



**The New Mexico Tribal-State
Judicial Consortium**

STRENGTHENING RELATIONSHIPS, FOSTERING COMMUNICATIONS

**Quarterly Meeting
Wednesday, January 10, 2018, 9:00 a.m.
Hotel Albuquerque
Children's Law Institute
800 Rio Grande Blvd. NW
Albuquerque, NM 87104**

Members Present:

Judge William Bluehouse Johnson, Judge John F. Davis, Judge Randolph Collins, Judge. T. David Eisenberg, Judge Pedro Rael, Judge Joseph Little, Judge Bruce Fox, Judge Renee Torres, Judge John Romero, Judge Briana Zamora, Judge William Parnall, Judge Geoffery Tager

Non-Voting Members and/or Staff Present:

Kyle Nayback, USAO; Valerie Merryfield and Peter Bochert, AOC

Also Present:

Amanda Arthur, CYFD; Kristen Plummer, CYFD; Tasia Martinez, 13th Judicial District Court; Bernie Teba, CYFD; Patricia Galindo, AOC Staff Attorney; Josett Monette, NMLA Staff Attorney; Donalyn Sarracino, NM ICWA Consortium President

Members Absent:

Judge Allan Toledo, Judge Marita Johnson, Judge Leonard Livingston, Judge M. Monica Zamora

I. Approval of Agenda

A motion to approve the agenda was made by Judge Collins and seconded by Judge Little. The agenda was approved as is.

II. Welcome, Invocation, Introduction, and Announcements

Invocation was given by Bernie Teba. Introductions were made by all present.

III. Action Items

a. Approve the October Meeting Minutes

Motion to approve the October minutes made by Judge Davis and seconded by Judge Parnall. Meeting minutes approved as is.

b. Replacement of Mescalero Judge due to Judge Knight's vacancy

Judge Johnson reached out to the new Mescalero Judge Harold Monteau to ask if he was interested in joining. Judge Monteau indicated he was and has been added to the listserv. He was not present for the meeting.

c. Update on finalization and distribution of the ICWA Bench Cards

Beth Gillia of the Corinne Wolfe Children's Law Center/UNM presented on the ICWA Bench Card at the last meeting and incorporated the input discussed. Judge Romero gives

some history on the request for incorporation of the latest regulations/rules from a court in Arizona. Judge Collins clarifies there are two things to be addressed: one, approval of the bench card and second, and the issue of CYFD's interpretation of law. Judge Rael moves and Judge Parnall seconds approval of the ICWA Bench Card. The motion passed unanimously. There was some discussion of the length of the "card" and that an ICWA Bench Book may be needed eventually, but the ~~Commission~~ (Consortium) appreciated the current card format.

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There was a long discussion on the importance of determining tribal affiliation. Some key points from the discussion were:

- Judge Romero indicated the responsibility of determining affiliation is a source of conflict between judges and CYFD. It is troublesome that some cases come to adjudication and the department has made no effort to determine if ICWA applies.
- Judge Parnall believes it is incumbent on CYFD to follow up with parties when they indicate they may be affiliated.
- Donalyn Sarracino stated that sometimes the way families are asked if they are affiliated causes confusion. Often times the families are asked for a CDIB, but not all tribes issue CDIB. CYFD does not always contact the tribe for confirmation. An official ICWA notice needs to be sent to the tribe. ß
- Judge Collins suggested a subcommittee should meet to help address issues between CYFD vs. the court's interpretation of the law.
- Donalyn states the NM Partners Group is currently working on this issue.
- Bernie Teba requested this consortium send a letter to the secretary of CYFD with the concerns.
- Josett Monette stated ICWA is not being implemented in some "removals" because there is no court proceeding/case.
- Judge Parnall indicates Bernalillo County is using a team approach to this issue.
- Judge Johnson appointed Bernie and Josett to make contact with The Casey Foundation to discuss the ICWA issue and to draft a letter to CYFD within four to six weeks. Judge Romero suggested the letter should also be sent to the Children's Court Improvement Commission, c/o Senior Justice Maes.
- Bernie indicated CYFD has an issue with a lack of database to track the ICWA cases. He stated the worst case scenario is to have a manual tracking system of these cases. Judge Collins suggested including this issue in the letter.
- Judge Romero stated the Odyssey case management system is able to track ICWA cases, but does not include all information needed, such as tribal affiliation. He stated if he needs to know the number of ICWA cases he will contact Advocacy Inc. and/or Guardians Ad Litem for the information. CASA volunteers are only being assigned to ICWA cases now in Bernalillo County. A lot of times CASA is getting notice before the tribes.

d. Report on December NM Partners Meeting with Casey Family Foundation (Johnson)

