



# Judicial Council of California

Tribal Court–State Court Forum

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## TRIBAL COURT–STATE COURT FORUM

### NOTICE AND AGENDA OF OPEN MEETING WITH CLOSED SESSION

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.75(c), (d), and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

OPEN PORTION OF THIS MEETING IS BEING RECORDED

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**Date:** April 11, 2024  
**Time:** 12:15 - 1:15 p.m.  
**Public Call-In Number:** <https://jcc.granicus.com/player/event/3236>; (Listen Only)

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Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the open meeting portion of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to [forum@jud.ca.gov](mailto:forum@jud.ca.gov).

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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#### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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##### Call to Order and Roll Call

##### Approval of Minutes

Approve minutes of the December 14, 2023, Tribal Court–State Court Forum meeting.

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#### II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

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This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [forum@jud.ca.gov](mailto:forum@jud.ca.gov). Only written comments received by 12:15 p.m. on April 10, 2024 will be provided to advisory body members prior to the start of the meeting.

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**III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**

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**Info 1**

**Cochair Report**

Forum Cochairs will update the members on developments since the last meeting.

Presenters: Hon. Abby Abinanti, Chief Judge of the Yurok Tribal Court, Cochair of the California Tribal Court–State Court Forum, Hon. Joyce D. Hinrichs, Judge of the Superior Court of California, Court of Humboldt, Cochair of the California Tribal Court–State Court Forum.

**Info 2**

**State of Alaska Model**

The presenter will discuss various ways in which tribes and the State of Alaska collaborate on criminal justice issues.

Presenters: Hon. Eric Smith (Ret.), Alaska Superior Court

**Info 3**

**PL-280 Study**

Update on the federal Government Accountability Office study on the impacts of PL-280 and other state and federal developments related to PL-280.

Presenter: Hon. Abby Abinanti

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**IV. ADJOURNMENT**

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**Adjourn to Closed Session**

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**V. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(D))**

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**Item 1**

**Legislative Update**

Ms. Tracy Kenny will update Forum members of pending legislation of interest to the committee.

Presenter: Ms. Tracy Kenny, Supervising Attorney, Office of Governmental Affairs, Judicial Council of California

**Adjourn Closed Session**



## TRIBAL COURT-STATE COURT FORUM

### MINUTES OF OPEN MEETING

December 14, 2023

12:15-1:15 pm

Zoom

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**Advisory Body Members Present:** Hon. Joyce Hinrichs, Cochair, Hon. April Attebury, Hon. Leonard Edwards (Ret.), Hon. Tara Flanagan, Mr. Christopher Haug, Hon. Joni Hiramoto, Hon. Lawrence King, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Ms. Merri Lopez-Keifer, Hon. Nicholas Mazanec, Hon. Dorothy McLaughlin, Hon. Mark Ralphs, Hon. Victorio Shaw, Hon. Dean Stout, Hon. Alison Tucher, Ms. Stephanie Weldon, Hon. Christine Williams, Hon. Joseph Wiseman.

**Advisory Body Members Absent:** Hon. Abby Abinanti, Cochair, Hon. Richard Blake, Hon. Ana España, Hon. Winston Keh, Hon. Kristina Lindquist, Hon. April Olson, Ms. Andrea Pella, Hon. Stephen Place, Ms. Christina Snider.

**Others Present:** Ms. Audrey Fancy, Ms. Ann Gilmour, Ms. Amanda Morris.

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 12:17 pm. and took roll call.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the October 26, 2023, Tribal Court-State Court Forum meeting.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1)

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##### **Item 1**

##### **Rules and Forms: *Family and Juvenile Law – Recognition and Enforcement of Tribal Child Custody Orders***

Presenter: Ann Gilmour, Attorney, Center for Families, Children, and the Courts

Ann Gilmour presented to the committee a proposal for two new and four revised forms regarding recognition and enforcement of tribal court child custody orders. The Family and Juvenile Law Advisory Committee made stylistic changes to one of the forms, but no content was changed.

Judge Lawrence King motioned for approval to move the forms forward to the Rules Committee, Judge Joni Hiramoto seconded that motion. Judge April Attebury opposed the motion. The vote was deferred to an action by email to address comments from Judge Attebury.

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**INFORMATION ONLY ITEMS (ITEMS 1-2)**

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**Item 1**

**Update on the October meeting of the National American Indian Court Judges Association (NAICJA)**

Presenter: Hon. Dean Stout, Chief Judge of the Bishop Paiute Tribal Court

Judge Dean Stout gave committee members an overview of the National American Indian Court Judges Association conference held in Tulsa, Arizona in October 2023. Judge Richard Blake presented on topics including the ethics and pitfalls of artificial intelligence. The conference was well attended and will be held in Los Vegas, Nevada in 2024.

**Item 2**

**California State-Federal Judicial Council**

Presenters: Hon. Devon Lomayesva, Chief Judge of the Intertribal Court of Southern California and Judge Joseph Wiseman, Chief Judge of the San Manuel Band of Mission Indians Tribal Court

Judges Wiseman and Lomayesva attended the meeting of the California State-Federal Judicial Council in San Diego, California in October 2023. They presented to Forum members a summary of their experience and presentation at the meeting. Topics covered included the Indian Child Welfare Act and Public Law 280. The Chief Justice of California requested that they present their material again on a much larger scale sometime in the future.

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**ADJOURNMENT**

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There being no further business, the meeting was adjourned at 1:09 p.m.

Approved by the advisory body on enter date.

**Tribal Court–State Court Forum**  
**Annual Agenda<sup>1</sup>—2024**

**Approved by Executive and Planning Committee: March 14, 2024**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Abby Abinanti, Chief Judge, Yurok Tribal Court Hon. Joyce D. Hinrichs, Judge, Superior Court of California, County of Humboldt
<b>Lead Staff:</b>	Ms. Ann Gilmour, Attorney, Center for Families, Children & the Courts
<b>Committee’s Charge/Membership:</b> <p><a href="#">Rule 10.60</a> of the California Rules of Court states the charge of the Tribal Court–State Court Forum (Forum), which is to make recommendations to the Judicial Council for improving the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state judicial branch and the tribal justice systems overlap.</p> <p>Additional duties set forth in <a href="#">rule 10.60 (b)</a> are:</p> <ol style="list-style-type: none"><li>1. Identify issues of mutual importance to tribal and state justice systems, including those concerning the working relationship between tribal and state courts in California;</li><li>2. Make recommendations relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions;</li><li>3. Identify, develop, and share with tribal and state courts local rules of court, protocols, standing orders, and other agreements that promote tribal court-state court coordination and cooperation, the use of concurrent jurisdiction, and the transfer of cases between jurisdictions;</li><li>4. Recommend appropriate activities needed to support local tribal court-state court collaborations; and</li><li>5. Make proposals to the Center for Judicial Education and Research Advisory Committee on educational publications and programming for judges and judicial support staff.</li></ol> <p><a href="#">Rule 10.60(c)</a> sets forth the membership position of the forum. The Forum currently has 28 members. The current committee <a href="#">roster</a> is available on the committee’s web page.</p>	

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<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

### **Subcommittees/Working Groups<sup>2</sup>:**

1. Ad Hoc Working Group on Options for Recognition and Enforcement of Tribal Court Child Custody Orders
2. Ad Hoc Working Group on Options to Provide for Recognition and Enforcement of Tribal Court Orders Excluding Individuals from Tribal Lands
3. Ad Hoc Working Group on Public Law 280 (*New*) – This working group will monitor the work of the federal Government Accountability Office study on the “[Inequitable Justice System Facing Tribal Nations in Different States](#)” specifically related to [Public Law 280](#), which was requested by Senators Alex Padilla (D-CA), Lisa Murkowski (R-AK), Jeff Merkley (D-OR) and Congressman Jared Huffman (D-CA-02) to review the impacts of Public Law 280 on the justice systems in the states that have jurisdiction over tribal lands, including California. The Ad Hoc Working Group will make recommendations for Judicial Council input as required.

