



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-037*

For business meeting on November 13, 2020

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**Title**

Judicial Council–Sponsored Legislation  
(Family Law): Recognition of Tribal Court  
Orders Relating to the Division of Marital  
Assets

**Rules, Forms, Standards, or Statutes Affected**

Code Civ. Proc., §§ 1731(b)(2)–(3), 1733(b),  
1733.1, 1735(a), 1736(b), and 1737(a); Fam.  
Code, § 2611; Gov. Code, § 70603(e)

**Recommended by**

Legislation Committee  
Hon. Marla O. Anderson, Chair  
California Tribal Court–State Court Forum  
Hon. Abby Abinanti, Cochair  
Hon. Suzanne M. Kingsbury, Cochair  
Family and Juvenile Law Advisory  
Committee  
Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

**Agenda Item Type**

Action Required

**Effective Date**

November 13, 2020

**Date of Report**

October 19, 2020

**Contact**

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## Executive Summary

The Judicial Council Legislation Committee, California Tribal Court–State Court Forum, and Family and Juvenile Law Advisory Committee recommend sponsoring legislation to add section 1733.1 to the Code of Civil Procedure and amend sections 1731, 1733, and 1735–1737; add section 2611 to the Family Code; and amend section 70603 of the Government Code to ensure that final divorce or dissolution judgments issued by tribal courts that include division of pension or other deferred compensation assets are effective and, in particular, recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and other

similar statutes that restrict the transfer or division of such assets. The changes will also address an ongoing gap in the law by creating a simplified process to file—in California state court—a final order of a tribal court dividing pension and other similar deferred compensation assets to have that order recognized for purposes of legislation—such as ERISA—that restricts the division and transfer of such assets.

## **Recommendation**

The Judicial Council Legislation Committee, California Tribal Court–State Court Forum, and Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2022, sponsor legislation to:

1. Add section 1733.1 to the Code of Civil Procedure and amend sections 1731, 1733, 1735, 1736, and 1737 to establish a process for the filing of a tribal court order that relates to the provision of child support, spousal support payments, or marital property rights to a spouse, former spouse, child, or other dependent from a pension plan or other form of deferred compensation covered by ERISA or other similar legislation that limits or restricts the division or transfer of such assets;
2. Add section 2611 to the Family Code specifying that an order filed and recognized under the above added and amended sections is a domestic relations order made under the domestic relations laws of this state for the purposes of legislation that restricts or limits the division and transfer of such assets; and
3. Amend section 70603 of the Government Code to align the fee provisions of this section with the proposed \$100.00 filing fee for a joint application filed under proposed Code of Civil Procedure section 1733.1.

The proposed new and amended statutes are attached at pages 7–9.

## **Relevant Previous Council Action**

In 2012, the Judicial Council proposed legislation that eventually became the Tribal Court Civil Money Judgment Act (Sen. Bill 406 (Evans); Stats. 2014, ch. 243). This legislation added sections 1730–1741 to the Code of Civil Procedure to clarify and simplify the process for recognition and enforcement of tribal court civil judgments consistent with the mandate set out in the California Rules of Court regarding recommendations concerning the “recognition and enforcement of court orders that cross jurisdictional lines” (Cal. Rules of Court, rule 10.60(b)).

## **Analysis/Rationale**

Tribal courts in California hear a variety of case types, including child abuse and neglect cases; domestic violence protective orders; domestic relations (e.g., divorce and dissolution); contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatement, and possession of tribal lands; name changes; and civil harassment protective orders.

Some tribal courts in California issue domestic relations orders, including divorce and dissolution decrees. For these domestic relations orders to be thorough and effective, tribal courts must be able to address division of assets, including pension benefits and other forms of deferred compensation governed by ERISA (Pub.L. No. 93-406, 88 Stat. 829) and other similar legislation that limits or restricts the division or transfer of these assets. In 2011, the U.S. Department of Labor issued the following guidance:

In the Department’s view, a tribal court order may constitute a “judgment, decree or order . . . made pursuant to State domestic relations law” for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.

(Emp. Benefits Security Admin., Advisory Opinion 2011-03A (Feb. 2, 2011), p. 3.)<sup>1</sup>

ERISA section 206(d)(3)(B)(ii) is codified as title 29 United States Code section 1056(d)(3)(B)(ii).

