



Beyond the Bench 21

Child Support and Tribal Communities: Myths and Realities

Coming of Age in Tough Times: Building Our Strength Together

Child Support and Tribal Communities: Myths and Realities

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Child Support and Tribal Communities: Myths and Realities

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- Hoopa Valley Tribe
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A TRIBAL/STATE CHILD SUPPORT PROCEDURES
OVERVIEW FOR CALIFORNIA



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DEFINITIONS (1)

- The terms Indian and Native American are used interchangeably in this presentation.
- “Tribe” is used generically in reference to any specific Tribal community.
- Definitions of “Indian” and “Indian Tribe” are in 45 CFR 309.05, and “Indian Country” is defined in 18 USC § 1151.
- IV-D – As used in this presentation, refers to “Title IV-D case,” which means any case in which a child support agency is establishing or enforcing a Child Support Order, pursuant to Title IV-D of the “Social Security Act,” 42 USC 651.

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DEFINITIONS (2)

- IV-A – As used in this presentation, IV-A refers to all government programs funded in whole or in part with funds provided under the Temporary Assistance for Needy Families (TANF) block grant, established by Title IV-A of the “Social Security Act,” 42 USC 601.
- Tribal TANF – Tribes authorized to administer own TANF programs under PRWORA since 1996.
- Tribal IV-D – Tribal IV-D programs authorized and operated by Tribes, pursuant to 45 CFR 309.01.

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Why are Tribal jurisdictional issues important?

- 565 recognized Tribes in U.S. as of 2010 (25 USC.479a-1) (Federal Register October 1, 2010)
- 107 recognized Tribes in California
- 52 Tribal IV-D programs in U.S.
- 1 Tribal IV-D program in California (Yurok Tribe in start-up process)
- 15 Tribal TANF programs in California
- 80 plus Tribal Courts in U.S.
- 20 Tribal Courts and/or Tribal Court coalitions in California
- Unlimited number of Tribal employers/employees on and off Tribal land

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- IV-D agencies have an obligation to equally provide services to all children and families, including those on Tribal land even where Tribes are not cooperative. *Howe v. Ellenbecker* (1991) 774 F Supp 1224
- With the increasing number of Tribal Courts, particularly family courts that have concurrent jurisdiction, State Courts, State agencies, the Legislature, and members of the Bar need to develop policies and procedures to manage the inherent conflicts that will arise.

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How do you know you have a possible Tribal case?

1. One or both parents or the child is Native American and/or lives on Tribal land.
2. An obligor works for a Tribal employer.
3. The Tribal Court has jurisdiction over the case in a pending action, or you are in a non-P.L. 280 state.
4. The Tribal Court has issued a child support order.
5. The children are receiving Tribal TANF.

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INTERGOVERNMENTAL - NOT INTERSTATE

- Tribes are sovereign entities.
- Procedures, agreements, and policies will vary from Tribe to Tribe.
- Need to be flexible at the local level.

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GET TO KNOW

- Familiarize yourself with each Tribe's history, culture, government, court, etc.
- If available, visit each Tribe's website.



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JURISDICTION

- The Indian Child Welfare Act (ICWA) does not apply in child support cases, so there is no Tribal preemption.
- P.L. 280 is a federal law, enacted in 1953, which transferred civil and criminal jurisdiction from the federal government to some states' Indian Country.
- California was one of the six mandatory P.L. 280 states, so here the State has jurisdiction over Tribal members and to civil actions arising in Indian Country.

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JURISDICTION (continued)

- P.L. 280 civil jurisdiction has been interpreted to be concurrent with Tribal jurisdiction, so Tribal Courts may also address family law matters.
- Exceptions:
 - Limited 280 – jurisdiction (optional state/disclaimer)
 - Retrocession (return of jurisdiction by state)
 - Case law – IOWA v. Whitebreast 409 N.W.2d 460 (regulatory)

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SERVICE

- If P.L. 280 state, can serve process in Indian Country.
- If state has jurisdiction over a civil matter, and the parties reside on Tribal land, then it appears service of process on a Tribal member on Tribal land is not prohibited. Nevada v. Hicks (2001) 533 U.S. 353
- Even if service of process on Tribal land by state agencies is valid, we should respect Tribal sovereignty by:
 1. Developing cooperative agreements with Tribes regarding service;
 2. Using Tribal law enforcement for service;
 3. Service by mail.

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TRIBAL CIVIL JURISDICTION

If P.L. 280 state (re CA), concurrent jurisdiction. In non-P.L. 280 state, the Tribe has the inherent sovereign powers of any sovereign as to internal matters, not external (issue passports), limited by Treaties and express Congressional legislation.

Subject matter and personal jurisdiction of Tribe will be based on a factual analysis and the specific Tribe's statutes/ordinances.