The Casey Family Foundation in NM and other states are collaborating with tribes on issues that involve families and family services. They are looking at regulations, and at how CYFD can improve their services. Judge Johnson asks Judges Romero and Parnall if they would be interested in attending the meetings; both state they are interested in attending.

e. Judge Collins to report on the December Tribal Law and Policy Meeting in California

The presentation went well about what New Mexico has been doing. Judge Collins was surprised at the fair amount of uniformity throughout the states on the violence against women act, including the adoption of the Project Passport coversheet. There was discussion of how to get protection orders online, on a database (possibly NCIC), so law enforcement will have access to the information at all times. Patricia Galindo indicated that most states have their own separate registry systems for these types of orders, but that would be too costly for NM. She applied for a federal grant last year to post tribal orders, but did not get the funding. She explained how courts work with local law enforcement and DPS for data entered into NCIC. Each tribal entity can contact the FBI to request access to NCIC, but they would need 24/7 support to verify data entry. There could be some separate agreements between tribes and local law enforcement to enter this information into NCIC for them, and an MOU would probably work. Judge Collins recommended developing an MOU for state or local county law enforcement. Judge Collins, Judge Tager, and Patricia are to work on the standard for the MOU between tribes and law enforcement agencies. Patricia suggested contacting tribal leadership to see if they would be interested in an MOU. If there is only one entity interested it may not be worthwhile, but if several agree then it would be something to work on. If orders are modified, expired, or terminated the records need to be updated in NCIC.

Patricia is going to check on if there is a way Odyssey could keep record of the tribal protection orders. At this time there is no way for a state court to know if there is a current tribal protection order. At times parties will file in the state court and the tribal court, and the courts are not aware of the filing in the other court.

Judge Fox stated the restraining orders themselves should include findings that meet federal regulations. The cover sheet addresses these guidelines; maybe the tribal courts can use the same cover page as the state courts.

Patricia added there were many questions asked at the presentation. Although there is a financial constraint in New Mexico, we are making great strides.

IV. New Business

a. Tribal Delinquency Order (Johnson/Bernie Teba)

b. A comparison of the language in the New Mexico Children's Code (NMCC)

Delinquency Section 32A-1-8 (E) and Mental Health section 32A-6-21 (a)-(E) and full faith and credit. Review and discussion - related to enforcement of tribal court orders in State delinquency proceedings. (Bernie Teba).

Bernie indicated the language in the NM Children's Code Delinquency section 32A-1-8(E) and Mental Health section 32A-6-21(a)-(e) are similar, but the Mental Health section 32A-6-21(a)-(e) says it may enter into an intergovernmental agreement, and the NM Children's Code Delinquency section 32A-1-8(E) requires an intergovernmental agreement. Bernie mentioned if you are making a rule change in the mental health section, you may consider the same thing in the delinquency section. Five tribes currently have an intergovernmental agreement, but what about the other 18 tribes? Bernie's office says absent an intergovernmental agreement no action can be taken, unless they go through a district court judge. Judge Parnall suggested there should be two sentences that the tribal judge can

make the order and may be implemented in an intergovernmental agreement. Involuntary commitment for juveniles already exists in the code.

There is a model order that Judge Collins hopes is adopted by the Supreme Court; it was recommended by the committee that proposes the rules to the NM Supreme Court. It is not a rule change. Bernie indicated there have been some tribes that have created an order recognized by state judges (Laguna for example).

Judge Collins stated there may be some disagreement between the courts and CYFD regarding the statute. Giving the tribes that don't have an IGA a template was suggested. Bernie indicated an IGA with CYFD and the tribe will include the regulations to make sure CYFD follows the regulations. This will be referred to the Full Faith & Credit / State Services Committee; they need to discuss and report back to Judge Johnson. Judge Fox will ask the forms committee to review.

c. Recommend Legislative Initiative (Johnson)

After some discussion the decision was made to consider this for next year **but later during a discussion concerning notice in delinquency proceedings (section V.a., below), Judge Collins and Judge Eisenberg discussed changes to rules and statute regarding notice in delinquency proceedings and it was suggested that some action begin this year.**

V. Updates from Committee Chairs/Review of how Strategic Plan is being implemented:

a. State Services/Full Faith and Credit (Collins) - **Notice to Tribes in NM Delinquency Proceedings.**