The practical effect of the guidance issued by the U.S. Department of Labor is that for a tribal court divorce or dissolution order to effectively distribute pension benefits governed by ERISA, state law must recognize the order as a judgement, decree, or order made under state domestic relations law. The Department of Labor specifically approved of the model that had been incorporated into Oregon law at Oregon Revised Statutes section 24.115(4).<sup>2</sup>

Currently, California law does not explicitly recognize judgments or orders from tribal courts (or foreign courts, for that matter) that divide pension assets as judgements or orders made under state domestic relations law as mandated by ERISA. Furthermore, current California law has no mechanism to simply “recognize” a tribal court order. Therefore, under current law, for a party in tribal court to have an ERISA domestic relations order accepted, that party must apply for entry of judgement based on the order. The current process creates several additional issues for both the litigant and the court, in addition to being financially burdensome.

Specifically, litigants seeking to obtain entry of judgment based on their orders are required to pay (1) the two first-appearance fees (currently \$870); (2) the fee for a certified copy (currently \$20); and (3) the fee for a bench officer’s signature (currently \$20).

Litigants are also required to complete the necessary registration paperwork.

Once registration is complete, the California court then becomes responsible for that order, requiring court and staff time.

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<sup>1</sup> Available at [www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a](http://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a).

<sup>2</sup> Available at <https://www.oregonlaws.org/ors/24.115>.

The Family Code contemplates recognition and enforcement of foreign custody orders under the Uniform Child Custody Jurisdiction and Enforcement Act and foreign support orders and paternity judgments under the Uniform Interstate Family Support Act.<sup>3</sup> The Uniform Foreign-Country Money Judgments Recognition Act<sup>4</sup> excludes from its coverage any judgment arising from a divorce, support, or maintenance judgment rendered in connection with domestic relations. The Tribal Court Civil Money Judgment Act<sup>5</sup> does not have a blanket exclusion for domestic relations judgments but does exclude judgments for which federal or state law already provides for recognition, including the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) and the Uniform Interstate Family Support Act. Entry of judgment based on these orders can be inconsistent, cumbersome, and expensive—and is not required by federal law. By adding section 2611 to the Family Code and adding section 1733.1 to and amending sections 1731(b)(2) and (3), 1733(b), 1735(a), 1736(b), and 1737(a) of the Code of Civil Procedure, the proposal will ensure that final divorce or dissolution judgments issued by tribal courts that include division of pension or other deferred compensation assets are effective and, in particular, are recognized as meeting the requirements of ERISA and other similar statutes that restrict the transfer or division of such assets.

Assuming enactment of these statutes, the Judicial Council will create rules and forms to implement the legislation. Consistent with the legislation, any such rules and forms will require the filing of a joint petition that would avoid the problem of a potential collateral attack on the orders.

### **Policy implications**

California is home to more people of Indian ancestry than is any other state in the nation. Currently, there are 109 federally recognized tribes in California, second only to the number of tribes in the state of Alaska. Each tribe is sovereign, with powers of internal self-governance, including the authority to develop and operate a court system. At least 20 tribal courts currently operate in California, and several other courts are under development. This proposal will address an ongoing gap in the law by creating a simplified process to file in California state court a final order of a tribal court—dividing pension assets—to have that order recognized for ERISA purposes, thereby helping tribal families properly divide marital assets, avoid the existing cumbersome and costly registration process, and be in compliance with guidance issued by the U.S. Department of Labor.

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<sup>3</sup> The Uniform Child Custody Jurisdiction and Enforcement Act is incorporated into the Family Code at section 3400 et seq. The Uniform Interstate Family Support Act is found at section 5700.101 et seq.

<sup>4</sup> Code Civ. Proc., §§ 1713–1725.

<sup>5</sup> For an overview of these issues, see Peter M. Walzer, Esq., “Making Foreign Divorce Judgments, Orders, and Decrees Valid and Enforceable California Court Orders,” Divorce Source, [www.divorcesource.com/ds/california/making-foreign-divorce-judgments-orders-and-decrees-valid-and-enforceable-california-court-orders-4276.shtml](http://www.divorcesource.com/ds/california/making-foreign-divorce-judgments-orders-and-decrees-valid-and-enforceable-california-court-orders-4276.shtml) (as of Sept. 30, 2020).