### **Meetings Planned for 2024<sup>3</sup> (Advisory body and all subcommittees and working groups)**

Date/Time/Location or Videoconference:

1. Remote Meetings: February 8, April 11, June 13, August 8, October 10, and December 12, 2024.
2. One in-person meeting (date to be determined); and
3. Ad hoc virtual meetings as required.

Check here if exception to policy is granted by Executive Office or rule of court.

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<sup>2</sup> California Rules of Court, [rule 10.30 \(c\)](#) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>	
1.	<p><b>Project Title:</b> Monitor and Make Recommendations as Appropriate Regarding Federal Government Accountability Office Study on the “<a href="#">Inequitable Justice System Facing Tribal Nations in Different States</a>” Related to Public Law 280</p>	<p><b>Priority<sup>5</sup></b> 2</p> <p><b>Strategic Plan Goal<sup>6</sup></b> I, IV, VII</p>
<p><b>Project Summary<sup>7</sup>:</b> The federal Government Accountability Office (GAO) will be conducting a study on the impacts of Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360) (commonly referred to as “P.L. 280”) on justice systems in impacted states, including California. The full text of the GAO’s response letter is available <a href="#">here</a>. The full text of the initial letter from Senators Padilla (D-California), Murkowski (R-Alaska), Merkley (D-Oregon), and Congressman Huffman (D- California) is available <a href="#">here</a>.</p> <p><b>Status/Timeline:</b> GAO anticipated work on this study to begin in December 2023. More information on the process and timing will be available after the study begins.</p> <p><b>Fiscal Impact/Resources:</b> To be accomplished with existing CFCC staff resources. Governmental Affairs and/or Criminal Justice Services, as appropriate.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs and/or Criminal Justice Services, as appropriate.</p> <p><b>AC Collaboration:</b> Criminal Law Advisory Committee, as appropriate.</p>		

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to or accurately reflect the law; 1(b) Council or an internal committee has directed the committee to consider new or amended rules and forms; 1(c) Change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(d) Proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk. 2(a) Useful, but not necessary, to implement changes in law; 2(b) Responsive to identified concerns or problems; 2(c) Helpful in otherwise advancing Judicial Council goals and objectives.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	Ongoing Projects and Activities <sup>4</sup>	
1.	<b>Project Title: Legal Representation for Tribes in ICWA Cases (Implementation Project)</b>	<b>Priority<sup>5</sup> 1</b> <b>Strategic Plan Goal<sup>6</sup> I, IV, V</b>
<p><b>Project Summary:</b> The Judicial Council of California received ongoing funding to assist the courts in implementing section 16 of Senate Bill 124 which added section 10553.14 to the Welfare and Institutions Code. This program will fund the federally recognized California Indian Tribes to pay for attorneys in cases governed by the Indian Child Welfare Act (ICWA) in California juvenile courts. Consistent with its charge under rule 10.60 (a) and (b), the Forum will serve as a resource for any education or policy recommendations to address court issues that may arise out of implementation of this program.</p> <p><b>Status/Timeline:</b> Ongoing. Information sheet and initial curriculum were drafted last year. Roll out of attorney curriculum and other resources in future years.</p> <p><b>Fiscal Impact/Resources:</b> To be accomplished mainly with existing CFCC staff resources for this current fiscal year with funding used to supplement existing resources using temps and contractors.</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p><b>Internal/External Stakeholders:</b> Tribal ICWA attorneys and California Department of Social Services Office of Tribal Affairs.</p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee.</p>		
2.	<b>Project Title: Prepare Recommendations for Recognition and Enforcement of Tribal Court Child Custody Orders</b>	<b>Priority<sup>5</sup> 2(a) &amp; (b)</b> <b>Strategic Plan Goal<sup>6</sup> IV</b>
<p><b>Project Summary:</b> Tribal court orders that involve the custody of a child are entitled to full faith and credit under 1911(d) of the Indian Child Welfare Act and recognition and enforcement under the Uniform Child Custody Jurisdiction and Enforcement Act as specifically set out in Family Code sections 3402(p) and 3404. Currently, however, there is no mechanism to have tribal court child custody orders recognized and enforced within the state court system. This is causing confusion and resulting in difficulties having tribal court custody orders recognized and enforced.</p> <p><b>Status/Timeline:</b> Spring 2024 invitation to comment cycle.</p>		



#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Fiscal Impact/Resources:</b> To be accomplished with existing CFCC staff resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> Tribal courts.</p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee.</p>	
3.	<p><b>Project Title: Indian Child Welfare Act Compliance and Implementation Improvements (Implementation Project)</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <p><b>Strategic Plan Goal<sup>6</sup> I, IV, V</b></p>
	<p><b>Project Summary:</b> Improvements to California’s implementation of the <i>Indian Child Welfare Act</i> is a primary focus of the work of the Forum. Anticipated future action includes responding to the decisions of the California Supreme Court in the cases of <i>In Re Dezi C.</i>, <a href="#">S275578</a>. (B317935; 79 Cal.App.5th 769; Superior Court of Los Angeles County; 19CCJP08030) and <i>In re Ja.O.</i>, <a href="#">S280572</a>. (E079651; 91 Cal.App.5th 672; Superior Court of San Bernardino County; J291035). These cases involve issues related to ICWA inquiry and may require rules changes depending on their outcome.</p> <p>This project was approved on the committee’s 2018 annual agenda.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Work will be accomplished with existing CFCC staffing resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> May involve collaboration with CJER staff on updating education resources.</p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee and Probate and Mental Health Advisory Committee with respect to recommendations that impact the work of those bodies.</p>	

#	Ongoing Projects and Activities <sup>4</sup>	
4.	<b>Project Title: Implement Improvements in Addressing Domestic Violence and Related Issues in Tribal Communities</b>	<b>Priority<sup>5</sup> 2</b> <b>Strategic Plan Goal<sup>6</sup> I, IV</b>
<p><b>Project Summary<sup>7</sup>:</b> Coordinate with Judicial Council staff, other advisory committees, the attorney general’s office, the Commercially Sexually Exploited Children (CSEC) action team of the Child Welfare Council, tribal courts, and other stakeholders on developing and implementing recommendations to improve the justice systems response to the issues of domestic violence (DV) and related issues in tribal communities. This includes collaborating in the implementation of <a href="#">AB-3099</a> “Department of Justice: law enforcement assistance with tribal issues: study” (Stats. 2020, ch. 170) which mandates a study regarding resources for reporting and identifying missing Native Americans in California, and <a href="#">AB-44</a> (Stats. 2023, ch. 638) which sets conditions for tribal law enforcement and courts to access the California Law Enforcement Telecommunications System (CLETS). The Forum has historically focused on issues related to domestic violence and victimization in tribal communities much in the way it has focused on issues related to the Indian Child Welfare Act. Issues of domestic violence, trafficking, and exploitation of individuals in tribal communities is an issue of increasing importance and activity in California and it is important for the judicial branch to be part of these initiatives.</p> <p>This project was approved on the Forum’s 2022 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> To be completed with existing CFCC resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> Attorney General’s Office of Native American Affairs; tribal courts, law enforcement, and leaders; and CSEC action team.</p> <p><b>AC Collaboration:</b> TBD.</p>		
5.	<b>Project Title: Explore Options to Provide for Recognition and Enforcement of Tribal Court Orders Excluding Individuals from Tribal Lands</b>	<b>Priority<sup>5</sup> 2(a) &amp; (b)</b> <b>Strategic Plan Goal<sup>6</sup> IV</b>
<p><b>Project Summary:</b> Tribes in California report an inability to remove unwanted individuals from within the exterior boundaries of their reservations. Tribal courts do not have criminal jurisdiction over non-Indians and in California, tribal courts are generally not exercising criminal jurisdiction at all. In 1997, the California Office of the Attorney General issued an opinion (80 OpsCal.Atty.Gen.46) concluding</p>		

