, key provisions of the Act and Part 23 of Title 25 of the Code of Federal Regulations have been incorporated in these rules. However, not all provisions are set forth in these rules and the Act and Part 23 of Title 25 of the Code of Federal Regulations should be carefully reviewed, particularly as it relates to adoption proceedings. Any conflict between these rules and the Act and federal regulations shall be resolved in favor of the Act and federal regulations. ~~The Bureau of Indian Affairs Guidelines for State Courts in Indian Child Custody Proceedings may be of assistance in interpreting provisions of the Act.~~

The federal regulations governing Indian Child Welfare Act Proceedings, 25 C.F.R. Part 23, provide mandatory standards for applying the Indian Child Welfare Act in state courts. According to the regulations, a court has “reason to know” that a child is an Indian child upon the occurrence of any of the following: (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 pueblo, 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. 25 C.F.R. § 23.107.

The regulations governing petitions to transfer proceedings to tribal court, 25 C.F.R. §§ 23.115-119, address the criteria for ruling on transfer petitions and the determination of "good cause" to deny transfer. Under 25 U.S.C. § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must *not* consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

Rule 37. Definitions

A. – B. [no changes]

C. Definitions and Mandatory Placement Preferences pursuant to the Indian Child Welfare Act, 25 U.S.C. 1903 and 1915 and Part 23 of Title 25 of the Code of Federal Regulations:

1. – 7. [no changes]

Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process

A. Petition. A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child. A petition on behalf of a dependent child shall be generally in the form and contain the information required by law. The action shall be captioned, "In the Matter of _____ a person under the age of 18 years," may be based upon information and belief and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. The petitioner shall indicate a request for in-home intervention by including the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

B. – C. [no changes]

D. Service of petition. The petitioner shall serve a copy of the petition, notice of hearing and temporary orders upon those persons as required by law. The petitioner shall provide any parent, guardian or Indian custodian appearing at the preliminary protective hearing with a copy of the petition, notice of hearing and temporary orders which shall constitute service, as provided by law. Otherwise, the petition, notice of hearing and temporary orders shall be served in the manner provided for in Rules 4.1 or 4.2, Arizona Rules of Civil Procedure. Except for service of process that occurs at the preliminary protective hearing or the execution of an acceptance of service and waiver, service of process shall be completed no less than five (5) days prior to the court hearing. In dependency proceedings:

1. – 8. [no changes]

9. If the petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

10. The parent, Indian custodian or the child's tribe may waive the ten (10) day notice requirement, pursuant to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, for purposes of proceeding with the preliminary protective hearing within the time limit as provided by state law.

E. [no changes]

Committee Comment

It was the determination of the committee that a provision permitting the parent, Indian custodian or the child's tribe to waive the ten (10) day notice requirement is not in conflict with the Indian Child Welfare Act and is reflective of current practice in some counties. Some of the tribes currently waive the federal 10-day notice requirement ~~time~~ in order to permit the preliminary protective hearing to proceed within Arizona's ~~the~~ statutory time limits if the tribe is provided with sufficient information concerning the case in advance of the hearing. It is the belief of the committee that the inclusion of the waiver provision is necessary to ensure timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe pursuant to the Indian Child Welfare Act. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. § § 1922 and 25 C.F.R. 23.113 the 10 day notice requirement does not apply.

Rule 50. Preliminary Protective Hearing

A. Purpose. At the preliminary protective hearing, the court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation and the provision of services to the child and family. The preliminary protective hearing may be held as an emergency hearing as provided in 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113.

B. Procedure. t the preliminary protective hearing, the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 12. [no changes]

C. Findings and orders. All findings and orders, including any agreements reached by the parties shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

1. – 2. [no changes]

3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if the court has reason to believe the child is an Indian child; Confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all 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);~~

4. – 5. [no changes]

6. If the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by Section 1922 of the Act; and

7. – 8. [no changes]

~~Committee Comment~~

It is the recommendation of the committee that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian or Indian custodian with a written

copy of the admonition in order to protect the due process rights of the parent, guardian or Indian custodian. See Form 1.

Rule 50.1 Deviation from placement preferences.

The determination to depart from the placement preferences in Section 1915 of the Indian Child Welfare Act as provided in 25 C.F.R. § 23.132 must be made in the following manner:

- (a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.
- (b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences.
- (c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
 - (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
 - (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement;
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.
- (d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- (e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Rule 52: Initial Dependency Hearing

A. – B. [no changes]

C. **Procedure.** At the initial hearing the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 6. [no changes]

D. **Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the initial hearing the court shall:

1. – 2. [no changes]

3. ~~Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if there is reason to believe the child is an Indian child; Confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all 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);~~

4. – 8. [no changes]

9. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

10. – 11. [no changes]

E. **Continuance.** The court may continue the initial dependency hearing, upon a showing of good cause, for reasons which may include:

1. Service of process and/or notification pursuant to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations has not been completed as to the parties;

2. Additional time is requested by the child's tribe or if additional time is required to comply with the requirements of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations; or

3. [no changes]

Rule 53: Settlement Conference

A. – C. [no changes]

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 54: Findings and Orders

A. – B. [no changes]

C. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the pretrial conference, the court may:

1. [no changes]

2. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56 if the court finds that the parent, guardian or Indian custodian failed to appear at the pretrial conference without good cause shown, had notice of the hearing, was properly served pursuant to Rule 48 and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent, guardian or Indian custodian and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition. The court may adjudicate the child dependent based upon the record and evidence presented if the petitioner has established grounds upon which to adjudicate the child dependent;

a. - b. [no changes]

c. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

d. [no changes]

Rule 55: Dependency Adjudication Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. As to each parent, guardian or Indian custodian, based upon the record and evidence presented, the court shall:

1. – 6. [no changes]

7. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 56: Disposition Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall determine the appropriate case plan and shall:

1. – 5. [no changes]

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. – 8. [no changes]

Rule 57: Provision of Reunification Services Hearing

A. – B. [no changes]

C. Findings and Orders. All findings shall be in writing, in the form of a minute entry or order. If the court finds, by clear and convincing evidence, that reunification efforts are not required, the court shall:

1. – 5. [no changes]

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations; including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

7. [no changes]

Rule 58: Review Hearing

A. [no changes]

B. Notice.

1. Right to participate. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any future proceedings:

a. The authorized agency charged with the child's care and custody and the child's tribe as required by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

d. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107 and the child's Indian custodian as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

e. The child, if twelve years of age or older.

f. The child's relative, as defined in A.R.S. § 8-501, if that relative files a written notice of right of participation with the court.

g. A person permitted by the court to intervene as a party in the dependency proceeding.

h. A physical custodian of the child within the preceding six months.

i. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

j. Any other person as the court may direct.