## **Comments**

The proposal circulated for public comment from April 10 through June 9, 2020, as part of the spring 2020 invitation-to-comment cycle. It was sent to the standard mailing list for family and juvenile law proposals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys; distributed through the monthly newsletter distributed by the Tribal Court–State Court Forum; and sent to the California Department of Social Services Office of Tribal Affairs listserve to reach people with an interest in the Indian Child Welfare Act and tribal matters.

The proposal received six formal comments, from the Executive Committee of the Family Law Section of the California Lawyers Association, California Indian Legal Services, the Child Support Directors Association, the Orange County Bar Association, and two superior courts. None of the commenters opposed the proposal. Two agreed with the proposal, one agreed if modified, and three did not indicate a position, but the general tenor of their comments indicated support for the proposal with amendments suggested.

The comments raised two main substantive concerns:

1. As circulated for public comment, the proposal targeted pension plans governed by ERISA. Commenters uniformly suggested expanding the proposal to include not only pensions, but other forms of deferred compensation such as 401(k) plans that may also be governed by ERISA, and also to encompass such pension and deferred compensation assets that are subject to similar legislative restrictions on division and transfer under statutes other than ERISA.
2. The commenters stated that access to the streamlined process created by this proposal should not be limited to situations where both parties agree to file a joint petition.

The three bodies recommending this proposal agreed with both of these recommendations, and the proposal was substantially revised following the comment period to incorporate these concerns.

## **Alternatives considered**

The California Tribal Court–State Court Forum and Family and Juvenile Law Advisory Committee initially considered adding language to the Tribal Court Civil Money Judgement Act, which would have made it similar to that found in Oregon Revised Statutes section 24.115(4),<sup>6</sup> referenced by the U.S. Department of Labor in advisory opinion 2011-03A. After much discussion, they concluded that registration of the order under the Tribal Court Civil Money Judgment Act was unnecessarily cumbersome and expensive to achieve the goal of having the tribal court orders recognized under ERISA, and determined to develop a simplified filing process as a better way of achieving this goal with less expense on litigants and less burden on state courts.

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<sup>6</sup> Oregon Revised Statutes, § 24.115(4), [www.oregonlaws.org/ors/24.115](http://www.oregonlaws.org/ors/24.115).

## **Fiscal and Operational Impacts**

No implementation costs are anticipated. The proposal is expected to improve efficiencies by ensuring that parties can effectively resolve dissolution issues in tribal court and not have to take pension issues to a different venue. Although the simplified filing process contemplates having no filing fee and may require adjustments to court processes, it should avoid the state courts' having to engage in protracted hearings and enforcement of the orders, and thus ultimately reduce the burdens on the state courts.

## **Attachments and Links**

1. Proposed Code Civ. Proc., §§ 1731, 1733, 1733.1, 1735, 1736, and 1737; Fam. Code, § 2611; and Gov. Code, § 70603, at pages 7–9
2. Comments chart, at pages 10–24

Code of Civil Procedure section 1733.1 and Family Code section 2611 would be added; and Code of Civil Procedure sections 1731, 1733, and 1735–1737 and Government Code section 70603 would be amended, effective January 1, 2022, to read:

**Code Cov. Proc., § 1731.**

(a) \* \* \*

(b) This chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B), except for the purposes of recognizing a tribal court order establishing the right of a child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, to an assignment of all or a portion of the benefits payable.

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code), except for the purposes of recognizing a tribal court order establishing the right of a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation to an assignment of all or a portion of the benefits payable.

(4) \* \* \*

(c) \* \* \*

**§ 1733.**

(a) \* \* \*

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, and except as provided in section 1733.1, the proper county for the filing of an application is either of the following:

(1)–(2) \* \* \*

(c) \* \* \*

1 **§ 1733.1**

2  
3 (a) Where the parties to the underlying tribal court proceeding agree, the parties may file  
4 a joint application for the recognition of a tribal court order that establishes a right to  
5 child support payments, spousal support payments, or marital property rights to such  
6 spouse, former spouse, child, or other dependent of a participant in a retirement plan or  
7 other plan of deferred compensation, which order assigns all or a portion of the benefits  
8 payable with respect to such participant to an alternate payee.