#	Ongoing Projects and Activities <sup>4</sup>	
	<p>that violation of a tribal exclusion order did not constitute a misdemeanor under the terms of Penal Code Section 602 and that a county sheriff would not be required to take any action to enforce an exclusion order issued by a tribe. Tribal judges report that as a result, they have no effective recourse against individuals who, for example, dump hazardous waste on the reservation, and this creates a public safety concern.</p> <p>This project was approved on the Forum’s 2022 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing. The Forum began work on this item by holding discussions on the problem and possible solutions. This problem was also part of the agenda at the training event the Forum held in Sacramento on September 30, 2022.</p> <p><b>Fiscal Impact/Resources:</b> To be accomplished with existing CFCC staff resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> Tribal courts and Attorney General’s Office of Native American Affairs.</p> <p><b>AC Collaboration:</b> Criminal Law Advisory Committee.</p>	
6.	<p><b>Project Title: Policy Recommendations: Ethics (Implementation Project)</b></p>	<p><b>Priority<sup>5</sup> 2</b></p>
	<p><b>Project Summary:</b> State and tribal court judges may sit on each other’s benches and hear cases in the other jurisdiction through a joint-jurisdiction court or on an ad hoc or ongoing basis. The Forum will continue to work with the California Supreme Court’s Advisory Committee on the Code of Judicial Ethics and make recommendations and request advisory opinions or amendments to the canons as appropriate and necessary to facilitate such collaborations.</p> <p>This project was approved on the Forum’s 2018 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing. Generally, new work under this item will continue to be deferred.</p> <p><b>Fiscal Impact/Resources:</b> Work will be accomplished by existing CFCC staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><i>Internal/External Stakeholders:</i> None.</p> <p><i>AC Collaboration:</i> Advisory Committee on the Code of Judicial Ethics.</p>	
7.	<p><b>Project Title: Policy Recommendation: Technological Initiatives (Implementation Project)</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <hr/> <p><b>Strategic Plan Goal<sup>6</sup> I, V, VI</b></p>
<p><b>Project Summary:</b> Serve as subject matter resource regarding integrating of tribes, tribal agencies and governments into technological initiatives such as remote appearances, remote filing, remote access, court case management systems, document assembly programs, e-noticing, and the California Courts Protective Order Registry.</p> <p>This project was approved on the Forum’s 2018 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Existing CFCC, CJER, and Information Technology (IT) staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> External stakeholders include tribal courts.</p> <p><b>AC Collaboration:</b> TBD.</p>		
8.	<p><b>Project Title: Funding and Support for Innovative Practices and System Improvements (Implementation Project)</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <hr/> <p><b>Strategic Plan Goal<sup>6</sup> I, IV</b></p>
<p><b>Project Summary:</b> The Forum seeks to support innovative practices and system improvements including seeking funding for such initiatives as a pilot program to facilitate tribal participation and improve outcomes in ICWA cases by providing appointed counsel for tribes in these cases.</p> <p>This project was approved on the Forum’s 2018 Annual Agenda.</p>		

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Status/Timeline:</b> Ongoing. In prior years the council has sought support for innovative practices and system improvements expansion of joint jurisdiction courts and other collaborative efforts. The Forum and Tribal/State Programs Unit staff will continue to seek out available funding. The goal of facilitating innovative practices and system improvements and seeking funding for this is to improve efficiencies in cases that span both jurisdictions or could be heard in either jurisdiction. This could potentially reduce workloads for state courts and improve access to justice for underserved and remote tribal communities.</p> <p><b>Fiscal Impact/Resources:</b> Existing CFCC staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> None.</p>	
9.	<p><b>Project Title: Increase Tribal/State Partnerships: Sharing Resources and Communicating Information About Partnerships</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <p><b>Strategic Plan Goal<sup>6</sup> I, IV</b></p>
	<p><b>Project Summary:</b> One of the guiding principles of the Forum is to improve access to justice by providing tribal and state courts access to resources for capacity building and collaboration on an equal basis, sharing resources, and seeking out additional resources.</p> <ol style="list-style-type: none"> <li>1. Identify Judicial Council and other resources that may be appropriate to share with tribal courts.</li> <li>2. Identify tribal justice resources that may be appropriate to share with state courts.</li> <li>3. Identify grants for tribal/state court collaboration.</li> <li>4. Share resources and information about partnerships through Forum E-Update, a monthly electronic newsletter.</li> <li>5. Publicize these partnerships at conferences, on the Innovation Knowledge Center (IKC), and at other in-person or online venues.</li> <li>6. Disseminate information to tribal court judges and state court judges monthly through the Forum E-Update, a monthly electronic newsletter with information on the following: <ul style="list-style-type: none"> <li>○ Grant opportunities;</li> <li>○ Publications;</li> <li>○ News stories; and</li> <li>○ Educational events.</li> </ul> </li> <li>7. Foster tribal court/state court partnerships, such as the Superior Court of Los Angeles County’s Indian Child Welfare Act Roundtable and the Bay Area Collaborative of American Indian Resources—court-coordinated community response to ICWA cases in urban areas and the providing technical assistance to the joint-jurisdiction collaborations between the Yurok Tribe and the Superior Court of</li> </ol>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p>California, County of Humboldt and the Shingle Springs Band of Miwok Indians and the Superior Court of California, County of El Dorado.</p> <p><b>Status/Timeline:</b> Ongoing. During this year, two tribal court systems were provided with access to unlocked Judicial Council Juvenile, Family, Probate, and Domestic Violence forms that the staff of the court systems adapted for their use. The goal of facilitating partnerships between state and tribal courts is to improve efficiencies in cases that span both jurisdictions or could be heard in either jurisdiction. This could potentially reduce workloads for state courts and improve access to justice for underserved and remote tribal communities.</p> <p><b>Fiscal Impact/Resources:</b> Work will be accomplished with existing CFCC staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> None.</p>	
10.	<p><b>Project Title: Increase Tribal/State Partnerships: Tribal/State Collaborations that Increase Resources for Courts</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <p><b>Strategic Plan Goal<sup>6</sup> I, IV</b></p>
	<p><b>Project Summary:</b> A primary goal of the Forum is to improve relationships between state and tribal courts and foster collaboration between those courts. There are now at least three active joint-jurisdiction projects ongoing between Forum member state and tribal courts—the Superior Court of California, County of El Dorado collaborative with the Shingle Springs Band of Miwok Indians Tribal Court and the Superior Court of California, County of Humboldt collaboration with the Yurok Tribal Court. The Forum will explore ways to assist courts that wish to expand their joint-jurisdiction programs to include veteran’s programs or other specialized focus areas. The Forum will explore ways to support and increase the numbers of joint jurisdiction courts and other innovative models such as regional ICWA courts and dedicated ICWA courts or calendars, including providing education, developing tools and resources, and seeking opportunities for additional grant funding to support such courts.</p> <p><b>Status/Timeline:</b> Ongoing. This year, the Judicial Council staff are supporting these collaborations by sharing resources and agreements and offering technical assistance on collaborations. The goal of facilitating collaborations between state and tribal court judges is to improve efficiencies in cases that span both jurisdictions or could be heard in either jurisdiction. This could potentially reduce workloads for state courts and improve access to justice for underserved and remote tribal communities.</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Fiscal Impact/Resources:</b> Collaboration and joint-jurisdiction courts should provide fiscal savings by improving the sharing of resources across jurisdictions. CFCC staff will continue to provide support to this project.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> External stakeholders include superior courts and tribal courts.</p> <p><b>AC Collaboration:</b> None.</p>	
11.	<p><b>Project Title: Increase Tribal/State Partnerships: Education and Technical Assistance to Promote Partnerships and Understanding of Tribal Justice Systems (Implementation Project)</b></p>	<p><b>Priority<sup>5</sup> 2</b></p> <p><b>Strategic Plan Goal<sup>6</sup> I, IV, V</b></p>
	<p><b>Project Summary<sup>7</sup>:</b> The Forum will continue to develop educational events, resources, and tools, and provide technical assistance to promote partnerships and understanding between state and tribal justice systems including:</p> <ol style="list-style-type: none"> <li>1. Make recommendation to Judicial Council staff to continue providing educational and technical assistance to local tribal and state courts to address domestic violence and child custody issues in Indian country.</li> <li>2. Make recommendation to Judicial Council staff to provide technical assistance to evaluate the joint jurisdictional court and to courts wishing to replicate the model.</li> <li>3. Make recommendation to the Judicial Council staff to continue developing civic learning opportunities for youth that exposes them to opportunities and careers in tribal and state courts.</li> <li>4. Make recommendation to explore, at the option of tribes, opportunities for state and federal court judges to serve as a tribal court judge.</li> <li>5. Collaborate with federal courts and federal justice partners on educational and other events related to justice and safety in tribal communities.</li> <li>6. Develop and implement strategy to seek resources for tribal/state collaborations.</li> <li>7. Continue to provide the <a href="#">State/Tribal Education, Partnerships, and Services (S.T.E.P.S.) to Justice—Domestic Violence</a> and <a href="#">Child Welfare</a> programs and provide local educational and technical assistance services.</li> <li>8. Continue the first joint jurisdictional court in California. The Superior Court of El Dorado County, in partnership with the Shingle Springs Band of Miwok Indians, is operating a family wellness court and next year will provide technical assistance to evaluate the joint jurisdictional court. (See <a href="#">Court Manual</a>).</li> <li>9. Establish partnership between the Superior Court of Humboldt County and the Yurok Tribal Court to develop civics learning opportunity for youth in the region.</li> </ol>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p>This project was approved on the Forum’s 2018 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing. The goal of facilitating partnerships between state and tribal courts is to improve efficiencies in cases that span both jurisdictions or could be heard in either jurisdiction. This could potentially reduce workloads for state courts and improve access to justice for underserved and remote tribal communities.</p> <p><b>Fiscal Impact/Resources:</b> Work accomplished within existing CFCC and CJER staff resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> None.</p>	
12.	<p><b>Project Title: Education: Judicial Education</b></p>	<p><b>Priority<sup>5</sup> 2</b></p>
	<p><b>Strategic Plan Goal<sup>6</sup> I, IV, V</b></p> <p><b>Project Summary:</b> CJER toolkits, located on the Judicial Resources Network, will be updated to include federal Indian law. Develop 10-minute educational video to be posted online and shared statewide with justice partners. In collaboration with the CJER Curriculum Committees, consult on and participate in making recommendations to revise the CJER online toolkits so that they integrate resources and educational materials from the forum’s online federal Indian law toolkit. Forum judges are working together with committee representatives from the following curriculum committees: (1) Access, Ethics, and Fairness, (2) Civil, (3) Criminal, (4) Family, (5) Juvenile Dependency and Delinquency, and (6) Probate.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Work will be accomplished with existing CFCC and CJER staff resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> CJER Advisory Committee.</p>	