2. [no changes]

C. – E. [no changes]

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 6. [no changes]

7. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

8. [no changes]

Rule 59: Return of the Child

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 60: Permanency Hearing

A. – D. [no changes]

E. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall make findings based upon the evidence presented and shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations; including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. – 7. [no changes]

Rule 61: Motion of Hearing, Service of Process and Orders for Permanent Guardianship

A. Motion. If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child, the court shall order that a motion for guardianship be filed by the Department of Child Safety or by the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall contain all information required by law and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. [no changes]

C. Service. The motion for guardianship and notice of hearing shall be served by the moving party upon the parties and any other person as provided by law, pursuant to Rule 5(c), Ariz. R. Civ. Pro. If the motion alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and child's tribe. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe by registered or certified mail.

1. [no changes]

D. Orders. Upon the filing of a motion for guardianship, the court shall order the Department of Child Safety, an agency or a person designated as an officer of the court to conduct an

investigation and prepare a report addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

Rule 62: Initial Guardianship Hearing

A. – B. [no changes]

C. **Procedure.** At the initial hearing the court shall;

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 8. [no changes]

D. **Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 4. [no changes]

5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. [no changes]

Rule 63: Guardianship Adjudication Hearing

A. – E. [no changes]

F. **Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing the court shall:

1. – 3. [no changes]

4. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of

Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;

5. – 6. [no changes]

Rule 63.2: Initial Successor Permanent Guardianship Hearing

A. – B. [no changes]

C. **Procedure.** At the initial successor permanent guardianship hearing, the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act;

2. [no changes]

D. – E. [no changes]

Rule 64: Motion, Petition, Notice of Hearing and Service of Process and Orders

A. Motion for Termination of Parental Rights. If the court determines that termination of parental rights is in the best interests of a dependent child, the court shall order that a motion for termination of parental rights be filed by the Department of Child Safety or the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall allege the grounds for termination of parental rights as provided by law and shall state whether there is reason to know the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. Petition for Termination of Parental Rights. If the child at issue is not a dependent child or is a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, the petitioner shall file a petition for termination of parental rights, pursuant to A.R.S. § 8-534 and shall state whether the child is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. Nothing in this rule shall preclude the filing of a petition in those cases where the child was the subject of a dependency petition filed after July 1, 1998.

C. [no changes]

D. Service. If the motion or petition alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and the child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or

location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

E. [no changes]

Rule 65: Initial Termination Hearing

A. – B. [no changes]

C. **Procedure.** At the initial hearing the court shall:

1. Inquire if any party has reason to ~~believe~~ know that the child at issue is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

2. – 7. [no changes]

D. **Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. – 3. [no changes]

4. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

5. [no changes]

Rule 66: Termination Adjudication Hearing

A. – E. [no changes]

F. **Findings and Orders by the court.** All findings and orders shall be in the form of a signed order or set forth in a signed minute entry. At the conclusion of the hearing the court shall:

1. [no changes]

2. If the moving party or petitioner has met its burden of proof, the court shall:

a. – d [no changes]

e. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

3. [no changes]

Rule 68: Definitions

A. [no changes]

B. 1 – 7 [no changes]

8. Adoptive Placement Preferences. In any adoptive placement of an Indian child, a preference shall be given, where the child's tribe has not established a different order of preference and in the absence of good cause to the contrary, to a placement with:

- a. A member of the Indian child's extended family;
- b. Other members of the Indian child's tribe; or
- c. Other Indian families.

Rule 69: Appointment, Appearance and Withdrawal of Counsel

A. Appointment. The court may appoint counsel for those persons entitled to counsel and determined to be indigent as provided by law, these rules or the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. In determining whether a person is indigent, the court shall:

1. [no changes]

B. – D. [no changes]

Rule 76: Service of Process

A. [no changes]

B. Notice. If the petition to adopt alleges or the court has reason to ~~believe~~ know the child at issue is an Indian child as defined by the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe of any involuntary

proceeding involving an Indian child. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

Rule 78: Temporary Custody

A. Petition for Temporary Custody. A person seeking temporary custody of child shall file a petition and a notice of hearing with the clerk of the court within five (5) days of obtaining the child. The petition shall set forth how the child came into the prospective adoptive parent's care, how long the child has resided with the prospective adoptive parent, why continued custody is in the best interests of the child and whether there is reason to know the child is subject to the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

E. Findings and Orders. All findings and orders shall be in writing and signed by the court, in the form of an order or minute entry. The court shall;

1. [no changes]
2. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations, including whether placement of the Indian child is in accordance with Section 1915 of the Act and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

F. – G. [no changes]

Rule 79: Petition to Adopt

A. Petition to Adopt. The petition to adopt and notice of hearing shall be filed with the clerk of the court. A petition to adopt shall be captioned, "In the Matter of___, a person under the age of 18 years," and may be based upon information and belief. In addition to information required by law, each petition to adopt shall contain the following information:

1. Whether there is reason to know the child to be adopted is an Indian child subject to the requirements of the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations. If the Act applies, the petition shall include the following:

a. Whether the placement preferences required by Section 1915 of the Act and 25 C.F.R. § 23.130 have been complied with;

b. – d. [no changes]

2. – 4. [no changes]

B. – C. [no changes]

Rule 84: Hearing to Finalize Adoption

A. – B. [no changes]

C. Procedure. At the hearing the court shall:

1.-5. [no changes]

6. If an Indian child subject to the Act is being adopted, the court shall determine whether:

a. The tribe was notified of the proceedings and the right to intervene, if applicable;

b. The parent or Indian custodian's consent to the adoption was taken in accordance with the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations;

c. The placement complies with the preferences set forth in Section 1915 of the Act and 25 C.F.R. § 23.130 or whether good cause exists for deviation from the placement preferences; and

d. [no changes]

D. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order and shall grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law had not been received by the court prior to or at the hearing, as required by these rules. If the Indian Child Welfare Act applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations.

1. [no changes]

Rule 85: Motion and Hearing to Set Aside Adoption

A. Motion to Set Aside Adoption. A person seeking to set aside a final order of adoption shall file a motion to set aside the adoption with the clerk of the court. The motion shall allege grounds only as permitted by Rule 60(b)-(d), Ariz. R. Civ. P. or by the Indian Child Welfare Act

and Part 23 of Title 25 of the Code of Federal Regulations. Upon receipt of the motion, the court shall set an initial hearing within ten (10) days and shall advise the parties as to the date, time and location of the initial hearing. If there is reason to know the child is an Indian child, the court shall proceed in the manner set forth in the Indian Child Welfare Act and Part 23 of Title 25 of the Code of Federal Regulations.

B. – F. [no changes]

G. Findings and Orders. The court shall make its findings in writing, in the form of a minute entry or order. The court shall advise the parties of their right to appeal and shall enter orders concerning the custody of the child if the adoption is set aside. If the Indian Child Welfare Act applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required by the Act and Part 23 of Title 25 of the Code of Federal Regulations.

V. Meeting Business
A.2. ICWA Roundtable - 2017

Withey, David

From: Withey, David
Sent: Wednesday, January 18, 2017 5:46 PM
To: Schrade, Jeff; Goltz, Gabriel; Lautt-Owens, Caroline
Cc: Shelley, Robert; 'Sheri Freemont'
Subject: Judicial Roundtable Proposal for Judicial Conference Session

As we discussed, having considered options for holding the session proposed below adjacent to the judicial conference in the evening or before or after the conference it appears to me the best option is to propose a Juvenile Dependency Judicial Roundtable session as part of the conference. The Indian Child Welfare Act is one of many matters about which interaction between state and tribal judge such as that proposed would benefit the administration of justice in Arizona.

