



Subject Text

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Title

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

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):
 - a. 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.
 - b. 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.
 - c. Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion.
 - d. 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.
 - e. Specify the time limit within which any objection to the transfer to tribal court must be brought.
 - f. 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:
 - a. Remove some of the factors to be considered in making a determination to transfer to tribal court.
 - b. 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.
 - c. 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.