#	Ongoing Projects and Activities <sup>4</sup>	
13.	<b>Project Title: Education: Truth and Healing (Implementation Project)</b>	<b>Priority<sup>5</sup> 2</b>
		<b>Strategic Plan Goal<sup>6</sup> I, IV, V</b>
<p><b>Project Summary<sup>7</sup>:</b> Consider collaboration among the three branches of state government in partnership with tribal governments to promote a truth and healing project that acknowledges California’s history, as described in Professor Benjamin Madley’s book, <i>An American Genocide: The United States and the California Indian Catastrophe</i>, with respect to indigenous peoples, fosters an understanding of our shared history, and lays a foundation for healing, which promotes a call to action.</p> <p>This project was approved on the Forum’s 2019 Annual Agenda.</p> <p><b>Status/Timeline:</b> Ongoing. As a step towards the goal of Statewide Truth and Healing, the Forum continues to monitor the development of the Truth and Healing Council announced by Governor Gavin Newsom being organized by the Governor’s Tribal Advisor, a Forum member. Currently, the focus is on relationships with the tribal community. Courts may be brought into the Truth and Healing process later. During this year, the Forum discussed the <a href="#">Federal Indian Boarding School Initiative Investigative Report</a> and its relevance to the judicial branch and had an update on the work of the California Truth and Healing Council.</p> <p><b>Fiscal Impact/Resources:</b> This work will be accomplished with existing CFCC staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> Governor’s Tribal Advisor.</p> <p><b>AC Collaboration:</b> None.</p>		
14.	<b>Project Title: Legislation, Regulations, and Requests for Public Comment. Serve as Subject Matter Resource for the Judicial Council and Other Advisory Groups Regarding Tribal and Indian Law Issues to Avoid Duplication of Efforts and Contribute to the Development of Recommendations for Council Action (Implementation Project)</b>	<b>Priority<sup>5</sup> 2</b>
		<b>Strategic Plan Goal<sup>6</sup> I, IV</b>
<p><b>Project Summary:</b> Review and recommend positions on legislation, regulations, proposals from other committees, and requests for public comment related to tribal courts, tribal justice systems, and the Indian Child Welfare Act.</p> <p>This project was approved on the Forum’s 2020 Annual Agenda.</p>		

#	Ongoing Projects and Activities <sup>4</sup>
	<p><b>Status/Timeline:</b> Ongoing. From time to time the federal government publishes proposed regulations and requests for public comment that may impact state and tribal justice systems in California. This year, the Forum developed and recommended comments related to the issue of payment for and appointment of counsel in ICWA cases.</p> <p><b>Fiscal Impact/Resources:</b> Accomplished with existing CFCC and Governmental Affairs staff resources.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> TBD, dependent on the subject matter.</p>

### III. LIST OF 2023 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	The Indian Child Welfare Act Bench Handbook revisions were completed, and the revised publication was distributed to judicial officers completing primary assignment orientation in juvenile law as well as being posted to the Judicial Resources Network.
2.	Prepared Rules and Forms recommendations for the Judicial Council concerning “Indian Child Welfare Act (ICWA): Discretionary Tribal Participation”. The proposal, available <a href="#">here</a> , was approved by the Judicial Council at the Council’s September 19 meeting, and is effective as of January 1, 2024.
3.	Provided input and subject matter expertise on the development of “Harm Reduction and Commercial Sexual Exploitation of Children and Youth: Bench Cards”. These new bench cards will assist courts in treating youth impacted by Commercial Sexual Exploitation (CSE) in a trauma-informed, youth-centered manner using harm reduction principles when they appear in court.
4.	In conjunction with the Family and Juvenile Law Advisory Committee provided input into the federal Children’s Bureau <a href="#">Notice of Proposed Rulemaking</a> concerning Foster Care Legal Representation.
5.	Developed a tab within the <a href="#">JCART California Courts Juvenile Portal</a> with resources for representing tribes in Indian Child Welfare Act cases. This tab includes an information sheet on Tribal Dependency Representation as well as links to ICWA trainings, statutes regulations, guidelines, job aids, and other resources.