Program Description:

The National American Indian Court Judges Association (NAICJA) and the Casey Family Programs-Indian Child Welfare Program has selected Arizona as one of the priority states for Judicial Roundtables involving tribal and state juvenile court judges. The State, Tribal, and Federal Court Forum and its ICWA Committee are cooperating with Casey to plan and implement Judicial Roundtables with the goal of increasing participants' mutual understanding and commitment to improving outcomes for Indian children and their families' in dependency cases. To accomplish this, Casey is committed to fostering both informal and formal communication among state and tribal judges by providing a meal in conjunction with the program, national experts on child welfare, and an experienced facilitator. We request a session first thing in the morning that can be held following a breakfast provided for attendees.

Participating judges will exchange ideas regarding selected issues and best practices concerning Indian children who appear in their courts. Judicial Roundtables have functioned best when attended by tribal and state presiding juvenile court judges or their designees from each tribe and from each county with a significant number of Indian children in foster care to allow productive interaction and dialogue among judicial peers. We think a judicial conference session provides an ideal venue for participation from throughout the state.

With the adoption of new federal regulations and the proposal of new Arizona Rules of Procedure for the Juvenile Court implementing the Indian Child Welfare Act (ICWA), now more than ever, it is imperative for tribal and state juvenile court judges to come together to ensure the purposes of ICWA and the requirements of the new regulations are effectively implemented in Arizona's courts. The Judicial Roundtable is designed to inform and solidify a shared commitment to work together now and into the future towards to this end.

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

V. Meeting Business
A.4. Waiver of Pro Hac Vice Requirements

Oregon Proposed Pro Hac Vice Waiver for Tribal ICWA Attorneys

Posted on [January 16, 2017](#) by [Kate Fort](#)

Here is the proposed rule:

{(9) An applicant is not required to associate with local counsel pursuant to subsection (1)(c) of this section or pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that:

(a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq.;

(b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903; and

(c) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law.}

The proposed change is to rule 3.170, and comments in support of the rule change must be made by February 24th. Now both [Michigan](#) and Oregon have these proposed rule changes in the works. These are really important state rule changes for tribes and Native families—the cost of pro hac in Oregon alone is \$500, and in other states tribal attorneys are still being denied the right of intervention without following long and onerous pro hac requirements—sometimes making it impossible to participate in child welfare hearings involving Native kids.

State Ex Rel. Juv. Dept. v. Shuey

850 P.2d 378 (1993)

119 Or. App. 185

In the Matter of Vanisha Shuey, a Minor Child. STATE ex rel. JUVENILE DEPARTMENT OF LANE COUNTY, Respondent, v. Terra SHUEY, Respondent, and Confederated Tribes of the Grande Ronde Community of Orgeon, Proposed Intervenor-Appellant.

90 368; CA A72174.

Court of Appeals of Oregon.

Argued and Submitted July 8, 1992.

Decided April 14, 1993.

Edmund J. Goodman, Native American Program, Oregon Legal Services, Portland, argued the cause and filed the brief for proposed intervenor-appellant.

Harrison Latto, Asst. Atty. Gen., Salem, waived appearance for respondent Juvenile Dept. of Lane County.

Susan A. Schmerer, Eugene, waived appearance for minor child.

No appearance for respondent Terra Shuey.

RIGGS, Judge.

The Confederated Tribes of the Grand Ronde Community of Oregon (the Grand Ronde) appeal from the trial court's denial of its motion to intervene in a child custody *379 proceeding involving a child who is an enrolled member of the tribe. The motion was denied because it was not signed by an attorney. In this case of first impression, we reverse and remand.

The Grand Ronde filed a motion to intervene in proceedings by the Children's Services Division (CSD) to remove an Indian child from her mother's custody. The motion was pursuant to § 101(c) of the Indian Child Welfare Act (ICWA), which provides:

"In any State court proceeding for foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding." 25 U.S.C. § 1911(c).

The trial court denied the motion sua sponte, because it was not signed by an attorney as required by ORS 9.160[1] and ORS 9.320.[2]

The Grand Ronde retained legal counsel and filed a motion to reconsider that ruling and a request for oral argument. The intervention issue was briefed and argued to the trial court. After oral argument, the trial court issued an order denying the motion to reconsider and the underlying motion to intervene, again because the underlying motion was not signed by an attorney. We review for errors of law.

Whether state law is preempted by federal law is a question of law. See *Best v. U.S. National Bank*, 303 Or. 557, 739 P.2d 554 (1987). In state/tribal matters, the standard for preemption is much lower than in other contexts:

"Although a State will certainly be without jurisdiction if its authority is pre-empted under familiar principles of pre-emption, we caution * * * that our prior cases d[o] not limit pre-emption of state laws affecting Indian tribes to only those circumstances. 'The unique historical origins of tribal sovereignty' and the federal commitment to tribal self-sufficiency and self-determination make it 'treacherous to import * * * notions of pre-emption that are properly applied to * * * other [contexts].' * * * By resting pre-emption analysis principally on a consideration of the nature of the competing interests at stake, our cases have rejected a narrow focus on congressional intent to pre-empt state law as the sole touchstone. * * * State jurisdiction is pre-empted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority. * * * "Certain broad considerations guide our assessment of the federal and tribal interests. The traditional notions of Indian sovereignty provide a crucial 'backdrop' * * * against which any assertion of state authority must be assessed." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386-87, 76 L. Ed. 2d 611 (1983). (Citations omitted.)

When a state law "interferes or is incompatible with federal and tribal interests," the Supreme Court requires balancing tribal and state interests. 462 U.S. at 334, 103 S. Ct. at 2386-87. Here, we must first determine whether the requirement that a tribe be represented by an attorney in ICWA proceedings "interferes or is incompatible with" the tribe's right to intervene and its interest in its children. If we find an interference or incompatibility, then we must balance the competing state and tribal interests.

The Grand Ronde persuasively argues that enforcement of the statutory representation requirement will not only burden the right of tribal intervention, it will essentially deny that right in many cases. Although most tribes are entitled to and do receive federal grants for child and family services, those funds cannot be used for *380 legal representation or for legal fees for litigation. See, e.g., 25 U.S.C. § 1931(a)(8); 25 CFR

§§ 89.40-41. Other federal moneys for social services are similarly restricted: They cannot be used to pay for legal services for litigation. 25 U.S.C. §§ 450 et seq. The Grand Ronde also presented evidence that the federal government has completely regulated and has direct oversight of how tribes can retain legal counsel, and who they can retain as counsel. See 25 U.S.C. §§ 81, 81a; 25 CFR Part 89. Because of those economic and procedural barriers to obtaining legal representation, we conclude that enforcement of ORS 9.160 and ORS 9.320 in this case interferes and is incompatible with the federally granted tribal right and the tribal interests in intervening in such proceedings.

