



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title

Family Law: Transfers of Title IV-D Child
Support Cases Between State and Tribal
Court

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 5.372

Date of Report

August 28, 2017

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Contact

Ann Gilmour, Attorney II

415-865-4207

ann.gilmour@jud.ca.gov

Tribal Court–State Court Forum

Hon. Abby Abinanti, Cochair

Hon. Dennis M. Perluss, Cochair

Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court–State Court Forum (forum) propose amendments to rule 5.372 governing discretionary transfer of title IV-D child support cases between state courts and tribal courts in cases of concurrent jurisdiction. The amendments would allow transfers from the tribal court to the state court, clarify the contents and procedures for motions to transfer, and modify the factors and procedures for ruling on motions to transfer. These proposed amendments are based on suggestions received from those involved in transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court – State Court Forum recommend that effective January 1, 2018, the Judicial Council amend rule 5.372 to:

1. Provide by the language in the title and subdivision (a) that a title IV-D child support case may be transferred between tribal and state courts in both directions. When adopted, the current rule had only envisioned a title IV-D child support case being transferred from the state court to the tribal court. However, the goal is to ensure that a title IV-D child support case will be in the jurisdiction (tribal or state) that is best able to serve the family and protect the best interests of the child.
2. Add new subdivision (i), which describes the state court procedure when a tribal court with concurrent jurisdiction decides it is in the child's best interest for the case to be heard in state court and stipulates that such transfers are exempt from the payment of any filing fees that might otherwise apply.
3. Revise subdivision (h) to add the exception in new subdivision (i), which authorizes the filing of a motion to transfer a case back to state court when a tribal court determines that it is not in the best interest of the child or the parties to retain jurisdiction.
4. In (e):
 - Allow the state court to suggest transfer to tribal court on its own motion should circumstances suggest to the court that tribal court jurisdiction may be in the child's best interest.
 - Require that certain information be included in the motion to transfer to tribal court. This information is fundamental to the court's determination of concurrent jurisdiction.
 - Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion.
 - Recognize a presumption of tribal court jurisdiction if the child involved in the case is a tribal member or eligible for tribal membership. This is consistent with legal principles that generally recognize tribal subject matter jurisdiction over children who are members or eligible for membership in the tribe.
 - Specify the time limit within which any objection to the transfer to tribal court must be brought.
 - Provide that the objecting party has the burden of proof to establish that there is good cause not to transfer the matter to tribal court. This is consistent with state implementation of the Indian Child Welfare Act of 1978 (ICWA).
5. In (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court.
 - Specify that the court may not consider the perceived adequacy of the tribal justice system in determining whether to transfer the case. This is consistent with state and federal law under the ICWA.
 - Permit the state court judge to contact the tribal court judge to resolve procedural issues consistent with procedures contained in the Uniform Child Custody Jurisdiction and Enforcement Act and the Tribal Court Civil Money Judgment Act.
6. Add an Advisory Committee Comment to address the issue of filing fees when a case is transferred from tribal court.

The text of the amended rules and the new and revised forms are attached at pages 6–8.

Previous Council Action

The Judicial Council adopted California Rules of Court, rule 5.372, effective January 1, 2014, in response to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state court to the tribal court when there is concurrent subject matter jurisdiction.

Rationale for Recommendation

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹ as amended by the Balanced Budget Act of 1997,² authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok Tribe had comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the state court to the tribal court. Rule 5.372 was adopted to meet this need. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, rule 5.372 was drafted in anticipation that other tribes may develop such programs in the future.

¹ Pub.L. No. 104-193 (Aug. 21, 1996) 110 Stat. 2105.

² Pub.L. No. 105-33 (Aug. 5, 1997) 111 Stat. 251.

Since implementation of rule 5.372 on January 1, 2014, over 40 cases have been considered for transfer between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. The Yurok Tribe intends to seek transfer of cases currently under the jurisdiction of state court in the following counties: Lake, Mendocino, Shasta, Siskiyou, and Trinity. In addition, at least one other tribe located in Southern California is expected to soon begin handling title IV-D child support cases.