9  
10 (1) The application shall be on a form adopted by the Judicial Council, executed under  
11 penalty of perjury by both parties to the proceeding.

12  
13 (2) The application shall include the name, current address, telephone number, and email  
14 address of each party; the name and mailing address of the issuing tribal court; and an  
15 attached certified copy of the order to be recognized.

16  
17 (3) The filing fee for a joint application filed under this section is \$100.00.

18  
19 (4) The proper county for the filing of an application is the county in which either one of  
20 the parties resides.

21  
22 (5) Entry of the tribal court order under this section does not confer any jurisdiction on a  
23 court of this state to modify or enforce the tribal court order.

24  
25 (b) Where one of the parties to the order described in subdivision (a) does not agree to  
26 join in the application, the other party may proceed by having the tribal court execute a  
27 certificate in a format to be developed by the Judicial Council in lieu of the signature of  
28 the other party.

29  
30 **§ 1735.**

31  
32 (a) Promptly upon the filing of the application, under section 1734, the applicant shall  
33 serve upon the respondent a notice of filing of the application to recognize and enter the  
34 tribal court money judgment, together with a copy of the application and any documents  
35 filed with the application. The notice of filing shall be in a form that shall be prescribed  
36 by the Judicial Council, and shall inform the respondent that the respondent has 30 days  
37 from service of the notice of filing to file objections to the enforcement of the tribal court  
38 money judgment. The notice shall include the name and address of the applicant and the  
39 applicant's attorney, if any, and the text of Sections 1736 and 1737.

40  
41 (b)–(e) \* \* \*  
42



1   **§ 1736.**

2  
3   (a) \* \* \*

4  
5   (b) The judgment entered by the superior court shall be based on and contain the  
6   provisions and terms of the tribal court money judgment. The judgment shall be entered  
7   in the same manner, have the same effect, and be enforceable in the same manner as any  
8   civil judgment, order, or decree of a court of this state, except as provided in section  
9   1733.1.

10  
11   **§ 1737.**

12  
13   (a) Any objection to the recognition and entry of the tribal court money judgment sought  
14   under section 1734 shall be served and filed within 30 days of service of the notice of  
15   filing. If any objection is filed within this time period, the superior court shall set a time  
16   period for replies and set the matter for a hearing. The hearing shall be held by the  
17   superior court within 45 days from the date the objection is filed unless good cause exists  
18   for a later hearing. The only grounds for objecting to the recognition or enforcement of a  
19   tribal court money judgment are the grounds set forth in subdivisions (b), (c), and (d).

20  
21   (b)–(e) \* \* \*

22  
23  
24   **Fam. Code, § 2611.**

25  
26   (a) A final tribal court order that creates or recognizes the existence of the right of a  
27   spouse, former spouse, child, or other dependent of a participant in a retirement plan or  
28   other plan of deferred compensation to receive all or a portion of the benefits payable  
29   with respect to such plan participant; that relates to the provision of child support  
30   payments, spousal support payments, or marital property rights of the spouse, former  
31   spouse, child, or other dependent; and that is filed in accordance with section 1733.1 of  
32   the California Code of Civil Procedure, shall be recognized as an order made pursuant to  
33   the domestic relations laws of this state.

34  
35   (b) The filing of the tribal court order does not confer any jurisdiction on a court of this  
36   state to modify or enforce the tribal court order.

37  
38   **Gov. Code, § 70603.**

39  
40   (a)–(d) \* \* \*

41  
42   (e) The filing fee for a joint application filed under section 1733.1 of the Code of Civil  
43   Procedure shall be \$100.00.