The next question is whether the state interest in enforcement of the representation requirement in ICWA proceedings outweighs tribal interests in intervening in such proceedings. The state's interest in requiring groups and associations to be represented by an attorney is legitimate. ORS 9.160 and ORS 9.320 assure that those appearing in judicial proceedings are familiar with substantive and procedural requirements and protocols, thus assuring adequate representation. Although the Oregon Supreme Court recently ruled that those statutes require that "only an individual human being can appear in person," it did not consider the ICWA or any other federal law that may require a different result. *Oregon Peaceworks Green, PAC v. Sec. of State*, 311 Or. 267, 271, 810 P.2d 836 (1991). Although the interests represented by the statutes are substantial, those interests are not so substantial as to outweigh a tribe's interests in its children.

Congress passed the ICWA in response to the alarmingly high number of Indian children being removed from their families and placed in non-Indian adoptive or foster homes by state welfare agencies and courts. At the time of its enactment, 25 to 35 percent of all Indian children were separated from their families and placed in adoptive or foster homes, 90 percent of which were non-Indian. Conservative estimates were that the rate of adoptive or foster home placement for Indian children was at least five times greater than the rate for non-Indian children. Congress found

"that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe," 25 U.S.C. § 1901(3), and "that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(5).

The ICWA's policy is

"to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in

foster or adoptive homes which will reflect the unique values of Indian culture." 25 U.S.C. § 1902.

According to the House Report that accompanied the ICWA through Congress, the procedural and substantive standards set by the ICWA were intended to make "sure that Indian child welfare determinations are not based on `a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family.'" *Mississippi Choctaw v. Holyfield*, 490 U.S. 30, 37, 109 S. Ct. 1597, 1602, 104 L. Ed. 2d 29 (1989), quoting H.R.Rep. No. 95-1386, 2d Sess. 24, reprinted in U.S.Code Cong. & Adm.News 7530, 7546 (1978). Many state courts have concluded that the tribal interests articulated in the ICWA are of the highest order. For example, after quoting the congressional findings that prompted the passage of the ICWA and the ICWA policy sections, the Supreme Court of Utah said:

*381 "The broad grant of jurisdiction to tribes and the narrowing of state court authority were aimed at preventing these perceived evils. The importance of tribal primacy in matters of child custody and adoption cannot be minimized, for the ICWA is grounded on the premise that tribal self-government is to be fostered and that few matters are of more central interest to a tribe seeking to preserve its identity and traditions than the determination of who will have the care and custody of its children." *Matter of Adoption of Holloway*, 732 P.2d 962, 965 (Utah 1986). (Citations omitted.)

The Utah court concluded that "[t]he protection of th[e] tribal interest [in its children] is at the core of the ICWA." 732 P.2d at 969. We agree with those conclusions. The state's interest in requiring attorney representation is not as substantial as the tribal interests in participating in ICWA proceedings. The state's interest in adequate representation and compliance with procedure and protocol in general cannot compare with a tribe's interests in its children and its own future existence. Also, in the narrow context of ICWA proceedings, the state interests are not compromised. The Grand Ronde, and other tribes generally, appear in child-custody proceedings in state court through its Director of Social Services, whose job includes overseeing child-custody issues for tribal members. That necessarily requires intimate familiarity with the procedural and substantive requirements of the ICWA, and with the procedures and organizations of other social service agencies.

Tribal participation in state custody proceedings involving tribal children is essential to effecting the purposes of the ICWA. The state interests represented by ORS 9.160 and ORS 9.320 are outweighed by those purposes and the tribal interests that they represent. With the applicable preemption test weighted in favor of tribal interests, the state requirement of representation by an attorney is preempted in the narrow context of these ICWA proceedings.

Reversed and remanded with instructions to grant the motion to intervene, and for further proceedings.

WARREN, Presiding Judge, dissenting.

Because I disagree that the state is precluded from requiring compliance with its procedural statutes in this case, I dissent.

The majority is correct that ICWA grants Indian tribes a substantive right to intervene in a child custody proceeding involving an Indian child and that ICWA preempts the state from enforcing any law that would deny that substantive right. It is also correct that federal law preempts any conflicting state law that affects its substantive rights under ICWA. However, when the state law is solely procedural in nature and does not affect or limit the substance of a federal right, then no preemption occurs. *Nutbrown v. Munn*, 311 Or. 328, 811 P.2d 131 (1991), cert. den. ___ U.S. ___ (112 S.Ct. 867), 116 L. Ed. 2d 773 (1992); *Marr v. Smith Barney, Harris Upham & Co., Inc.*, 116 Or.App. 517, 842 P.2d 801 (1992), rev. den. 315 Or. 442, 847 P.2d 409 (1993).

ORS 9.160 provides that "no person shall practice law * * * unless that person is an active member of the Oregon State Bar." ORS 9.320 provides:

"Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases * * *."

In general, the forum state applies its own conflicts of law rules to determine whether the question is one of substance or procedure. *Hust v. Moore-McCormick Lines, Inc.*, 180 Or. 409, 424, 177 P.2d 429 (1947). However, a state cannot apply its own law to limit the rights that a party has under a federal claim, even when that claim is asserted in a state court. *Rogers v. Saylor*, 306 Or. 267, 284, 760 P.2d 232 (1988). Because the ICWA gives an Indian tribe a right to intervene in state court proceedings, we must decide whether applying ORS 9.160 and ORS 9.320 would *382 deny the tribe a right granted it by federal law.

25 U.S.C. § 1911(c) provides:

"In any State court proceeding for foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding."

ORS 9.160 and ORS 9.320 do not deny the tribe's right to intervene in this proceeding, but affect only how the intervention shall occur.

We decided a similar issue in *Cooley v. Fredinburg*, 114 Or.App. 532, 836 P.2d 162 (1992), rev. den. 315 Or. 311, 846 P.2d 1160 (1993). In that case, we held that the failure of the Federal Deposit Insurance Corporation to assert and establish its lien in a foreclosure proceeding precluded it from redeeming the property under ORS 23.530(2). 28 U.S.C. § 2410(c) provides for an absolute right on the part of the United States to have one year from the date of sale within which to redeem. We said:

"Although 28 U.S.C § 2410(c) requires Oregon to permit redemption by the government within 1 year from the date of sale, nothing entitles the government, or anybody else, to

redeem when it has failed to follow the state procedures that would have permitted it to protect itself." 114 Or.App. at 538, 836 P.2d 162.

Similarly, the tribe retains its substantive right to intervene so long as it complies with the state's procedures for intervention. I would hold that the trial court did not err when it ruled that the tribe's motion to intervene was defective because it did not comply with the requirements of ORS 9.160 and ORS 9.320.

I dissent.

NOTES

[1] ORS 9.160 provides that "no person shall practice law * * * unless that person is an active member of the Oregon State Bar."

[2] ORS 9.320 provides:

"Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases * * *."