Representatives of the state Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state courts, and Judicial Council staff met to review the case transfer procedures at a cross-court educational exchange on October 26, 2016. Based on the experience with the transfers that have taken place so far, the participants made a number of suggestions to improve the transfer process, including amendments to rule 5.372 to streamline the process, reduce confusion, and ensure consistent and efficient use of court resources. The group recommended clarifying that transfers could happen both to and from a tribal court. As a family's circumstances change, a case that may have initially been best served by tribal court jurisdiction may transition to one that is best served by state court jurisdiction. The Full Faith and Credit for Child Support Orders Act mandates full faith and credit for child support orders between tribal and state courts, thereby contemplating movement in either direction. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders. The group also recommended revising the list of factors that the state court could consider when making a determination to transfer to tribal court. The original list of factors was drawn from a Wisconsin rule that governs the transfer of general civil matters where there is concurrent tribal and state court jurisdiction. Not all of those factors were relevant to the consideration of the more specific title IV-D child support case type. In particular, the nature of the action, the interests of the parties, and whether state or tribal law will apply are all the same in these child support cases. The inclusion of these on the list of factors to be considered was confusing and an inefficient use of court resources.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2017 comment session—from February 27 to April 28—to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court appointed special advocate programs, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues. Ten comments were received. Four commentators approved of the proposal. Four approved with proposed amendments, and two did not indicate whether they approved. A number of clarifying revisions were made in response to the comments. Subdivision 5.372(e)(2)(C) was revised to include receipt by the parents of tribal services as among the factors that could be considered when determining whether the tribal court has concurrent

jurisdiction. Subdivision 5.372(i)(3) was revised to replace the word may with must. Subdivision 5.37(e) was revised to include a deadline for objection to transfer.

In addition, subdivision (h) was revised and an Advisory Committee Comment was added to address the issue of filing fees when a title IV-D child support case is transferred from tribal court to a superior court. Several members of the committee expressed concern that without such provisions, transfers of eligible title IV-D child support cases from tribal court might be subject to filing fees, which would not apply were the cases initiated directly by a local child support agency.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal, because the rule clarifies the process and requirements for transfer of these title IV-D child support cases between tribal and superior courts.

Attachments and Links

1. Cal. Rules of Court, rule 5.372 at pages 6–8
2. Chart of comments, at pages 9–19

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Rule 5.372. Transfer of title IV-D cases between ~~to a tribal court~~ and state court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

(b)–(d) * * *

(e) Determination of concurrent jurisdiction by a superior court

(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases.

(2) The motion for transfer to a tribal court must include the following information:

(A) Whether the child is a tribal member or eligible for tribal membership;

(B) Whether one or both of the child's parents are tribal members or eligible for tribal membership;

(C) Whether one or both of the child's parents live on tribal lands or in tribal housing, work for the tribe, or receive tribal benefits or services;

(D) Whether there are other children of the obligor subject to child support obligations;

(E) Any other factor supporting the child's or parents' connection to the tribe.

(3) When ruling on a motion to transfer, the superior court must first make a threshold determination that concurrent jurisdiction exists. Evidence to support this determination may include:

1
2 (A) Evidence contained within the motion for transfer;

3
4 (B) Evidence agreed to by stipulation of the parties; and

5
6 (C) Other evidence submitted by the parties or by the tribe.

7
8 The court may request that the tribal child support agency or the tribal court
9 submit information concerning the tribe's jurisdiction.

10
11 (4) There is a presumption of concurrent jurisdiction if the child is a tribal
12 member or eligible for tribal membership. If concurrent jurisdiction is found
13 to exist, the transfer to tribal court will occur unless a party has objected ~~in a~~
14 ~~timely manner~~ within 20 days after service of notice of the right to object
15 referenced in subdivision (e)(1) above. On the filing of a timely objection to
16 the transfer, the superior court must conduct a hearing on the record
17 considering all the relevant factors set forth in (f). The objecting party has the
18 burden of proof to establish good cause not to transfer to tribal court.