## LEG20-03

### Proposal for Judicial Council–Sponsored Legislation (Family Law): Recognition of Tribal Court Orders Relating to the Division of Marital Assets

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

	Commenter	Position	Comment	Committee Response
1.	California Indian Legal Services  By Dorothy Alther, Executive Director	NI	<p>This letter is in response to the Judicial Council of California’s invitation for comments to the proposed amendment to Family Code § 2611 and amendment to Code of Civil Procedure § 1736(c).</p> <p>Founded in 1967, California Indian Legal Services (CILS) is the oldest public interest Indian rights law firm in the country, promoting the fundamental rights of California tribes and Indians through litigation, legislative and administrative advocacy, community development, and other strategies for systemic change. CILS provides a full range of legal representation to California Indian tribes and Indian organizations, advocates for the rights of California Indians at the local, state, and national levels, and provides direct services and community education to low-income Indian individuals on issues related to federal Indian law.</p> <p><b><u>Comments:</u></b></p> <p><u>Family Code 2611</u></p> <p>We strongly recommend legislative language recognizing all of the types of orders issued by tribal courts in California,</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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			<p>and not just tribal domestic relations orders. The model implemented in Minnesota for recognition of all tribal court orders may provide useful. That being said, the proposed language is useful for addressing the problems CILS has encountered when enforcing tribal domestic relation orders with entities that administer pensions for state employers. In our experience, the pension administrator simply requested that we forward a California law that stated that the state would recognize the tribal domestic relations order under state law to enforce the tribal order. We could not do that and instead had to file a petition for comity to accomplish the same purpose. This petition was costly to the litigant in the state court. With the proposed law, the litigant will not need to file any petition in the state court and instead forward this California law for enforcement purposes.</p> <p>The proposed law will also provide useful for title IV-D tribal child support agencies that need to enforce a tribal domestic relations order to collect against a non-custodial parent's pension. The Title IV-D agency will be able to directly enforce the order rather than request a county title IV-D agency to do the work for them.</p>	
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			<p><u>Code of Civil Procedure 1736(c)</u></p> <p>We strongly encourage a process where a tribal court litigant is not required to file in state court for recognition. Such a process is unduly cumbersome on a tribal court litigant who will need to file a petition in state court after having completed the process and theoretically received a final court order. In instances where a tribal court litigant is utilizing tribal court for cost-saving measures, having to expend additional finances for filing fees could be a significant deterrent for tribal court litigant(s) to use tribal courts. The burdensome nature of filing a petition for recognition in state court may ultimately serve as a deterrent for tribal litigants using tribal courts for domestic relation cases.</p> <p>We recommend that any process adopted is not commenced via “joint petition.” While a tribal court will need to determine jurisdiction over the litigants, if a party is displeased with the final tribal court domestic relations order, that party could withhold their consent from the joint petition. This would unfairly prevent the other party from enforcing the domestic relations order and require that party to</p>	
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			relitigate the domestic relations issue in state court again.	
2.	Child Support Directors Association  By Terrie Hardy-Porter, Director	A	<p>The proposed legislation is appropriate and necessary in order to minimize the time and expense currently imposed upon alternate payees seeking to enforce their otherwise valid tribal court domestic relation orders against ERISA retirement plans.</p> <p>Request for Specific Comments</p> <p>Is the proposal broad enough to encompass all kinds of pensions?</p> <p>ERISA protection is exclusive to employer sponsored retirement plans, whether combined benefit plans, such as pensions, or combined contribution plans, such as 401(k) plans. The proposal intends to create a simplified process</p> <p>by which tribal domestic orders can be recognized as domestic relations orders by the state and in so doing allow them to qualify as an exception to the protection from creditors otherwise afforded the plan participant's benefit.</p> <p>The proposal would accomplish this purpose for ERISA pensions only. To ensure equal application, it is recommended</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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			<p>that “pension plan covered by ERISA” be replaced with “employer sponsored retirement plan covered by ERISA.”</p> <p>Should the proposal be broader to encompass different kinds of pension plans such as those in the CalPERS system?</p> <p>Public retirement plans are exempt from ERISA. They are, however, governed by various state laws. It would be beneficial to address public retirement plans in addition to ERISA retirement plans within the proposed legislation.</p> <p>Should the proposal be broader to encompass orders from foreign countries or sister states?</p> <p>Is it a problem if the orders can only be recognized through a joint petition? Do we need to have a process for recognition if one party refuses to join the petition?</p> <p>ERISA § 206(d)(3)(B)(ii) defines a domestic relations order as any judgment, decree, or order made pursuant to a State domestic relations law. So long as the order was made pursuant to any sister state’s domestic relations law, there is no need to encompass the registration of that order in</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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			<p>CA as part of this proposal. That order is already</p> <p>enforceable against the ERISA protected plan so long as it creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable with respect to a participant under a plan. Tribal court orders require the proposed legislative changes because they are not currently recognized as being made pursuant to State</p> <p>domestic relations law. The simplified process of filing the order in state court will more easily afford tribal orders the recognition required to qualify as a domestic relations order as defined by ERISA. A process for recognition if one party refuses to join the petition is required since only state recognition will allow the alternate payee to receive the benefit assigned to him/her within the tribal domestic relations order. Otherwise, any unwilling plan participant would be able to delay an alternate payee's right to collect by QDRO by refusing to join the petition.</p> <p>That stated, we request that the proposal be expanded to permit the Department of Child Support Services (DCSS) to utilize this</p>	
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			proposed simplified process to file a tribal court order in the state court whenever DCSS is providing child support services. DCSS has an interest in being included in this process in order to expedite the enforcement of existing tribal court child support orders. While enforcing these orders, DCSS may likewise require a state recognized domestic relations order for purposes of enforcing support balances against ERISA protected retirement plans.	
3.	<p>The Executive Committee of the Family Law Section of the California Lawyers Association</p> <p>By Justin M. O’Connell, Legislation Chair and Saul Bercovitch, Director of Governmental Affairs</p>	A	<p>FLEXCOM agrees with this proposal. As to specific request for comment, FLEXCOM responds as follows:</p> <ul style="list-style-type: none"><li>• Is the proposal broad enough to encompass all kinds of pensions? No.</li><li>• Should the proposal be broader to encompass different kinds of pension plans such as those in the CalPERS system? Yes.</li><li>• Should the proposal be broader to encompass orders from foreign countries or sister states? Yes.</li><li>• Is it a problem if the orders can only be recognized through a joint petition? Yes.</li><li>• Do we need to have a process for recognition if one party refuses to join the</li></ul>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