Special Bar Admission for ICWA Representation

Proposed Addition – Alternative 1

A.R.S. Sup.Ct.Rules, Rule 38

Rule 38. Special Exceptions to Standard Examinations and Admission Process

(___) Authorization to Practice Law for Attorneys Representing Indian Tribes for the Purpose of Indian Child Welfare Cases. An attorney who has been admitted to practice law in any other jurisdiction for at least two years that provides legal assistance to Indian Tribes for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq.

1. Purpose. To exempt tribal representatives from the requirement to associate with local counsel and the payment of any application fees, in certain cases subject to the Indian Child Welfare Act (ICWA). ICWA creates a right for tribal governments to participate in child custody proceedings, but does not provide the funding necessary to exercise that right. As a result, the obligation to associate with local counsel and pay the associated application fees is perceived as a burden on the tribal government's right to participate, particularly in the context of out-of-state tribal governments.

2. Definitions.

A. "ICWA" stands for the Indian Child Welfare Act, which is a federal law passed in 1978. ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

B. A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation.

C. The Attorney represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903.

3. Application and Authorization. An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar membership for at least the two years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory or district for the past five years, or during the time of the applicant's licensure, whichever is greater;

B. an affidavit asserting the Indian Tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; and

C. a sworn statement signed by the applicant that he or she:

i. has read and is familiar with the Rules of the Supreme Court and any applicable statutes of the State of Arizona relative to the conduct of lawyers, and will abide by the provisions thereof;

ii. submits to the jurisdiction of the Court for disciplinary purposes, as defined by the Rules of the Supreme Court;

iii. has not been disciplined by the bar or courts of any jurisdiction within the past five years, or during the time of the applicant's licensure, whichever is greater; and

iv. has successfully completed the course on Arizona law described in Rule 34(j).

The applicant shall send a copy of the application to the State Bar of Arizona, which shall file any objection to such application with the clerk of the Supreme Court within ten (10) days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court of Arizona. The clerk of the Supreme Court shall send a copy of the order authorizing the practice of law to the State Bar of Arizona.

4. *Mandatory Continuing Legal Education.* An attorney authorized to practice under this paragraph (g) must comply with the Mandatory Continuing Legal Education (MCLE) requirements of Rule 45.

5. *Expiration of Authorization.* Authorization to practice law under this section shall remain in effect from the date of the order authorizing the applicant to practice law in the State of Arizona until (A) the applicant no longer represents an Indian Tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903; participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq.; (B) the applicant is admitted to the practice of law in

Arizona pursuant to Rules of the Supreme Court 33 through 37; or (C) two years from the date of the order authorizing the applicant to practice law under this rule, whichever comes first.

6. *Discipline.* In addition to any appropriate proceedings and discipline that may be imposed by the Court under these rules, the Rule 38(g) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(g) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Supreme Court, or the funded indigent defense office.

7. *Limitation of Activities.* An attorney authorized to practice under this rule shall not perform any legal services within the State of Arizona except for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq. The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903.

8. *Waiver of Fees.* The Attorney who represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903, for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq. shall be exempt from the fees prescribe in A.R.S. Sup.Ct.Rules, Rule 39, Rule 39. Admission Pro Hac Vice.

Proposed Addition - Alternative 2

Rule 39. Admission Pro Hac Vice

a. – l. [no changes]

m. Exception. An applicant is not required to associate with local counsel pursuant to subsection (b) and (c) of this rule or pay the fees established by subsection (c)(1)(B) and (h) of this rule if the applicant upon submitting the application required by subsection (c) establishes to the satisfaction of the Bar that:

(1) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. §1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §1901 et seq.;

(2) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 U.S.C. §1903; and

(3) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law.

The applicant shall perform any duty required to be performed by associate counsel and receive any notice required to be provided to associate counsel pursuant to this rule.

V. Meeting Business
**B. Prescription Drug Abuse in Tribal
Communities Presentation**

V. Meeting Business
C. Probation Supervision on Reservations

V. Meeting Business
C.1. Arrest/Extradition

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.	

IN THE TRIBAL COURT OF
THE FORT MCDOWELL YAVAPAI NATION

FORT MCDOWELL YAVAPAI NATION) Case No. EX2016-0002
vs.)
CIARA SALINA ARMENTA) EXTRADITION HEARING
Defendant)

DATE: January 17, 2017

HEARING TYPE: Extradition Hearing - Waived

PRESENT: Anders Lundin, Deputy Prosecutor, Fort McDowell Yavapai Nation
Ciara Salina Armenta, Defendant
Defense Counsel (Waiver)

SUMMARY: This is the time set for Extradition Hearing requested by Defendant. President's warrant of extradition. Defendant is present and waives counsel. Nation is present via counsel. Court advises Defendant of her Constitutional rights, particularly her right to contest extradition, the right to hearing, (which is scheduled today), the right to counsel, and her right to file a Writ of Habeas Corpus. Defendant waives her right to extradition and signs a written extradition waiver.

The Court finds that the Waiver is entered into knowingly, voluntarily and with unconditional consent, without threats, promises, duress or agreements and with full knowledge of her rights to be held in custody until she is requisitioned by the State of Arizona, Maricopa County Superior Court, there to stand trial on the charge(s) of violating her terms and conditions of probation to Aggravated DUI a class 6 designated felony.

ORDER: IT IS ORDERED finding the Defendant to be a Fugitive of Justice, that she is the person being sought in the Demand for Extradition, that the paperwork demanding surrender of the Defendant are properly and legally authenticated, and there is probable cause to justify commitment for trial on the crime(s) alleged.

IT IS ORDERED detaining the Defendant on President's Extradition Warrant and Waiver of Extradition entered into by the Defendant before this Court, and

IT IS ORDERED remanding her to the custody of Fort McDowell Yavapai Nation to be held without bond for 30 days or until requisitioned by the State of Arizona, Maricopa County, whichever occurs first.

SO ORDERED this 17th day of January 2017.

Kerry G. Passey, Judge

Copies sent: DATED _____ BY _____
TO: ___ Prosecutor ___ Defendant ___ PO Dana Shepherd

**THE FORT MCDOWELL
YAVAPAI NATION
LAW AND ORDER CODE**

Published in 2015 by Order of the Tribal Council

- Sec. 7.5-1. Purpose.
- Sec. 7.5-2. Civil trespass.
- Sec. 7.5-3. Civil penalties.
- Sec. 7.5-4. Forfeiture authorized.
- Sec. 7.5-5. Jurisdiction.
- Sec. 7.5-6. Civil trespass actions.
- Sec. 7.5-7. Remedies.
- Sec. 7.5-8. Removal of trespassers.
- Sec. 7.5-9. Seizure and forfeiture of property.
- Sec. 7.5-10. Forfeiture proceedings.
- Sec. 7.5-11. Enforcement of civil penalties.
- Sec. 7.5-12. Advocate fees.
- Sec. 7.5-13. Time limitation.
- Sec. 7.5-14. Authorized law enforcement officers.

ARTICLE I. EXTRADITION

Sec. 7.1-1. Definitions.

