



Judicial Council of California

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Subject Text

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Title

Family and Juvenile Law: Transfers to Tribal Court Under the Indian Child Welfare Act (Action Required)

Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court-State Court Forum (forum) propose amendments to the California Rules of Court and revisions to Judicial Council forms concerning the transfer of court proceedings involving an Indian child from the jurisdiction of the state court to a tribal court. These changes are in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460) and the Court of Appeal decision in *In re M.M.* (2007) 154 Cal.App.4th 897. SB 1460 requires the state juvenile court to give the tribal court specific information and documentation when a case governed by the Indian Child Welfare Act is transferred. The *In re M.M.* decision implicates an objecting party's right to appeal a decision granting a transfer to a tribal court.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court-State Court Forum recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.483 to make use of the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) mandatory rather than optional, add a requirement that the transfer order include matters required by section 827.15 of the Welfare and Institutions Code, and, to ensure that the parties are aware of the requirements, add a subsection requiring an advisement that any party wishing to appeal an order transferring a case to tribal court must file their appeal before the transfer is finalized and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;
2. Amend rule 5.590 to require an advisement that an appeal of an order granting a transfer of an Indian child custody proceeding involving an Indian child to tribal court must be taken before the transfer finalizes and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;
3. Revise Judicial Council *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) by making it mandatory rather than optional, reorganizing the form in response to comments, adding places to put the information required by Welfare and Institutions Code section 827.15, and adding an advisement concerning appellate rights as follows:

A party that intends to seek appellate review of the transfer order is advised that they must take their appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delayed effective date) of the transfer order will result in loss of appellate jurisdiction; and
4. Revise *Judicial Council Notice of Appeal--Juvenile* (form JV-800) to refer to section 305.5 of the Welfare and Institutions Code, and add the following advisement:

You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.