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			<p>petition? Yes. There are situations where a party might need to obtain a superior court order but is not able to obtain the other party's signature. The superior court is not the proper court to litigate the issue (e.g. obtaining a superior court order to accept without a party's signature, or appointment of a clerk to sign). A possible solution to explore might be to allow for a party to file non-joint petition if they also filed an order from a tribal court authorizing them to file without the other party (e.g. filing as an exhibit). This would place the tribal court in the position of first adjudicating the right of a party to file in superior court without the other party, thereby preventing overlapping jurisdictional issues.</p>	
4.	Orange County Bar Association  By Scott B. Garner, President	AM	<p><b>Comments:</b> The proposal needs to be modified to include "all kinds of pensions" if the last sentence in Section 2611 reads "is a domestic relations order made pursuant to the domestic relations laws of this state <i>AND</i> for the purposes of 29 U.S.C. §1056." In addition, the proposal needs to modify CCP 1736 to allow for default or single-party registration of the Tribal Judgment/Order.</p> <ul style="list-style-type: none"><li>• The proposal as modified (so that the registration creates a Domestic Relations Order, or DRO, as well as a</li></ul>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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			<p>Qualified Domestic Relations Order, or QDRO).</p> <ul style="list-style-type: none"><li>• The proposal should NOT be broader or encompass foreign/sister state Judgments/orders because there is an entire body of law on the process for registration of those Judgments/orders that does not provide for “automatic” recognition in the way Tribal Judgments/orders would be recognized.</li><li>• Assuming Tribal jurisprudence provides allows for default or single-party proceedings (including for recognition/enforcement purposes), the proposal has a problem because it does not allow only one of the parties to seek registration of the Tribal Judgment/Order.</li></ul>	
5.	<p>Superior Court of California, County of Orange</p> <p>By Vivian Tran, Administrative Analyst</p>	NI	<ul style="list-style-type: none"><li>• <b>Amend Family Code 2611</b> No comments.</li><li>▪ <b>Amend Code of Civil Procedure 1736</b> No comments.</li><li>• <b>Comments on the proposal as a whole:</b> This is a welcomed proposal so that parties can resolve all their dissolution issues in tribal court and not have to specifically go to a different court to</li></ul>	