19
20 (f) **Evidentiary considerations**

21
22 (1) In making a determination on the ~~application~~ motion for case transfer, the
23 superior court must consider:

24
25 ~~(1) The nature of the action;~~

26
27 ~~(2) The interests of the parties;~~

28
29 (A) The identities of the parties;

30
31 (B) The convenience of the parties and witnesses;

32
33 ~~(5) Whether state or tribal law will apply;~~

34
35 (C) The remedy available in the superior court or tribal court; and

36
37 (D) Any other factors deemed necessary by the superior court.

38
39 (2) In making a determination on the motion for case transfer, the superior court
40 may not consider the perceived adequacy of tribal justice systems.

41
42 (3) The superior court may, after notice to all parties, attempt to resolve any
43 procedural issues by contacting the tribal court concerning a motion to

1 transfer. The superior court must allow the parties to participate in, and must
2 prepare a record of, any communication made with the tribal court judge.

3
4 **(g) Order on request to transfer**

5
6 If the superior court denies the request for transfer, the court must state on the
7 record the basis for denying the request. If the superior court grants the request for
8 transfer, it must issue a final order on the request to transfer including a
9 determination of whether concurrent jurisdiction exists.

10
11 **(h) Proceedings after order granting transfer**

12
13 Once the superior court has granted the application to transfer, and has received
14 confirmation that the tribal court has accepted jurisdiction, the superior court clerk
15 must deliver a copy of the entire file, including all pleadings and orders, to the clerk
16 of the tribal court within 20 days of confirmation that the tribal court has accepted
17 jurisdiction. With the exception of a filing by a tribal court as described by
18 subdivision (i) of this rule, the superior court may not accept any further filings in
19 the state court action in relation to the issues of child support and custody that were
20 transferred to the tribal court.

21
22 **(i) Transfer of proceedings from tribal court**

23
24 (1) If a tribal court determines that it is not in the best interest of the child or the
25 parties for the tribal court to retain jurisdiction of a child support case, the
26 tribe may, upon noticed motion to all parties and the state child support
27 agency, file a motion with the superior court to transfer the case to the
28 jurisdiction of the superior court along with copies of the tribal court's order
29 transferring jurisdiction and the entire file.

30
31 (2) The superior court must notify the tribal court upon receipt of the materials
32 and the date scheduled for the hearing of the motion to transfer.

33
34 (3) If the superior court has concurrent jurisdiction, it must not reject the case.

35
36 (4) No filing fee may be charged for the transfer of a title IV-D child support
37 case from a tribal court.

38
39 Advisory Committee Comment

40 This rule applies only to title IV-D child support cases. In the normal course, transfers from tribal court are
41 initiated by the local child support agencies. Under Government Code sections 6103.9 and 70672, local
42 child support agencies are exempt from payment of filing fees. The rule makes it clear that this exemption
43 also applies when an eligible case is being transferred from a tribal court.

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|--|---|
| 1. | Burgess, Jennifer J., Program Manager, Yurok Child Support Services Humboldt County | AM | <p>Suggest change of term/word used in Rule 5.372 (e)(2)(C) "Whether one or both of the child's parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits".</p> <p>Suggest/request change of word used from "benefit" to services. Services provides a broader description and is a more appropriate term than "benefits".</p> | The proposal was revised in response to this comment to add "...or services." |
| 2. | California Indian Legal Services, By Denise H. Bareilles, Senior Staff Attorney Humboldt County | A | <p>Recommendations</p> <p>(i) Transfer of proceedings from tribal court</p> <p>1. If a tribal court determines that it is not in the best interest of the child or the parties for the tribal court to retain jurisdiction of a child support case, the tribe may, upon noticed motion to all parties and the state child support agency, file a motion to transfer the case to the jurisdiction of the superior court along with copies of the tribal court's order transferring jurisdiction and the entire file.</p> <p>2. The superior court must notify the tribal court upon receipt of the materials and the date scheduled for the hearing of the motion to transfer.</p> <p>3. If the superior court has concurrent jurisdiction it may not reject the case.</p> <p><i>Comment #1:</i> The provision above allows interpretation that the Motion for Case Transfer from tribal court to state court may be processed and litigated twice. Subparagraph 1 presumes that the Motion for Case Transfer is occurring in</p> | <p>The rule does not assume that there has been litigation on the issue in tribal court, it merely acknowledges that the tribal court will have had to give up jurisdiction over the case in order for the state court to resume jurisdiction. That is why there must be an order from the tribal court order</p> |