Rule and/or legislative changes: Statute states the tribe is to be notified at the time of disposition or removal from the home. Judge Collins is looking for a rule/legislative change to require the tribe be notified at the time of filing. Bernie has been working with policy unit to have juvenile probation officers notify him personally, so he can notify the tribe. Rule 10-211 provides notice to the tribe upon filing of the petition. The suggestion was made to change statute 32-a-5 to add notification upon filing of petition. There was also a suggestion to change 32a-1-8e so that it is not necessary for an intergovernmental agreement so tribal orders for juveniles will be recognized with or without intergovernmental agreements. Juvenile justice should be consistent with ICWA. Judge Collins reported he'd like the committee to discuss this in more detail. He stated this is not ready to go to legislature this year, but possibly next year. He would prefer to do both rule and statute change. Previously, Senator McSorley offered to assist the consortium if it provided him with an issue or recommendation. He pointed out that this discussion needs to start in April to be ready for next year. Judge Eisenberg stated the Indian Affairs Committee is the place to start. Judge Parnall said a letter requesting the changes should be prepared by the next meeting. This discussion will continue at the next meeting (legislative initiatives). There was a suggestion to submit the rule/statute change requests to candidates running for governor.

b. ICWA (Johnson/McGinnis)

Judge Johnson had nothing to report. Judge McGinnis was not present.

c. Drug Court (Fox)

The plans for 2018 are similar to 2017. They are primarily coming up with forms to transfer people to tribal healing to wellness courts, a list of resources for drug courts, and a pamphlet or policy statement that would be adopted by this consortium. Judge Fox indicated they are trying to come up with a presentation for the National Drug Court Conferences--there is one in September in Albuquerque. Judge Brianna Zamora indicated the Healing to Wellness Court at the 2nd Judicial District Court will be having an event to launch their program.

Judge Fox wants to come up with proposed orders to transfer. The state courts have not agreed to transfer probation at this time. Judge Collins asked if statistics may be available that would help show the need to such a transfer rule.

Domestic violence usually goes hand in hand with substance abuse; Judge Collins asked if the issue of domestic violence was being considered to incorporate into wellness treatments. Judge Eisenberg indicated that these defendants are not prohibited to attend wellness as long as there is a substance abuse problem. Since the tribal wellness drug court does not receive federal funding, they are not prohibited by regulations on who can attend their programs. Judge Romero asked for numbers and outcomes of the collaboration. Sandoval County works really well together without an MOU. Metro Court is currently reworking their Domestic Violence Programs. Typically the treatment model focuses on treating dependency first.

d. JDAI (Brown-Yazzie)

Judge Brown-Yazzie was not present. Nothing to report.

VI. Other Business

a. USAO update from Kyle Nayback, AUSA, US Attorney's Office

There is currently a new US Attorney John Anderson who should be confirmed in the next month, and Kyle serves at his discretion. He discussed the Unlawful Flight to Avoid Prosecution (UFAP) and Supervisor of Indian Country Crimes Section, although that may change. Has been asked for a Central Violation Bureau (CVB) docket; they run one out of Kirkland. Tribal Law and Order Act has caused more scrutiny of tribal courts.

b. Budget update

There was a discussion on ways to spend down the budget. There is money available for use.

c. Review Any Membership Vacancies

To be addressed at the next meeting.

d. Confirmation of upcoming meeting dates and/or possible annual retreat

The next meeting will be held April 13, 2018. Judge Parnall at the Children's Court at the 2nd Judicial District Court volunteered to host the next meeting.

The July meeting will move to June to help spend down remaining budget and can do another strategic plan with Everett. This meeting will be held at a tribal site; either the Inn of the Mountain Gods (Mescalero) or Santa Ana? Avoid scheduling June 6-8 due to the Judicial Conclave .

The October meeting will be held at a state site, possibly the first week in October. Grants was suggested as a possible location by Judge Pedro Rael.

e. Review the annual report.

The ~~commission~~ Consortium was asked to review the annual report. It had already been sent to the Supreme Court, and Valerie Merryfield was thanked for her work in producing the report.

VII. Open Discussion

Donalyn updated the ~~Commission~~ Consortium regarding the ICWA Consortium. Meetings are held about 3rd Friday every month; the next meeting will be held at Santa Ana. She indicated that if someone would like to present at one of the meetings they should email Donalyn or Jacqueline Yelch. They are currently working on developing and unifying licensing protocol. Last year, 13 ~~consortium~~ ICWA Consortium members went to Oklahoma for training on the licensing protocol curriculum. The next task is to unify policies between tribes. The ~~Committee~~ ICWA Consortium will be presenting at NICWA's conference in Alaska.

VIII. Upcoming Dates

☞ Tribal-State Meeting: April 13, 2018

☞ Tribal-State Meeting: July __, 2018 (TBD)

☞ Tribal-State Meeting: October __, 2018 (TBD)

As the ~~Commission~~ Consortium had completed its business, Judge Johnson thanked everyone for their work and adjourned the meeting at 11:35 A.M.