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## LEG20-03

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			<p>resolve their pension issues. This can be effective if jurisdiction can remain with the tribal court, and not with the state court, for any modifications or enforcements.</p> <ul style="list-style-type: none"><li>• <b>Is the proposal broad enough to encompass all kinds of pensions?</b> The proposal appears broad enough as 29 U.S. Code § 1056 does states that the term “<a href="#">domestic relations order</a>” means <u>any</u> judgment, decree, or order that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a <a href="#">participant</a>, and is made pursuant to a <a href="#">State</a> domestic relations law (including a community property law). This is clearly stated in the proposal.</li><li>• <b>Should the proposal be broader to encompass different kinds of pension plans such as those in the CalPERS system?</b> No the proposal does not need to be broader as Family Code § 2610 (b) states that “... the court shall make whatever orders necessary or appropriate to ensure that each party receives the party’s full community property in any retirement plan, <u>whether public or private</u>, including all survivor</li></ul>	
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			<p>and death benefits...”. If this can be said for all tribal domestic relations orders as well, it would not have to be broader. There appears to be no specific plan names in the other family codes re retirement plans.</p> <ul style="list-style-type: none"><li>• <b>Should the proposal be broader to encompass orders from foreign countries or sister states?</b> It seems the orders from foreign countries or sister states would have to be registered in California and filed as a registration in the state court.</li><li>▪ <b>Is it a problem if the orders can only be recognized through a joint petition? Do we need to have a process for recognition if one party refuses to join the petition?</b> There may be an issue as to having the tribal court’s order submitted to the state court through a joint petition only. There should be a process in effect if the other party does not want to join in the petition. For example, if the other party is defaulted against or cannot be located for joining in the petition (refuses to sign or is deceased). Typically, with Qualified Domestic Relations Orders (QDROs) submitted to Orange County, it is rare that we do not get both</li></ul>	
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			<p>signatures on the QDROs, but we did/still do have a process in place just in case there is only one signature approving it. All objections to the Domestic Relations Order from the tribal court, should have gone through the appropriate waiting period before being submitted to the state court. So, it may be rare that this happens as well with the tribal court orders, but a process should be in place in case this issue does comes up.</p> <ul style="list-style-type: none"><li>• <b>Would the proposal provide cost savings? If so, please quantify.</b> The proposal appears it will provide cost savings as there will be minimal court involvement in the process. Staff would only be filing the joint petition as there will be no modification or enforcement of the tribal court’s order. The proposal would provide cost saving to the parties involved if it would not be required to register the order with the state court and pay the first appearance fees and other appropriate fees.</li><li>• <b>What would the implementation requirements be for courts – for example, training staff (please identify position and expected hours of training), revising processes and</b></li></ul>	
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			<p><b>procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b></p> <p>The implementation requirements as stated in this proposal would be minimal. Clerk’s office staff would be trained as to the filing of the joint petition. Entering docket codes or modifying our case management system would also be minimal if the proposal can stay at the joint petition level only with no modification or enforcement by the state court. A procedure would need to be created and the case management system would need to be updated to capture the filing of the petition and provide a case number.</p> <ul style="list-style-type: none"><li>• <b>Would 6 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes, 6 months would be sufficient time.</li><li>• <b>How well would this proposal work in courts of different sizes?</b> It would depend on the number of filings that may be connected to this proposal. Some smaller state courts may receive more tribal court filings</li></ul>	
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			than larger ones and may be more impacted by the volume.	
6.	Superior Court of California, County of San Diego  By Mike Roddy, Executive Officer	NI	<p>Is the proposal broad enough to encompass all kinds of pensions? Yes.</p> <p>Should the proposal be broader to encompass different kinds of pension plans such as those in the CalPERS system? No, the current proposal appears sufficient.</p> <p>Should the proposal be broader to encompass orders from foreign countries or sister states? Yes, the proposal should be broadened to encompass sister states.</p> <p>Is it a problem if the orders can only be recognized through a joint petition?</p> <p>Yes, it can be a problem because one party may not or refuse to participate. This often happens with QDROs and the party seeking the QDRO may need to request that an elisor be ordered to sign on behalf of the non-cooperating party.</p> <p>Do we need to have a process for recognition if one party refuses to join the petition? Yes.</p>	

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			<p>Would the proposal provide cost savings? If so, please quantify. No.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Develop procedures, create case type in case management system, and train staff.</p> <p>Would 6 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>It appears that the proposal will work for courts of various sizes.</p>	
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