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|--|-------------|----------|--|--|
| | | | <p>the tribal court and that a final tribal court order is being issued by the tribal court judge to transfer the case and related files to the state court.</p> <p>Subparagraph 2 also presumes that a Motion for Case Transfer is being filed in the state court. The motion should be heard in the court that last had jurisdiction over the child support matter.</p> <p>Subparagraph 1 should be modified to include that the tribal court must notify the state court of the date scheduled for the hearing of the motion for transfer, and this same language should be removed from subparagraph 2.</p> <p>Another option to clarify where the Motion for Case Transfer from tribal court to state court will be filed may be to keep the provision more general to allow both options, and then give the state and tribal Title IV-D agencies the ability to determine in an intergovernmental agreement where this motion would be filed.</p> <p>We are supportive of the proposed change based on clarifying in the rule that the Motion for Case Transfer from tribal court to state court is litigated once in either state or tribal court.</p> <p>(h) Proceedings after order granting transfer Once the superior court has granted the application to transfer, and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all</p> | <p>acknowledging that the case should go back to state court. The state court has no authority to order the tribal court to return the case. (<i>In re. M.M.</i> (2007) 154 Cal.App. 4th 897)</p> <p>No changes were made in response to this comment. It is not anticipated that the superior court would participate in the tribal court deliberations about whether the case should remain in tribal court or return to superior court. The goal is to ensure that if a case is no longer appropriate for tribal court jurisdiction it does not fall through the cracks and there is a mechanism to have it return to superior court jurisdiction.</p> |

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|--|
| | | | <p>pleadings and orders, to the clerk of the tribal court. With the exception of a filing by a tribal court as described by subdivision (i) of this rule, the superior court may not accept any further filings in the state court action in relation to the issues of child support and custody that were transferred to the tribal court.</p> <p><i>Comment #2:</i> The above language would need to be reconciled based on the modified language in provision (i).</p> <p>(e) Determination of concurrent jurisdiction by a superior court</p> <p>(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and post judgment cases.</p> <p>(2) The motion for transfer to a tribal court must include the following information:</p> <p>A. Whether the child is a tribal member or eligible for tribal membership;</p> <p>B. Whether one or both of the child's parents is a tribal member or eligible for tribal membership;</p> <p>C. Whether one or both of the child's parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits.</p> <p>D. Whether there are other children of the obligor subject to child support obligations;</p> <p>E. Any other factor supporting the child's or</p> | <p>No revisions were made in response to this comment because no revisions were made to (i).</p> |

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|---|---|
| | | | <p>parents' connection to the tribe.</p> <p><i>Comment #3:</i> We are supportive of the proposed change with the following modification, Provision (2)(C) –Whether one or both of the child's parents lives on tribal lands, in tribal housing or communities, works for the tribe, or receives tribal services, benefits, or resources.</p> <p><i>Comment #4:</i> California Rule of Court 5.372 was specifically written to apply to California tribes that are actively administering a Title IV-D agency and court. It is important to emphasize that there are tribes in California that exercise child support jurisdiction exclusively on tribal dollars without Title IV-D funds. Some of these tribes choose to operate in this manner so that they may apply tribal laws without being subject to federal Title IV-D regulation. There is a gap in the system for these non IV-D tribal courts. These courts may be garnishing wages for foreign enforcement but they are not included in this rule to support case transfers to their courts to allow them to work all aspects of the case, including modifications (i.e., transfer of continuing exclusive jurisdiction over the child support order). This is not good policy because there is an expectation of enforcement of foreign orders while at the same time not allowing the tribe to exercise its full jurisdiction over the child support matter. The non IV-D tribal court will have difficulty hearing a child support case that was initiated in the county system because it will be unclear as to which court has jurisdiction when a party thereafter petitions the tribal court to hear the matter.</p> | <p>Subdivision (e) (2) (C) was revised to reference both benefits or resources.</p> <p>As noted, rule 5.372 was written only to apply to Title IV-D child support cases. It is beyond the scope of this proposal to address non-Title IV-D child support cases.</p> |