Chief Executive officer includes the governor, president, chairman, business manager or chief administrative official who has been lawfully designated by an Indian tribal government to act in such executive capacity.

Executive Authority includes any person who is the chief executive officer of a state or Indian tribe or such law enforcement, correction or probation officials or agencies of a state or Indian tribe who are by such state or Indian tribe authorized to perform the functions of demanding extradition from other jurisdiction.

Indian Tribal Government means any existing American Indian tribe recognized as a self-governing unit for the purpose of any federal governmental agency and which has a duly organized tribal court, court of Indian offenses, or traditional court.

Nation refers to the Fort McDowell Yavapai Nation.

President means the chief executive officer of the Fort McDowell Yavapai Nation.

Prosecuting Officer includes any person duly designated by legal authority to attend to the prosecution of criminal offenses on behalf of the government, including attorneys general, prosecutors, special prosecutors, district attorneys or special appointees.

State includes any state or territory, organized or unorganized, of the United States of America, including the District of Columbia.

Tribe or Tribal is used in this chapter synonymously with "Indian tribal government," the Code of Indian Offenses or the custom and tradition of that tribe, or to specific departments within an Indian tribe or Nation.

(Law & Order Code 2006, § 7.1-1; Ft. McD. Res. No. 2008-79, ex. A, adopted 12-16-2008)

Sec. 7.1-2. Fugitives from justice; duty of chief executive.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof; it is the duty of the president of the Fort McDowell Yavapai Nation to have arrested and delivered to the executive authority of any state or other Indian tribe any person charged in that jurisdiction with a felony, who has fled from justice and is found in this tribal jurisdiction.

(Law & Order Code 2006, § 7.1-2)

Sec. 7.1-3. Applicability of chapter.

This chapter shall be applicable only in cases in which it is claimed that a felony has been committed. For purposes of this chapter, any act made a crime by the laws of any Indian tribe is a felony.

(Law & Order Code 2006, § 7.1-3)

Sec. 7.1-4. Form of demand.

No demand for the extradition of a person charged with crime or crimes in a state or another tribal jurisdiction shall be recognized by the president unless the demand is in writing alleging, except in cases arising under section 7.1-6, that the accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and that thereafter he fled from that jurisdiction. Said demand must be accompanied by a copy of an affidavit made before a tribal court judge or magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state or tribe that the person sought has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the tribal court judge or magistrate must substantially charge that the person has committed a crime under the law of that state or tribe; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(Law & Order Code 2006, § 7.1-4)

Sec. 7.1-5. President may investigate case.

When a demand shall be made upon the president of the Fort McDowell Yavapai Nation by the executive authority of a state or another Indian tribe for the surrender of a person so charged with crime, the president may call upon any prosecuting officer to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person sought and whether he should be surrendered.

(Law & Order Code 2006, § 7.1-5)

Sec. 7.1-6. Extradition of persons imprisoned or awaiting trial in a state or another tribe or who have left the demanding jurisdiction under compulsion.

A. When it is desired to have returned to this Nation a person who is charged in this jurisdiction with a crime, and that person is imprisoned or is held under criminal proceedings then pending against him in a state or other tribe, the president of the Fort McDowell Yavapai Nation may agree with the executive authority of such state or tribe for the extradition of that person before the conclusion of those proceedings or his term of sentence in the other state or tribe, upon the condition that the person be returned to the other state or tribe at the expense of this Nation as soon as the prosecution is terminated in this jurisdiction.

B. The president may also surrender, on the demand of the executive secretary of any state or other tribe, any person in this jurisdiction who is charged in the manner provided in section 7.1-

23 with having violated the laws of the state or tribe whose executive authority is making the demand, even though such person left the demanding jurisdiction involuntarily.

(Law & Order Code 2006, § 7.1-6)

Sec. 7.1-7. Extradition of persons not present in demanding jurisdiction at time of commission of crime.

The president may also surrender, on demand of the executive authority of any state or other tribe, any person in this jurisdiction who is charged in such other state or tribe in the manner provided in section 7.1-3 with committing an act in this jurisdiction or in another state or another tribe, which intentionally resulted in a crime occurring in the jurisdiction whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that jurisdiction at the time of the commission of the crime, and has not fled therefrom.

(Law & Order Code 2006, § 7.1-7)

Sec. 7.1-8. Issue of president's warrant of arrest; recitals of fact.

If the president decides that the demand should be complied with, he shall sign a warrant of arrest which shall be directed to any peace officer or other person whom he may deem fit to entrust with the execution thereof. The warrant must substantially set forth the facts necessary to the validity of its issuance.

(Law & Order Code 2006, § 7.1-8)

Sec. 7.1-9. Manner and place of execution of warrant.

Such warrant shall authorize the peace officer or other person to whom directed, to arrest the accused at any time and any place where he may be found within the tribal jurisdiction, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this chapter to the duly authorized agent of the demanding state or tribe.

(Law & Order Code 2006, § 7.1-9)

Sec. 7.1-10. Authority of arresting officer.

Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(Law & Order Code 2006, § 7.1-10)

Sec. 7.1-11. Rights of accused person; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to a duly designated agent of the demanding executive authority unless he shall first be taken forthwith before a Tribal Court judge in this jurisdiction, who shall inform him of the demand made for his surrender. He must also be advised of the crime of which he is charged, and his right to demand and procure legal counsel. If the prisoner or his counsel desire to test the legality of his arrest, the judge of such court shall fix a reasonable time for him to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of time and place of hearing thereon shall be given to the prosecuting officer and to the said agent of the demanding state or tribe. At the hearing the judge may inquire into whether the accused can receive a fair trial in the demanding jurisdiction. If the judge determines that the accused probably cannot receive a fair trial in the demanding jurisdiction, then he shall release the accused from custody forthwith or hold a hearing early to determine if a fair trial can be had.

(Law & Order Code 2006, § 7.1-11)

Sec. 7.1-12. Penalty for noncompliance with preceding section.

Any officer who shall wrongfully deliver to the agent of the demanding state or tribe a person in his custody in willful disobedience of this chapter shall be guilty of an offense and, upon conviction, shall be fined not more than five hundred dollars (\$500.00) or be imprisoned not more than six (6) months, or both.

(Law & Order Code 2006, § 7.1-12)

Sec. 7.1-13. Confinement in jail when necessary.

A. The officer executing the president's warrant of arrest or the agent of the demanding jurisdiction to whom the prisoner may have been delivered may, ~~whew~~when necessary, confine the prisoner in the Nation jail or any other existing facility for detention of Nation prisoners; and the keeper of such jail must receive and safely keep the prisoner until the officer having charge of him proceeds on his route, such officer or agent being chargeable with the expense of keeping.

B. The officer or agent of a demanding jurisdiction to whom a prisoner may have been delivered, following extradition proceedings in another state or another Indian tribe, or who may have jurisdiction over a prisoner, and who is merely passing through this jurisdiction with the prisoner for the purpose of immediately returning him to the demanding jurisdiction, may, when necessary, confine the prisoner in the Nation jail or other detention facility. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him proceeds on his route. The officer or agent is responsible for the expense of keeping his prisoner; however, such officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding jurisdiction with legal authority. Such prisoner shall not be entitled to demand a new requisition while in this Tribal Jurisdiction.

