

**MEETING SUMMARY**  
**Tribal Court State Court Forum**  
**Friday, July 15, 2016**  
**10:00 am to 3:00 pm**

**Leech Lake Judicial Center**  
**Court Administration Conference Room**  
**200 Sailstar Drive NW, Cass Lake, MN 56633**

**Attendees**

**Form Members:**

Hon. Stephen Askew  
Hon. Paul Day  
Hon. Sarah Hennessy  
Hon. David Harrington  
Hon. B.J. Jones  
Hon. David Lillehaug

Hon. Austin Needham  
Hon. Mary Ringhand  
Hon. Patrick Rohland  
Hon. Jessica Ryan  
Hon. Lenor Scheffler  
Hon. George Soule

Hon. Megan Treuer  
Hon. Margaret Treuer  
Hon. Korey Wahwassuck  
Hon. Robert Walker  
Judy Nord, Staff Attorney

**Guests:**

Arthur "Archie" LaRose, Secretary-Treasurer, the Leech Lake Band of Ojibwe Tribal Council  
Beau Berentson, State Court Administration  
Robert Budreau, Deputy Director for the Band  
Jennifer Daily, Law Clerk to Judge Tom Bibus  
Dale Greene, Director, Self-governance/1855 Treaty office  
Leroy Staples Fairbanks, District 3 Representative on the Tribal Council.  
Melissa Lorentz, Attorney  
Erin Moriarty, State Court Administrator  
Peter Rademacher, Hogan Adams  
Wendy Thompson, Leech Lake Court Administrator  
David Watson, Law Clerk to Judge Sarah Hennessy  
Robert Whipple, Director, Human Resources Department

**Tour: Leech Lake Judicial Center**

Hon. Paul Day and Hon. Megan Treuer hosted a tour of the newly built Leech Lake Judicial Center.

**Welcome and overview of agenda**

Judge Paul Day welcomed the Forum members and guests and offered an opening prayer.

**Review and approve January 2016 meeting summary**

The Forum members reviewed and approved the January 2016 Meeting Summary.

**Tribal Court State Court Forum website**

- Beau Berentson and Erin Moriarty, from the Minnesota Judicial Branch Information Office, provided an overview of the proposed Forum website, which includes an historical overview of the Forum, names of all Forum members, a place to post agendas and meeting summaries, links to the websites for Minnesota's tribes, links to upcoming trainings and conferences, and links to statutes and rules.
- The Forum agreed:
  - Staff should update and post the membership list quarterly and will work with the co-chairs to accomplish that goal. Members will notify staff of any changes to the membership roster.

- Agendas will be posted once finalized. The meetings are open to the public and the public is welcome to attend, which may happen given that agendas include notice of the date, time, and location of the Forum meetings.
- Meeting summaries will be published only after they have been reviewed and approved by the Forum.
- Members will notify staff of any upcoming trainings/conferences that should be posted on the website.
- The Forum will review and approve final version of website at the next Forum meeting.

**Petition and proposed amendments to Rule 10 of the General Rules of Practice**

- Hon. Lenor Scheffler and Peter Rademacher provided an overview of the proposed amendments, reasons for the proposed amendments, and background information about the historical process and outcomes of prior petitions.
- The Forum members discussed the petition and proposed amendments, suggested a few revisions, and approved moving forward with the finalizing and filing the petition.
- The plan is to finalize and file the petition with the Supreme Court by early fall.
- The Forum agreed to start lobbying efforts in support of the petition, including soliciting letters of support from attorneys, state court judges, and tribal courts judges. It was also agreed to talk with dissenters of previous petitions to explain the differences between the prior and current petition and the importance of adopting the amendments.

**Efforts to revise legislation to authorize state courts to transfer certain child support cases to tribal court**

Amber Ahola, Director of Leech Lake Child Support Enforcement Program and Julie Erickson and Tara Borton with the Minnesota Dept. of Human Services, explained the efforts to revise legislation to authorize state courts to transfer certain child support cases to tribal court.