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|---|--|
| | | | Conclusion While we did not comment on every proposed change, we do support all of them consistent to the above comments. The proposed changes promotes tribal self-governance, and provides additional clarity and efficiency in processing Title IV-D tribal child support case transfers between tribal and state courts. | |
| 3. | Executive Committee of the Family Law Section of the State Bar of California By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California | A | <p>The Executive Committee of the Family Law Section (FLEXCOM) supports the changes to California Rules of Court set out in this proposal. Please see below for our comments and suggestions.</p> <p>As for the specific inquiry, we believe that the proposed amendments appropriately address the stated purpose. Please consider the following recommendations:</p> <p>In 5.372(h), add a reasonable time limit by which the superior court clerk must deliver a copy of the entire file to the Tribal Court. This is to give priority to such cases in view of court backlogs and avoid any delays in addressing modification requests and enforcement of support orders in Tribal Courts (consider current delays in transfer of files when a motion to change venue is granted).</p> <p>In 5.372(i)(3), should it read “. . . may shall not reject the case.”? If this is mandatory, then the language used should clearly convey that.</p> | <p>No response required.</p> <p>No response required.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised to use “must” before “not” in response to this comment.</p> |
| 4. | Gloege, Naomi J., Rules Attorney, Aderant | NI | I am writing to comment on the proposed amendments to CRC 5.372, out for comment | |

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| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|---|
| | | | <p>until 4/28/17, and proposed to be effective 1/1/18.</p> <p>According to SPR 17-18 Invitation to Comment, CRC 5.372(e) is being amended in part to “specify the time limit within which any objection to the transfer to tribal court must be brought.” As proposed CRC 5.372(e)(4) will state in part as follows:</p> <p>“There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for tribal membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after service of notice. ...”</p> <p>It is not clear as written what specific notice triggers the 20 day deadline to object. Is it the “notice of right to object to transfer” or some other notice? As this may cause some confusion, I respectfully propose that the specific type of notice be identified in subdivision (e)(4) so that it is clear what notice triggers the objection deadline.</p> <p>For example, CRC 5.372(e)(4) could be amended to state in part as follows: ““There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for tribal membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after</p> | <p>The proposal has been revised in response to this comment.</p> |

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

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| | Commentator | Position | Comment | Committee Response |
|----|--|----------|---|---|
| | | | <u>service of notice of the right to object to transfer. ...</u> ” (Emphasis added). Thank you for your time and consideration. | |
| 5. | Orange County Bar Association By Michael L. Baroni, President Orange County | AM | Does the rule appropriately address the stated issue? Yes, except for subdivision (f). If the issue is whether or not to transfer an action from the Superior Court to a Tribal Court then one of the Evidentiary Considerations must be whether the child at issue is a tribal member or eligible for tribal membership. (See subdivision (e)(4) regarding the presumption for transfer). Suggested modification of Rule 5.372 would be to have the following language under Subdivision (f) (1) (C) “Whether the child(ren) at issue is/are member(s) of the tribe or eligible for tribal membership.” | The issue of children’s relationship to the tribe is central to the determination of whether or not the tribe has concurrent jurisdiction and must be considered by the superior court under subdivision (e)(2)(A) and does not need to be considered again under subdivision (f)(1). |
| 6. | Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit | AM | Rule 5.372 Please consider including how much time the court should wait for acceptance of jurisdiction by the tribal court. (section (h)) The following changes are suggested in the interest of clarity and consistency. (f) (1) (page 7) - change the word “application” to “motion.” Elsewhere in the rule “motions” are discussed but not “applications.” (f) (2) (page 7) - change the word “application” to “motion.” Same reason. (i) (1) (page 8) - to “may,...file a motion....” | The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this |