(Law & Order Code 2006, § 7.1-13)

Sec. 7.1-14. Arrest prior to requisition.

Whenever any person within this Nation is charged by the oath of a credible person given before a judge of this Nation with having committed a crime in any state or in another tribe and, except in cases arising under section 7.1-6, with having fled from justice, or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his bail, probation or parole; or whenever a complaint is made before a Nation judge in this ~~tribe~~Nation on the affidavit of a credible person in another jurisdiction stating that a crime has been committed in that jurisdiction and that the accused has been charged with having committed that crime and, except in cases arising under section 7.1-6, has fled from justice, or that the accused has been convicted of a crime and has escaped from confinement, or that the accused has broken the terms of his bail, probation or parole, and is believed to be in this jurisdiction; such Tribal Court judge shall issue a warrant directed to any peace officer commanding him to apprehend the named person in this jurisdiction and to bring him before the Tribal Court to answer the foregoing charges. A certified copy of the sworn charge of complaint and affidavit shall be attached to the warrant.

(Law & Order Code 2006, § 7.1-14)

Sec. 7.1-15. Arrest without a warrant.

The arrest of a person may be lawfully made by any peace officer without a warrant, upon reasonable information that the accused stands charged in the courts of a state or other tribe with a crime punishable by death or imprisonment for a term exceeding one (1) year. When arrested, the accused must be taken before a Nation judge with all practicable speed and a complaint must

be made against him under oath setting forth the grounds for the arrest as if he had been arrested as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on warrant.

(Law & Order Code 2006, § 7.1-15)

Sec. 7.1-16. Commitment to await requisition; bail.

If from the examination before the Nation judge it appears that the person held is the same person who is charged with having committed the alleged crime and, except in cases arising under section 7.1-6, that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the Nation jail for a period of time not to exceed thirty (30) days in order to enable the arrest of the accused to be made by the proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next section, or until his legal discharge.

(Law & Order Code 2006, § 7.1-16)

Sec. 7.1-17. Bail; in what cases; conditions of bond.

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribe in which it was committed, a Tribal Court judge in this Nation may grant the person arrested bail, in such sum as he deems proper, conditioned for the prisoner's appearance at a time specified in such bond, and for his surrender, for arrest upon the warrant of the president of this Nation.

(Law & Order Code 2006, § 7.1-17)

Sec. 7.1-18. Extension of time of commitment; adjournment.

If the accused has not been arrested under a warrant of the president by the expiration date as specified by the Nation judge in accordance with section 7.1-15, such judge may discharge the prisoner, recommit him for a period not to exceed sixty (60) days, or grant bail for this recommitment period as provided in section 7.1-16.

(Law & Order Code 2006, § 7.1-18)

Sec. 7.1-19. Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the tribal judge by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he is within the Tribal Jurisdiction. Recovery may be had on such bond in the name of the Nation as in the case of other bonds given by the accused in criminal proceedings.

(Law & Order Code 2006, § 7.1-19)

Sec. 7.1-20. Persons under criminal prosecution in this Nation at time of requisition.

If a criminal prosecution has been instituted against such person under the laws of this Nation and is still pending, the chief executive officer, at his discretion, may either surrender him on demand of the executive authority of a state or other Indian tribe, or hold him until he has been tried and discharged or convicted and punished by this Nation.

(Law & Order Code 2006, § 7.1-20)

Sec. 7.1-21. Guilt or innocence of accused; when inquired into.

Neither the president nor the Tribal Court may inquire into the guilt or innocence of the accused, in any proceeding after the demand for extradition, except to identify the accused as the person who is charged with the crime and to ascertain if reasonable cause exists for such extradition.

(Law & Order Code 2006, § 7.1-21)

Sec. 7.1-22. President may recall warrant or issue alias.

The president may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(Law & Order Code 2006, § 7.1-22)

Sec. 7.1-23. Fugitives from this Nation; duty of president.

Whenever the president of this Nation shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this Nation, from the executive authority of any state or other tribe, or from the chief justice or as associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of this ~~tribe~~Nation.

(Law & Order Code 2006, § 7.1-23)

Sec. 7.1-24. Application for issuance of requisition; by whom made; contents.

A. When a return to this Nation of a person charged with crime in this jurisdiction is required, the prosecuting officer shall present to the president his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the jurisdiction in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting officer, the ends of justice require the arrest and return of the accused to this ~~tribe~~Nation for trial and that the proceeding is not instituted to enforce a private claim.

B. When the return to this Nation is required of a person who has been convicted of a crime in this Nation and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting officer shall present to the governor a written application for a requisition for the return of such person, setting forth the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the jurisdiction in which he is believed to be, including the location of the person therein at the time application is made.

C. The application shall be verified by affidavit, executed in duplicate and accompanied by two (2) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the Tribal Court judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer may also attach such further affidavits and documents in duplicate as he shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the president endorsement thereon, and one (1) of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Nation secretary, to remain on record in that office. The other copies of all papers shall be forwarded with the president's requisition.

(Law & Order Code 2006, § 7.1-24)

Sec. 7.1-25. Costs and expenses.

In all cases where the punishment of the crime includes confinement, the expenses shall be paid out of the Nation's treasury on the certification of the president. The expenses shall be the fees paid to the officers of the tribe or state on whose executive authority the requisition is made,

and not exceeding the mileage fee then in effect by council policy for all necessary travel in returning such prisoner.

(Law & Order Code 2006, § 7.1-25)

Sec. 7.1-26. Immunity from service of process in certain civil actions.

A person returned to this Nation by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state or tribe from which he was extradited.

(Law & Order Code 2006, § 7.1-26)

Sec. 7.1-27. Written waiver of extradition proceedings.

A. Any person arrested in this Nation who is charged with having committed any crime in a state or other tribe or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 7.1-7 and 7.1-8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a Tribal Court judge within this Nation a writing which states that he consents to return to the demanding jurisdiction; however, before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of all his rights including the right to the issuance or service of a warrant of extradition and his right to obtain a writ of habeas corpus as provided in section 7.1-11.

B. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the president of this Nation and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state or tribe and shall deliver or cause to be delivered to such agent or agents a copy of such consent; however, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding jurisdiction, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding jurisdiction or of this Nation.

(Law & Order Code 2006, § 7.1-27)

Sec. 7.1-28. Nonwaiver by the Fort McDowell Yavapai Nation.

Nothing in this chapter shall be deemed to constitute a waiver by the Fort McDowell Yavapai Nation of its sovereignty or rights, powers or privileges to try such demanded person for crime committed within this jurisdiction, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this jurisdiction. Nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this ~~tribe~~Nation of any of its sovereignty or rights, privileges or jurisdiction in any way whatsoever.

(Law & Order Code 2006, § 7.1-28)

Sec. 7.1-29. No right of asylum; no immunity for other criminal prosecutions while in this jurisdiction.