## **Opportunities for Tribes to Collaborate with the State of Alaska**

There are several options for Alaska Tribes to work with the State on justice related matters. One of the options provides an opportunity to become involved in State criminal matters involving tribal citizens.

### **1. Rule 11 Plan between the Tribe and the Alaska Court System**

This option is often called a 'Rule 11' agreement because Alaska Criminal Rule 11 encourages the use of restorative justice practices in state court proceedings. This agreement provides a way for Alaska Tribes to become involved in state court cases and to make culturally appropriate sentencing recommendations. Tribes can become involved in cases involving their tribal members and may hold sentencing circles (or similar proceedings) to make sentencing recommendations to state court judges.

### **2. Civil Diversion Agreement (CDA) between the Tribe and the State Attorney General**

The CDA diverts certain misdemeanor cases directly to an Alaska Tribe's court for sentencing. When the CDA is signed, any law enforcement officer offers diversion for certain misdemeanors. The person chooses whether they would like to go to tribal court for sentencing, or to state court for prosecution. The Alaska Tribe's court may impose restorative sentences or other appropriate penalties. If the tribal penalty is completed, the person will have no state criminal record. If the tribal penalty is not completed, the State may prosecute the case.

### **3. Memorandum of Understanding (MOU) between the Tribe and Department of Health and Social Services, Division of Juvenile Justice (DJJ)**

The MOU allows certain juvenile cases to be diverted from the state justice system to the Tribe for sentencing. DJJ reviews cases for juveniles who have been charged with minor offenses and diverts the cases that DJJ thinks are appropriate. Referring cases to the Tribe is at the discretion of DJJ, it is not automatic. When a case is diverted to the Tribe, the Tribe may impose restorative sentences or other appropriate penalties. If the tribal sentence is completed, the state case will be closed. If the tribal sentence is not completed, the DJJ may petition the State Court to prosecute the juvenile.

If your Tribe is interested in collaborating with the State ANJC is here to help.

[tribaljustice@anjc.net](mailto:tribaljustice@anjc.net)

July 15, 1994; by SCO 1799 effective October 15, 2013 and by SCO 1951 nunc pro tunc July 9, 2019)

### **Rule 11. Pleas.**

(a) **Alternatives.** A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead, stands mute, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The defendant may appear by use of telephonic or contemporaneous two-way videoconference equipment pursuant to Criminal Rules 38.1 and 38.2.

(b) **Extension of Time for Pleading.** If the defendant requests an extension of time for entering a plea, then the court shall allow the defendant until the next day following the arraignment, or until such further time as the court considers reasonable, to plead to the indictment or information.

(c) **Pleas of Guilty or Nolo Contendere.** The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

(1) determining that the defendant understands the nature of the charge; and

(2) informing the defendant that by a plea of guilty or nolo contendere the defendant waives the right to trial by jury or trial by a judge and the right to confront adverse witnesses; and

(3) informing the defendant:

(A) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered, and

(B) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty, and

(C) that if the defendant is not a citizen of the United States, a conviction of a crime may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to federal law; and

(4) if the defendant is charged with a sex offense as defined in AS 12.63.100 or child kidnapping as defined in AS 12.63.100, informing the defendant in writing of the requirements of AS 12.63.010 and, if it can be determined by the court, the period of registration required under AS 12.63; and

(5) in cases when a plea agreement has been accepted by a court, informing the defendant:

(A) that the defendant waives the right to appeal a sentence as excessive and waives the right to seek reduction of a sentence under Criminal Rule 35 if a plea agreement between the defendant and the prosecuting attorney provides for a specific sentence or a sentence equal to or less than a specified maximum; and

(B) that the defendant waives the right to appeal as excessive that portion of a sentence that is less than or equal to a minimum sentence specified in a plea agreement between the defendant and the prosecuting attorney and waives the right to seek reduction of a sentence under Criminal Rule 35 to a length less than the length of the minimum sentence.

(d) **Insuring That the Plea is Voluntary.** The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the prosecuting attorney, defense counsel and the defendant to determine whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

### **(e) Plea Agreement Procedure.**

(1) *Disclosure of Sentencing Agreement.* If the parties reach a sentencing agreement, the court shall require disclosure of the agreement in open court at the time the plea is offered. Once the agreement has been disclosed, the court may accept or reject the agreement, or may defer that decision until receipt of a presentence report. If the court accepts the agreement, the court may impose sentence without a presentence investigation.

(2) *Acceptance of Agreement.* If the court accepts the agreement, the court shall impose sentence in accordance with the terms of that agreement.

(3) *Rejection of Agreement.* If the court rejects the agreement, the court shall inform the parties of this fact and advise the prosecuting attorney and the defendant personally in open court that the court is not bound by the agreement. If the court rejects the agreement as too lenient, the court shall then afford the defendant the opportunity to withdraw the plea. If the court rejects the agreement as too severe, the court shall then afford the prosecuting attorney the opportunity to withdraw from the agreement.

(f) **Determining the Accuracy of Plea.** The court shall not enter a judgment upon a plea of guilty without first being satisfied that there is a reasonable basis for the plea.

(g) **Record.** An electronic recording shall be made of the entire proceeding or proceedings.

### **(h) Plea Withdrawal.**

(1) A defendant may not withdraw a plea of guilty or nolo contendere as a matter of right. A defendant may move for withdrawal of the plea without alleging innocence of the charge to which the plea has been entered.

(2) Before sentencing, the trial court shall allow a defendant to withdraw a plea whenever the defendant, upon timely motion, proves that withdrawal is necessary to correct manifest injustice. Absent a showing that withdrawal is necessary to correct manifest injustice, the trial court may in its discretion allow the defendant to withdraw a plea for any fair

and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant’s plea.

(3) After imposition of sentence, the withdrawal of a plea may be sought only under AS 12.72. A defendant requesting post-sentence plea withdrawal must prove that withdrawal is necessary to correct a manifest injustice.

(4) Withdrawal is necessary to correct a manifest injustice whenever it is demonstrated that:

(A) The defendant was denied the effective assistance of counsel guaranteed by constitution, statute or rule, or

(B) The plea was not entered or ratified by the defendant or a person authorized to act in the defendant’s behalf, or

(C) The plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could be imposed, or

(D) The defendant did not receive the charge or sentence concessions contemplated by the plea agreement, and

(i) the prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement, or

(ii) after being advised that the court no longer concurred and after being called upon to affirm or withdraw the plea, the defendant did not affirm the plea.

(5) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceeding.

**(i) Restorative Justice Programs.**

(1) With the consent of the victim(s), the prosecutor, and the defendant(s), the judge may refer a case to a restorative justice program. The parties must inform the restorative justice program about any applicable mandatory sentencing provisions at the time the matter is submitted to the program. The parties may propose to the court the sentence recommended by the participants in proceedings convened by that program.

(2) The parties may include the recommendations of the restorative justice program in a sentencing agreement subject to the provisions of subsection (e).

(3) The term “restorative justice program” means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term “restorative justice program” does not include the Alaska Court System’s therapeutic courts.

(4) Except as provided below, the sentencing judge shall not participate directly in any restorative justice program to which a case is referred for sentencing recommendations.

(A) The judge may be present during the proceedings of the program provided that:

(i) the proceedings are conducted on the record; or

(ii) minutes of the proceedings are kept in a manner that the parties agree will fairly and accurately represent what is said at those proceedings.