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Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

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| | Commentator | Position | Comment | Committee Response |
|----|---|----------|--|---|
| | | | add “with the Superior Court.” | comment |
| 7. | Superior Court of California, County of Orange By Cynthia Beltran, Administrative Analyst, Family Law and Juvenile Court | NI | Does this rule apply to all tribal and state courts? At a recent AB 1058 meeting, the understanding was that this rule only applied to transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. | Currently Yurok is the only tribe with a title IV-D program. To date the rule has only been used between the Yurok tribe and Del Norte and Humboldt superior courts. The rule itself is, however, of general application. If more tribes develop title IV-D child support programs or if Yurok begins seeking transfer from cases outside of Del Norte and Humboldt county, this rule would apply to those cases. |
| 8. | Superior Court of California, County of Riverside By Susan D. Ryan, Chief Deputy of Legal Services | A | <u>Does the proposal address the stated purpose?</u> Yes. <u>Would the proposal provide costs savings?</u> No. <u>What would the courts require in order to implement this proposal?</u> The court would be required to train staff members (court services assistants, and supervisors), and draft new procedures. <u>Would six months provide sufficient time for implementation?</u> Six months would be sufficient for court implementation. However, tribal to court collaboration would require a lengthier implementation period to work out protocol with individual tribes. <u>How well would this proposal work in courts of different sizes?</u> Due to continued staffing shortages, these types of changes or additions to workload could lead to processing backlogs. | No response required. |
| 9. | Superior Court of California, County of San Diego | A | Q: Does the proposal appropriately address | No response required. |

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| | Commentator | Position | Comment | Committee Response |
|--|----------------------------------|----------|---|--------------------|
| | By Mike Roddy, Executive Officer | | <p>the stated purpose?</p> <p>Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify.</p> <p>The proposed rule change streamlines the process with specific requirements and instructions that are easy to follow. This should result in less confusion about how to handle these cases and result in expediency in court hearings and transfer of cases.</p> <p>Q: What would the courts require in order to implement this proposal?</p> <p>Forms to use for motions, orders, and notice of confirmation of acceptance of jurisdiction; training for judicial officers, courtroom clerks, and court operations clerks.</p> <p>Q: Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?</p> <p>Only if forms mentioned above have been created and approved.</p> <p>Q: How well would this proposal work in small courts? Large courts?</p> | |

SPR-17-18**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court** (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|-----|---|----------|--|--|
| | | | Should be the same for all courts affected. | |
| 10. | Yurok Child Support Services By Jennifer J. Burgess, Program Manager | AM | <p>Rule 5.372. Transfer of title IV-D cases between to a tribal court and state court While in agreement with all of the proposed changes to Rule 5.372, I do have a procedural concern regarding the proposed change of process in (h) Proceedings after order granting transfer. The proposed addition is in the first sentence. “Once the superior court has granted the application to transfer; and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.”</p> <p>I’m wondering if there will be a proposed process for court to court communication for the confirmation of the transfer process. I am aware there is a drafted, non-mandatory model Order After Hearing (FL 687) that have been put to use in Humboldt Superior Court for the transfer to tribal court process. This drafted format indicates the clerk to prepare and send the file directly to the tribal court. I’m wondering if there will possibly be a new mandatory transmittal form drafted and put into place by the Judicial Council to accommodate the process involved with confirmation between the courts, as outlined in the proposed change of section (h). Maybe something built similar to an FL-590A UIFSA Child Support Order Jurisdictional Attachment, but specific to Rule 5.372, inclusive of the fact that tribes are not required</p> | There is no plan to formalize a process for court to court communication or to develop a form. |

SPR-17-18**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court** (Amend Cal. Rules of Court, rule 5.372)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
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| | | | to adopt UIFSA. Also, possibly identifying the burden of transmittal regarding the form would be helpful. Meaning would the clerk's offices be transmitting this form as a court to court communication, or would the IV-D Agency be transmitting this form. Thank you for your attention to our comment and questions. | |