After a person has been brought back to this Nation by or after waiver of extradition proceedings, he may be tried in this jurisdiction for other crimes which he may be charged with having committed here as well as those specified in the requisition for his extradition.

(Law & Order Code 2006, § 7.1-29)

V. Meeting Business
C.2. Reconstitute Committee?

Probation Committee

Judge Michala Ruechel
Superior Court, Navajo County
100 East Carter Drive
Holbrook, AZ 86025
928-524-4246
mruechel@courts.az.gov

Judge Kerry Passey
Yavapai Nation Tribal Court
10755 N. Fort McDowell Road, Suite 1
Fort McDowell, AZ 85264
480-789-7604
kpassey@ftmcdowell.org

Margaret Vaughn, Probation Supervisor
Hualapai Tribal Court
960 Rodeo Way
P.O. Box 275
Peach Spring, AZ 86436
928-769-2338
margjimulla@gmail.com

The following possibilities require follow up:

Patrick McMullen and/or Susan Montgomery
ITCA See e-mail.

Jack Penn
Hopi Chief PO
Recommended by Judge Leslie

The following suggestions were made at the December Court Forum meeting.

- Mario Morina (or Deputy)
- Paul O'Connell (Department of Correction)
- Susan Alameda (AOC)
- Chief probation officers
- Juvenile court directors
- Court administrators/directors

As of December 4, 2014

Y:\Legal\Court Forum\Member Listings\Probation Committee 2014.doc

V. Meeting Business
D. Involuntary Commitment Legislation Update

REFERENCE TITLE: tribal courts; involuntary commitment orders

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HB 2084

Introduced by
Representative Farnsworth E

AN ACT

AMENDING SECTION 12-136, ARIZONA REVISED STATUTES; RELATING TO TRIBAL COURTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

HB 2084

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-136, Arizona Revised Statutes, is amended to
3 read:
4 12-136. Tribal courts; involuntary commitment orders;
5 recognition
6 A. Notwithstanding any law to the contrary, an involuntary
7 commitment order of an Arizona tribal court filed with the clerk of the
8 superior court shall be recognized and is enforceable by any court of
9 record in this state, subject to the same procedures, defenses and
10 proceedings for reopening, vacating or staying as a judgment of the
11 court. The Arizona supreme court may adopt rules regarding recognition of
12 tribal court involuntary commitment orders. The state, through the
13 attorney general, shall be given notice of the filing at the time the
14 commitment order is filed and shall have five days from receipt of the
15 written notice of the filing of the order to appear as a party and
16 respond. A patient committed to a ~~state~~ mental health treatment facility
17 under this section ~~shall be~~ IS subject to the jurisdiction of the state.
18 B. Decisions regarding discharge or release of a patient committed
19 pursuant to subsection A OF THIS SECTION shall be made by the facility
20 providing involuntary treatment. Ten days ~~prior to~~ BEFORE discharge or
21 release, the ~~state~~ mental health treatment facility shall notify the
22 tribal court ~~which~~ THAT issued the involuntary commitment order of the
23 facility's intention to discharge or release a patient. Any necessary
24 outpatient follow-up and transportation of the patient to the jurisdiction
25 of the tribal court, within the time set forth in the notice, shall be
26 provided for in an intergovernmental agreement between the tribe and the
27 ~~department of health services~~ ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.
28 C. A MENTAL HEALTH TREATMENT FACILITY MAY ADMIT A PATIENT FOR
29 INVOLUNTARY TREATMENT PENDING THE FILING OF A TRIBAL COURT'S INVOLUNTARY
30 COMMITMENT ORDER WITH THE CLERK OF THE SUPERIOR COURT PURSUANT TO
31 SUBSECTION A OF THIS SECTION. THE MENTAL HEALTH TREATMENT FACILITY MUST
32 DISCHARGE THE PATIENT IF THE TRIBAL COURT ORDER IS NOT FILED WITH THE
33 CLERK OF THE SUPERIOR COURT BY THE CLOSE OF BUSINESS ON THE NEXT DAY THAT
34 THE COURT IS OPEN AFTER THE ADMISSION OF THE PATIENT. IF THE PATIENT IS
35 DISCHARGED PURSUANT TO THIS SUBSECTION, THE PATIENT SHALL BE TRANSPORTED
36 TO THE JURISDICTION OF THE TRIBAL COURT IN THE SAME MANNER PROVIDED IN
37 SUBSECTION B OF THIS SECTION.

V. Meeting Business

E. Child Support Guide Development – Next Steps

The Arizona Inter-Tribal Child Support Enforcement Guide- Outline
Introduction and Purpose for Guide

Useful Beginning Information for CS Cases
(Information require will vary with 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) 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 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 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 tribal code or case law?

Concurrent jurisdiction: Can more than 1 tribe and the state have jurisdiction over 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?

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 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 tribes 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; (2) Hopi; (3) Quechan; (4) Salt River/Pima/Maricopa Indian Community; (5) Tonoho O'odham (Papago); (6) Pasqua Yaqui using State guidelines). Include a copy of guidelines for each jurisdiction. How does the court consider per capita payments to the child- Does this replace or reduce the child support obligation. Are assets and contributions of family or clan members, such as child care, considered?

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

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

Deviation from Guidelines?

In what circumstances are deviations allowed? (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. What tribal entity pursues enforcement in these matters?

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?

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
F. Statewide Self-Help Website
Arizona Bar Foundation

NEWS RELEASE

ARIZONA SUPREME COURT

ADMINISTRATIVE OFFICE OF THE COURTS

Contact: Heather Murphy
Telephone: (602) 452-3656
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January 12, 2017

New Site Gives Court Information, Legal Help for Everyday People

PHOENIX – A new website launched today to offer basic assistance to people of all walks of life who have legal questions or need assistance in resolving disputes in court. AzCourtHelp.org is organized by topic and geographical location to help people find the court locations, forms, and other information they may need.

Geographical information includes court locations, maps, hours, payment terms, parking, and accessibility information. The site also features live chat forums to assist with legal information, legal talk clinics on popular topics, and other information helpful to self-represented individuals. Frequently asked questions are arranged by topic so users can quickly find the information that is most helpful to their situation. The site will also include video tutorials, webinars, and a calendar of free legal workshops around Arizona.

AZCourtHelp.org has a presence on Facebook as a way to expand its reach.

The backbone of the website's video and interactive component is the Coconino County Superior Court's Virtual Resource Center, which will be hosting the video outreach for statewide viewing.

"The Chief Justice challenged us to work together to improve access to justice," said Coconino County Superior Court Administrator Gary Krcmarik. "We took up that challenge by developing this website in conjunction with our Virtual Resource Center to provide this valuable information

statewide. We are grateful to the Arizona Foundation for Legal Services and Education, which graciously partnered with us to design the website and curate the information on it.”

Krcmarik said that today’s public launch is a beginning of a larger effort and more information, including Spanish-language content, will be added to the site on a daily and weekly basis.

Like AzCourtHelp.org on Facebook at <https://www.facebook.com/AZCourtHelporg-1751856595097598/>.