(B) The judge may speak at these proceedings provided that the judge’s comments do not detract or appear to detract from the judge’s neutrality.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; amended by SCO 157 effective February 15, 1973; by SCO 427 effective August 1, 1980; by SCO 589 effective January 1, 1984; by SCO 606 effective October 4, 1984; SCO 660 effective November 7, 1985; by SCO 662 effective March 15, 1986; and by SCO 719 effective August 1, 1986; by SCO 750 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1194 effective July 15, 1995; by SCO 1204 effective July 15, 1995; by SCO 1222 effective August 8, 1995; by SCO 1242 effective July 15, 1996; by SCO 1343 effective January 1, 1999; by SCO 1382 (as revised by SCO 1413) effective April 15, 2000; by SCO 1590 effective April 15, 2006; by SCO 1816 effective April 15, 2014 and by SCO 1951 nunc pro tunc July 9, 2019)

**Note to SCO 1204:** Criminal Rule 11(c)(4) was added by ch. 41 § 10 SLA 1994. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendments.

**Note to SCO 1242:** Criminal Rules 11(c) and (h) were amended by ch. 79 §§ 24 & 26 SLA 1995. Sections 1 and 2 of this order are adopted for the sole reason that the legislature has mandated the amendments.

**LAW REVIEW COMMENTARIES**

“Guilty But Mentally Ill: The Ethical Dilemma of Mental Illness as a Tool of the Prosecution,” 32 Alaska L. Rev. 1 (2015).

“Advancing Tribal Court Criminal Jurisdiction in Alaska,” 32 Alaska L. Rev. 93 (2015).

**Rule 12. Pleadings and Motions Before Trial—  
Defenses and Objections.**

(a) **Pleadings and Motions.** Pleadings in criminal proceedings shall be the complaint, the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) **Pretrial Motions\*.** Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial:

## **CIVIL DIVERSION AGREEMENT BETWEEN THE STATE OF ALASKA AND [TRIBE]**

This Civil Diversion Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_, 2018, between the State of Alaska (“State”) and \_\_\_\_\_ (“Tribe”), a federally recognized tribe located in \_\_\_\_\_ (collectively referred to as the “Parties”).

### **1. Statement of Purpose**

WHEREAS, the State and the Tribe recognize that:

- In Alaska, 229 federally recognized tribes exist as sovereign governments.
- Remoteness, lack of connection to a road system, and extreme weather conditions often prevent or delay travel by law enforcement personnel into some communities, resulting in challenging law enforcement conditions.
- Tribal governments can provide local, culturally relevant remedies and are not impeded by location or harsh weather conditions.
- In addition, the use of local culturally relevant remedies may assist in lowering crime, alcohol abuse, drug abuse, domestic violence, and rates of suicide, while fostering educational achievement and economic development.
- Increasing tribal involvement in judicial services and law enforcement will encourage community involvement, create greater local accountability with respect to public safety, and promote a stronger link between the Tribe, the State, and all Alaskans.

In recognition of the above statements, the State and the Tribe enter this Agreement to cooperate on issues of mutual concern, and to improve the delivery of justice in Alaska.

## **GENERAL PROVISIONS**

### **2. Definitions**

- a. “Civil Diversion Agreement” or “Agreement” means the agreement entered into by the Tribe and the State of Alaska, including Exhibits A-D;
- b. “Law enforcement officer” means Alaska State Troopers, Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), Tribal Police

Officers (TPOs), and/or cooperating municipal or borough law enforcement officers.

### **3. Eligibility**

The Tribe represents and warrants that it meets the following eligibility criteria:

- a. The Tribe has passed a resolution or other official action from its governing body authorizing the Tribe to enter this Agreement (attached as Exhibit A).
- b. The Tribe has for the preceding three fiscal years no uncorrected significant and material audit exceptions regarding any federal or state contract or grant. However, the Tribe is not required to have had an audit to be eligible for this Agreement.
- c. The Tribe has sufficient governance capacity to conduct the program contemplated by this Agreement in a conscientious and effective fashion.
- d. The Tribe has written and oral rules setting out the structure and procedures of the tribal court and any tribal law enforcement to be utilized in connection with this Agreement.
- e. If the Tribe has a liability insurance policy that may cover its activities under this Agreement (attached as Exhibit B), the liability insurance policy shall include the State of Alaska as an additional insured. The Tribe shall ensure that a copy of its insurance policy is provided to the State annually, by February 1. If the Tribe does not have a liability insurance policy, the Tribe is not required to obtain liability insurance as a prerequisite to this Agreement.

### **4. Offenses Eligible for Civil Diversion**

By this Agreement, the State and the Tribe agree that, in lieu of state criminal prosecution, the Tribe will offer civil tribal remedies for the following offenses and crimes (as listed in Exhibit C):

- a. Certain Class B misdemeanors under Title 11 of the Alaska Statutes (including those involving domestic violence as defined by AS 18.66.990).
- b. Minor consuming or in possession offenses, including non-misdemeanor violations and misdemeanors (AS 04.16.050; AS 28.35.280).



- c. Local option alcohol possession offenses in communities that have voted to ban the possession of alcohol, making it a violation of state law to possess alcohol in that community (AS 04.11.501).
- d. Assault in the fourth degree (AS 11.41.230) (including those involving domestic violence as defined by AS 18.66.990) and reckless endangerment (AS 11.41.250) (including those involving domestic violence as defined by AS 18.66.990) if
  - i. the offender has
    - no assault conviction in the past ten years;
    - no prior felony convictions for crimes against a person; and
    - had no prior referrals to a tribal court for any assault in the fourth degree; or
  - ii. the District Attorney—in consultation with the Tribe—has determined that the offender should be referred to tribal court in the interests of justice.
- e. A matter will not be referred to tribal court if the offender commits an accompanying crime, in addition to those enumerated in this Section 4, and the accompanying crime is not covered by this Agreement.
- f. The Tribe has authority to decline any case referred to its tribal court.

## **5. Tribal Civil Proceedings and Remedies as Alternatives to State Prosecution**

- a. Within the community associated with the Tribe, except as limited in Section 6 below for crimes involving domestic violence, law enforcement officers shall or Assistant District Attorneys may offer eligible offenders (whether members or nonmembers of the Tribe) the option to have the Tribe impose tribal remedies in tribal civil proceedings in lieu of state prosecution.

- b. The offender's consent to the tribal remedies
  - i. must be voluntary and in writing;
  - ii. must include a statement agreeing to comply with tribally imposed remedies or face the possibility of prosecution in state court;
  - iii. must include an acknowledgment that the tribal civil remedies will be given without a trial and the tribal proceedings and remedies imposed are at the Tribe's sole and absolute discretion;
  - iv. must include an acknowledgment that the offender will not be entitled to a public defender in tribal court; and
  - v. must include a separately signed waiver and release of liability for all tribal and state conduct related to this Agreement and the remedies imposed. The offender shall agree to hold the Tribe and State harmless in the civil diversion proceedings.
- c. If an offender consents to the tribal civil diversion process, the law enforcement officer shall still thoroughly investigate the offense or crime, and retain all evidence in accordance with normal operating procedures. If the Tribe later requests referral of the case back to the State, the case will be processed through normal state procedures and be screened for potential prosecution.
- d. Tribal remedies may incorporate, but are not limited to, culturally derived procedures, such as restorative justice hearings and circle sentencing. The Tribe may coordinate with another participating tribal court on setting tribal proceedings and remedies.
- e. Tribal remedies may also include:
  - i. tribal court fines of \$1,500 total or less (not stackable for multiple offenses or crimes);
  - ii. forfeiture of the offender's property valued at \$1,500 or less; and
  - iii. restitution for the victim up to the amount necessary to make the victim whole for physical damage or property loss from the offense or crime.