There are 60 tribes in the United States with federally funded child support programs, including four Minnesota tribes: Leach Lake, White Earth, Mille Lacs, and Red Lake. The problem the legislation is attempting to address is the challenge that occurs when only some issues in a case (e.g., custody) are transferred to tribal court and the accompanying child support issues remain in state court. Wisconsin and California are among the states that permit transfer to tribal court of the entire case, including child support issues.

DHS has drafted legislation defining the procedure for transferring Title IV-D child support cases from state court to tribal court. Litigants could object to the transfer to tribal court, at which time the state court judge would hold a hearing to determine whether the transfer should proceed. The procedures would be only for dissolution and custody cases where IV-D is already involved so that part of a case could not stay in state court and the other transferred to tribal court. If a parent fails to comply with the child support order, the tribal court would use remedies to enforce the order. Contempt of court resulting in jail time would not be among the remedies used. Also, tribal courts don't have authority to intercept taxes or other revenues – objections and some remedies could be employed in state court.

The proposed legislation overview was provided only for information purposes and the Forum was not asked to either endorse or support the legislation.

**How to ensure state court / tribal court relationship building is included in New Judge Orientation and Bridging the Gap sessions**

In fall 2015 the Forum discussed ways to ensure state court / tribal court relationship building is among the topics addressed in New Judge Orientation (NJO) and Bridging the Gap sessions. The Forum agreed to develop a list of topics (e.g., Indian Law 101, ICWA etc.) that should be addressed during NJO and provide that information to the Judicial Branch education office along with a recommendation to include those topics in NJO.

## Development of Minnesota Judicial Branch ICWA curriculum and training schedule

Hon. Korey Wahwassuck explained that the State Court Administrator's Office, through the Children's Justice Initiative (CJI), has established a small workgroup of judges and tribal attorneys who are ICWA experts and who are in the process of revising the national ICWA curriculum to fit Minnesota's laws. The purpose of the Forum is included in the training. Once the curriculum is finalized, the workgroup will pilot test by providing training to the CJI team in Hinckley in September. After the pilot test, the curriculum will be revised, if needed, and then delivered in to judges, attorneys and other child protection system stakeholders in other locations statewide.

## New ICWA Regulations

Hon. Korey Wahwassuck and Hon. Jessica Ryan provided an overview of the new ICWA Regulations published in March 2016 and effective in December 2016. Click here for [Link](#)

Since its passage in 1978, the ICWA has provided important rights and protections for Indian families, and has helped stem the widespread removal of Indian children from their families and Tribes. State legislatures, courts, and agencies have sought to interpret and implement this Federal law, and many States should be applauded for their affirmative efforts and support of the policies animating ICWA.

But, the federal Department of the Interior has found that implementation and interpretation of the ICWA has been inconsistent across States and sometimes can vary greatly even within a State. This has led to significant variation in applying ICWA's statutory terms and protections. This variation means that an Indian child and her parents in one state can receive different rights and protections under Federal law than an Indian child and her parents in another state. This disparate application of ICWA based on where the Indian child resides creates significant gaps in ICWA protections and is contrary to the uniform minimum Federal standards intended by Congress. The need for consistent minimum Federal standards to protect Indian children, families, and Tribes still exists today.

This final rule adds a new subpart to the Department of the Interior's (Department) regulations implementing the Indian Child Welfare Act (ICWA), to improve ICWA implementation. The final rule addresses requirements for State courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for States to maintain records under ICWA. In particular, the final rule addresses the following issues:

- *Applicability.* The final rule clarifies when ICWA applies, while making clear that there is no exception to applicability based on certain factors used by a minority of courts in defining and applying the so-called "existing Indian family," or EIF, exception.
- *Initial Inquiry.* The final rule clarifies the steps involved in conducting a thorough inquiry at the beginning of child-custody proceedings as to whether the child is an "Indian child" subject to the Act.
- *Emergency proceedings.* Recognizing that emergency removal and placements are sometimes required to protect an Indian child's safety and welfare, the final rule clarifies the distinction between the requirements for emergency proceedings and other child-custody proceedings involving Indian children and includes provisions that help to ensure that emergency removal and placements are as short as possible, and that, when necessary, proceedings subject to the full suite of ICWA protections are promptly initiated.
- *Notice.* The final rule describes uniform requirements for prompt notice to parents and Tribes in involuntary proceedings to facilitate compliance with statutory requirements.
- *Transfer.* The final rule clarifies the requirement that a State court determine whether the State or Tribe has jurisdiction and, where jurisdiction is concurrent, establishes standards to guide the determination whether good cause exists to deny transfer (including factors that cannot properly be considered) and addresses transfer of proceedings to Tribal court.
- *Qualified expert witnesses.* The final rule provides interpretation of the term "qualified expert witness."
- *Placement preferences.* The final rule clarifies when and what placement preferences apply in foster care, pre-adoptive, and adoptive placements, provides presumptive standards for what may constitute good cause to depart from the placement preferences, and prohibits courts from considering certain factors as the basis for departure from placement preferences.
- *Voluntary proceedings.* The final rule clarifies certain aspects of ICWA's applicability to voluntary proceedings, including addressing the need to determine whether a child is an "Indian child" in voluntary proceedings and specifying the requirements for obtaining consent.

- *Information, recordkeeping, and other rights.* The final rule addresses the rights of adult adoptees to information and sets out what records States and the Secretary must maintain.

**National Convening of Tribal Court State Court Forums – Los Angeles – June 6-10**

Hon. Megan Treuer, Hon. Korey Wahwassuck, and Hon. Mary Ringhand provided an overview of the National Convening of Tribal Court and State Court Forums held in Los Angeles in June. The convening is an opportunity to continue relationship building opportunities and to learn about differences between forums. Not all states have forums. Some states, such as Minnesota, have informal Forums, while other states have formal forums with official committees and appointment procedures. At this convening, Minnesota provided an overview of the efforts to establish a joint wellness court.

**Proposal to track cases moving between state courts and tribal courts (discussed October 2015)**

In October 2015 the Forum discussed a proposal to track cases moving between state courts and tribal courts. At today’s meeting, the Forum agreed to dismiss that topic from further consideration.

**2017 Judicial Branch Strategic Plan – TCSC Forum Operational Plan**

Judy Nord, Forum Staff Attorney, explained that 2017 is the final year the Tribal Court State Court Forum will be part of the Minnesota Judicial Branch Strategic Plan as part of Priority 3c: Promote Communication and Collaboration between District Courts and Tribal Courts. Following is the proposed Operational Plan for 2017 identifying the tasks the Forum should strive to complete. A progress report on each item will be due in 2017.

<b>Priority 3C: Promote communication and collaboration between the Minnesota Judicial Branch and Minnesota Tribal Courts.</b>		
<b>Initiative</b>	<b>Responsibility</b>	<b>FY17 Tasks</b>
Continue to foster relationships between state courts and tribal courts through education, training, meetings and ride-alongs.	Tribal Court State Court Forum	The Tribal Court State Court Forum will: 1. Continue to support Indian Law education programs. 2. Expand joint jurisdiction and collaborative efforts. 3. Implement a Forum website. 4. Participate in efforts to reduce disparity of Native Americans in criminal justice system such as the Cass County/Leech Lake MacArthur Foundation grant application. 5. Involvement in efforts to reduce disparities in out of home placements for Indian Children in child protection proceedings 6. Submit proposed amendments to Rule 10 of the General Rules of Practice

**Future Meetings**

The Forum agreed to meet quarterly on the fourth Friday of the month as follows (locations to be determined)

- October 2016 – state court hosts
- January 2017 – tribal court hosts (Prairie Island Indian Community)
- April 2017 – state court hosts (Mankato)
- July 2017 – tribal court hosts (Grand Portage)
- October 2017 – state court hosts (Cass County)

Respectfully Submitted,  
 Judy Nord, Staff Attorney