- f. Temporarily depriving an offender of the use of a possession is not considered forfeiture.
- g. The Tribe shall direct the use of any fine collected by the tribal court from an offender, including for the sole benefit of the Tribe.
- h. The Tribe shall direct the use of any property forfeited by an offender in the tribal court, including for the sole benefit of the Tribe.
- i. If, during the course of tribal court proceedings, the tribal court becomes aware of potential criminal conduct involving crimes not covered by this Agreement, the Tribe shall notify the law enforcement officer who referred the matter to the Tribe.
- j. The State is not responsible for enforcement of tribal court remedies.
- k. The Tribe agrees to monitor the participant in the civil diversion program.
- l. The Tribe shall not incarcerate an offender pursuant to this Agreement.
- m. By consenting to tribal proceedings, the offender does not waive any state, federal, or tribal constitutional rights.

## **6. Domestic Violence Crimes**

For all crimes in Section 4 involving domestic violence as defined by AS 18.66.990, and even if the offender consents to submitting to the tribal process for implementation of tribal civil remedies, law enforcement officers shall comply with AS 18.65, including:

- a. The law enforcement officers shall comply with the mandatory arrest provisions of AS 18.65.530 unless (1) the officer has received authorization to forego arrest from a prosecuting attorney in the jurisdiction in which the crime occurred, or (2) the crime was committed over 12 hours prior to the law enforcement officer's involvement. If a mandatory arrest has occurred, an eligible offender shall be offered at the state court arraignment the option to go through tribal court civil diversion proceedings in lieu of state prosecution.

- b. Under AS 18.65.515(a), if necessary to protect the victim and/or the victim's family members, and to prevent any further violence, law enforcement officers shall transport the victim and victim's family members to a safe location; assist the victim in removing belongings from a residence; and assist the victim and victim's family members in obtaining medical treatment.
- c. Under AS 18.65.515(b), if necessary to protect the victim and/or family members, the law enforcement officer may seize deadly weapons that are in plain view or, if the crime involved a deadly weapon, seize all deadly weapons owned, used, possessed, or controlled by the offender. The owner of the weapons may retrieve them 24 hours after a determination is made that they are not needed as evidence in a state criminal case.
- d. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the right to seek a protective order.
- e. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the resources available in the community and region for victims of domestic violence including, without limitation, contact information for the Office of Victims' Rights and the Violent Crimes Compensation Board.
- f. The State and law enforcement officers shall take into consideration the desires of the victim in deciding whether to offer civil tribal remedies in lieu of state criminal prosecution for crimes involving domestic violence.

## **7. Victims' Rights**

To the extent practicable, the Tribe shall provide any victim of an offense or crime covered by this Agreement with the following rights:

- a. to be notified of, to be present during, and to participate in tribal proceedings; and
- b. to be protected from harm and threats of harm, such as through issuance of a tribal domestic violence protection order where appropriate.

## **8. Information Collection and Notice to the State**

- a. The responding law enforcement officer shall immediately notify the Tribe and District Attorney's Office of the referral, the offender's name, and the charge that would have otherwise been made, and send the police report and consent form. The Tribe will notify the District Attorney's Office if it has denied the referral no later than five business days after receipt. If the Tribe does not decline the referral it shall be deemed accepted. The District Attorney's Office contact information:
- b. The Tribe agrees that it will fill out a case form for every offender appearing before the tribal court pursuant to this Agreement. The case form will include the offender's name, the circumstances of the offense or crime, and the remedies ordered by the tribal court. If the offender subsequently commits another eligible offense or crime that is referred to the Tribe, the Tribe shall fill out a new case form. The Tribe may create its own case form or use the template form, attached as Exhibit D.
- c. The Tribe shall attach to the case form the offender's signed written consent voluntarily agreeing to participate in the tribal civil proceedings as outlined in Section 5(b)(i) – (iv) and signed written waiver and release of liability as outlined in Section 5(b)(v).
- d. The Tribe will update the case form within 120 days after the tribal remedies have been imposed to indicate whether the offender completed the assigned remedies. If the offender does not complete the assigned remedies, the Tribe shall promptly notify the District Attorney's Office and provide any information in its possession that would assist the State in potential prosecution of the offender.

The Tribe agrees to provide the case forms on a quarterly basis to the State Attorney General's Office contact identified in Section 22 of this Agreement. The Tribe shall also include any recommendations related to the timely and effective performance of the Tribe's responsibilities under the Agreement.

## **9. Cooperation in Litigation**

- a. If the State is sued by a third party related to the Agreement, the Tribe shall cooperate with the State in litigation. Cooperation includes, but is not limited to, making documents and other evidence held by the Tribe

(including its officials, officers, employees, and tribal council) available to the State, and making the Tribe's officials, officers, and employees available for deposition or testimony as necessary for the State to defend against the action brought by the third party. The State shall not pay for tribal attorney time or for lost wages, but the requesting party shall pay the Tribe's cooperation costs—as is customary—as follows:

- i. the cost of taking and transcribing a deposition, including the court reporter's fee and travel expenses to communities where a local court reporter is not available;
- ii. the fee of an interpreter or translator for a tribal witness;
- iii. long distance telephone charges for telephonic participation by a tribal official, officer, or employee at court proceedings, depositions, meetings called by the State or state attorneys, and witness interviews;
- iv. copying costs for paper copies, photographs, and microfilm;
- v. the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium;
- vi. exhibit preparation costs;
- vii. travel costs for tribal witnesses to the extent permitted by Administrative Rule 7(b), and at the coach class fare or the actual fare, whichever is less; ground transportation, outside of the traveler's home city; and food and lodging at the same per diem rate allowed for state employees.

## **10. Mutual Agreement Not to Sue**

The Parties agree not to sue each other under this Agreement. All disputes will be resolved under the terms of the Dispute Resolution Section of this Agreement. The Parties represent that, at the time of signing this Agreement, no assignment of claims for damages related to this Agreement has been made or executed to any other individual, firm or corporation, or other entity.

## **11. State Powers Retained**

Nothing in this Agreement creates, alters, or diminishes the civil or criminal jurisdiction of the State, including any political subdivision of the State. Even where an offender has consented to tribal remedies in lieu of prosecution under state law, the State retains its authority to move forward with prosecution of the offense or crime. In making its determination to move forward with prosecution, the State shall consult with the Tribe on whether the case is a good candidate for the tribal civil diversion program because of the particular facts and circumstances of the offense or crime including, but not limited to, the offender's history with the tribal court.

## **12. Tribal Powers Retained**

The Tribe is a sovereign government. Nothing in this Agreement creates, alters, or diminishes the jurisdiction of the Tribe, including the inherent and statutory authority of the Tribe over the health and welfare of the Tribe, for instance child protection and child custody matters, or the status of Indian country. Nothing in the Agreement shall prevent the Tribe from assuming protective custody of an individual under emergency circumstances to prevent imminent harm to self or others.

## **13. Relationship of the Parties**

This Agreement is by and between two governments and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever.

## **14. Dispute Resolution**

In the event of a dispute under this Agreement, the Parties shall first attempt to resolve the dispute informally and in good faith. If those efforts do not work, the Parties may engage in optional mediation of any dispute. The Parties shall choose a mediator by each submitting a list of three candidates in preferred order. The candidate who aligns in each Party's list would be the mediator for purposes of this Agreement. If no candidates

align, then the Parties will attempt to agree on a candidate. If attempts at selection of a mediator or at mediation fail, then the termination option in this Agreement will control.

## **15. Term**

This Agreement shall be effective when signed by both Parties. The term of this Agreement shall be one year from the effective date and shall renew automatically each year. The Parties may assess the Agreement each year and propose modifications at least thirty days prior to the renewal date.

## **16. Termination**

This Agreement may be terminated by either Party upon sixty days written notice; however, the Agreement will remain in effect, if the Tribe so chooses, until the last case initiated prior to termination has been completed by the tribal court and the tribal remedies have been carried out by the offender, but in no case more than ninety days after termination of the Agreement.

## **17. Entire Agreement**

This Agreement is the entire agreement between the State and the Tribe.

## **18. Survival of Agreement Terms**

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement (including the exhibits) that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive the termination date and shall remain enforceable by the Parties.

## **19. Interpretation**

Both Parties have had a full and fair opportunity to consult with legal counsel, to ask questions, and to consider this Agreement's specific provisions. This Agreement will not be interpreted in favor of or against either Party.

## **20. No Waiver for Failure to Demand Strict Performance**

The failure by either Party to insist upon the strict performance of any part of this Agreement shall not be considered a waiver or relinquishment of any rights or obligations under this Agreement.



**21. Modifications or Amendments**

No modification to the Agreement shall take effect unless made in writing and signed by authorized representatives of the State and the Tribe. If the Tribe has any questions relating to the interpretation of this Agreement or associated laws, ordinances, regulations, or permits, state officials may request that the Tribe submit them in writing. The Tribe may rely only on written responses from state officials.

**22. Contact Information for Notices Required under this Agreement**

The official tribal representative responsible for ensuring compliance with this Agreement and for receiving notifications from the State is:

Forms required to be submitted to the State under this Agreement, insurance information related to this agreement, and questions regarding the interpretation, enforcement, or renewal of this Agreement shall be directed to:

\_\_\_\_\_  
  
\_\_\_\_\_

State

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**LIST OF EXHIBITS**

**EXHIBIT A: A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT**

**EXHIBIT B: TRIBAL LIABILITY INSURANCE POLICY**

**EXHIBIT C: ELIGIBLE OFFENSES AND CRIMES**

**EXHIBIT D: TEMPLATE CASE FORM**

**EXHIBIT A**  
**TRIBE OF**

**RESOLUTION** \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT**

WHEREAS: TRIBE NAME (the “Tribe”) is a federally recognized tribe; and

WHEREAS: The Tribal Council is the governing body for the Tribe; and

WHEREAS: The Tribal Council has the authority under its Constitution, bylaws, and ordinances to sign for and bind the Tribe, the Tribe’s governing body, and all tribal officials, employees, and successors to the commitments and conditions of the Civil Diversion Agreement; and

WHEREAS: The Tribe wishes to enter into a Civil Diversion Agreement with the State of Alaska; and

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby approves the provisions of the Civil Diversion Agreement and hereby authorizes the execution and delivery of the Civil Diversion Agreement by \_\_\_\_\_[position], \_\_\_\_\_[name] (or successor).

**CERTIFICATION**

The foregoing resolution was passed and approved by a duly convened meeting of the Tribal Council, dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[name], [position]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[name], Council Secretary

\_\_\_\_\_  
Date

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**EXHIBIT B**

**TRIBAL LIABILITY INSURANCE POLICY**

**EXHIBIT C  
ELIGIBLE OFFENSES**

<b>ALCOHOL OFFENSES</b>		
<b>State Statute</b>	<b>Description</b>	
AS 04.11.501	Possession of alcohol after election where the majority of voters have voted to prohibit the possession of alcoholic beverages	
AS 04.16.050	Possession, control, or consumption of alcohol by persons under age	
AS 28.35.280	Minor operating a vehicle after consuming alcohol	
<b>CLASS A MISDEMEANORS</b>		
<b>State Statute</b>	<b>Description</b>	
AS 11.41.230	Assault in the fourth degree, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
AS 11.41.250	Reckless endangerment, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
<b>CLASS B MISDEMEANORS</b>		
<b>State Statute</b>	<b>Description</b>	
AS 11.31.100	Attempt to commit a crime if the crime attempted is a class A or class B misdemeanor	
AS 11.31.110	Solicitation of another to engage in a crime where the crime solicited is a class A or class B misdemeanor	
AS 11.41.460	Indecent exposure in the second degree (victim 16 years or older)	†
AS 11.46.150	Theft in the fourth degree (value less than \$250*)	
AS 11.46.220(c)(3)	Concealment of merchandise (value less than \$250*)	
AS 11.46.260(b)(3)	Removal of ID marks on property (value less than \$250*)	
AS 11.46.270(b)(3)	Unlawful possession (defaced, erased, or altered serial number or identification mark on property less than \$250*)	
AS 11.46.280(d)(4)	Issuing a bad check (value less than \$250*)	
AS 11.46.330	Criminal trespass in the second degree	†
AS 11.46.486	Criminal mischief in the fifth degree	†

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CLASS B MISDEMEANORS (continued)		
State Statute	Description	
AS 11.46.530(b)(3)	Criminal simulation (a person either makes or alters an object so that it appears to have a rarity, age, source, or authorship that it does not in fact possess, with intent to defraud; <i>or</i> with knowledge of its true character and with intent to defraud, the person possesses or utters such an object. Real object value must be less than \$250*).	
AS 11.56.755(b)(1)	Unlawful contact in the second degree (arrest was for a felony or class A misdemeanor)	
AS 11.56.758(b)(2)	Violation of custodian’s duty to report a violation of condition of release of a person released on a misdemeanor charge)	
AS 11.56.780	Hindering prosecution in the second degree	
AS 11.56.830	Impersonating a public servant in the second degree	
AS 11.61.110	Disorderly conduct	
AS 11.61.116(c)(1)	Sending an explicit image of a minor (image sent to another person)	
AS 11.61.120(a)(1)	Harassment 2-likely to provoke violence	
AS 11.61.120(a)(2)	Harassment 2-tie up phone line	†
AS 11.61.120(a)(3)	Harassment 2-repeated phone calls	†
AS 11.61.120(a)(4)	Harassment 2-anonymous, obscene, threatening communication	†
AS 11.61.120(a)(5)	Harassment 2-offensive physical contact	
AS 11.61.120(a)(6)	Harassment 2-publish/distribute pictures/films of genitals, anus, female breast, sexual acts	
AS 11.61.120(a)(7)	Harassment 2-repeatedly taunt minor through electronic communication, placing them in reasonable fear of physical injury	
AS 11.61.220	Misconduct involving weapons in the fifth degree	
AS 11.61.240(b)(5)	Criminal possession of explosives (intended to commit misdemeanor)	
AS 11.71.060	Misconduct involving a controlled substance in the fifth degree	
AS 11.76.115	Misconduct involving confidential information in the second degree	
AS 11.76.130	Interference with rights of physically or mentally challenged person	
AS 11.76.140(a)(2)	Avoidance of ignition interlock device (rent motor vehicle to	
AS 11.76.140(a)(3)	Avoidance of ignition interlock device (loan motor vehicle to	

\* Adjusted for inflation.

† The highlighted crimes are crimes involving domestic violence when committed by a household member against a household member. See AS 18.66.990(3). Crimes involving domestic violence are subject to the special conditions of Section 6 under this Agreement.

“Household member” is defined as:

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;

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- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A)-(G).

*See AS 18.66.990(5).*



**EXHIBIT D:  
TEMPLATE CASE FORM**

**[Space for Tribal Court Seal]**

Name of tribal court: \_\_\_\_\_

Location: \_\_\_\_\_

Date of offense or crime: \_\_\_\_\_

Offender's name: \_\_\_\_\_

Circumstances of offense or crime: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remedy ordered by tribal court: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and position of person filling out form: \_\_\_\_\_

Signature and date: \_\_\_\_\_