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TRIBAL COURT ORDERS

- Tribal child support orders are similar to other “state” orders. They are entitled to full faith and credit, retain CEJ, and can be registered and enforced in state Court. FFCCSOA 28 USC 1738B
- If multiple state/Tribal orders, states follow UIFSA to determine controlling order. (CA. FC § 4911)
- If a Tribe continues to have CEJ, any modification of the Tribal child support order needs to be filed in Tribal Court.
- Tribal income withholding orders issued by the Tribal Court are binding on a state’s employers. (UIFSA, in CA. FC § 5230.1)

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APPEARANCE IN TRIBAL COURT

- Appearances in Tribal Court are no different than appearances in other foreign courts (sample pleading, p. 31 – 35).
- Call the Court to determine rules for appearances and process. Every Tribal Court has its own rules and procedures.
- Generally:
 - Have to review their codes;
 - Become a member of their Bar;
 - Follow Tribal Court procedures as in any other court.

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ENFORCEMENT – TRIBAL EMPLOYEE/TRIBAL EMPLOYER

- State courts have no jurisdiction over Tribes or Native American property, such as Tribal land or trust money. (28 USC 1360(b))
- In California, trust money/per capita is income for purposes of determining child support obligations and loses its identity after distribution.
County of Inyo v. Jorge (1991) 227.C.A.3d 487
Marriage of Purnel (1997) 52 C.A. 4th 527

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ENFORCEMENT – TRIBAL EMPLOYEE/TRIBAL EMPLOYER (continued)

- Issue becomes, have order, how to collect?
 - Direct enforcement – many Tribes/Tribal employers honor IWOs
 - If Tribal IV-D – use process similar to UIFSA interstate process (Tribal Code, if available)
 - If Tribal Court – registration to enforce
 - If no Tribal Court – cooperative agreement with Tribe
 - If all else fails – OSC-C/PL 270

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PER CAPITA (Individual Distribution of Tribal Revenue)

- 28 USC 1360(b) – P.L. 280 does not extend to encumbrance of personal property of individual Indian. (See Jeff)
- 28 USC 1360(c) – States are required to give full force and effort to Tribal ordinance or custom (re Per Capita Ordinance).
County of Inyo v. Jeff (1991) 227 C.A. 3d 487
In Re Marriage of Purnel (1997) 52 C.A. 4th 527
IRMO Jacobsen (2004) 121 C.A. 4th 1187
- 45 CFR 115.001 – For trust funds, Secretary of Interior (BIA) is administering the duties, or if a Tribe is administering program previously with Secretary of Interior. Some IIM accounts could have per capita revenue.

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PER CAPITA (Individual Distribution of Tribal Revenue) (continued)

- 45 CFR 115.601(b)(1) – For Individual Indian Monies (IIM), an Order from a Court of Competent Jurisdiction for child support can encumber the account.
- 45 CFR 115.002 – Definition of Individual Indian Money (IIM) - Appears to be trust assets and can include per capita.
- 45 CFR 115.002 – Definition of Court of Competent Jurisdiction is a federal or Tribal Court with jurisdiction. If there is no Tribal Court with jurisdiction, then state Court with jurisdiction.
- Tribal ordinance can allow.
 - Hoopa Tribal Per Capita Ordinance will only enforce for Tribal entity.
 - Greenville Rancheria in Plumas County will honor IWO against per capita.

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TRIBAL IV-D PROGRAMS – 45 CFR PART 309

- Presently 42 Tribal IV-D programs in operation and 10 Tribes in the start-up phase. (See interactive list at OCSE website.)
- Allows for use of Tribal customs (Tribal common law). 45 CFR 309.90(b), paternity without GTs. In CA, Customary Adoptions P. 370-371.
- Does allow for recoupment to Tribe or State IV-D (not mandatory). 45 CFR 309.115
- Also provides intergovernmental procedures for cooperation between Tribal IV-D, state, and other Tribal IV-D agencies. (Not aware of any Tribes that have adopted UIFSA; Tribes are not required to adopt.)

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TRIBAL IV-D PROGRAMS – 45 CFR PART 309 (continued)

- Provides for recognition of child support orders issued by Tribes, Tribal organizations, and states under the Full Faith and Credit for Child Support Orders Act. 28 U.S.C. 1738B
- In-kind support (non-cash) allowed, but must have cash equivalency and cannot be used to satisfy assigned support. 309.105(a)(3)
- Comparison chart of State and Tribal IV-D requirements. (P. 433 – 437)

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MEDICAL SUPPORT

- Health Insurance – No Tribal IV-D requirement that Tribal child support orders include medical support order, but also no prohibition, so Tribal Court may issue health insurance orders.
- If child is entitled to the services of Indian Health Services, that satisfies health insurance requirement, even though it is not health insurance, and obligor does not have to provide through his/her employer even if it is available through is/her employer at a reasonable cost.
- Indian Health Service availability satisfies requirement to obtain health insurance order even when Medicaid received. PIQ 94-06

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LOCAL AGREEMENTS

- Our local child support agency has an agreement with the Hoopa Tribal Court and the Karuk Tribal Court for the efficient coordination and sharing of information regarding the establishment and enforcement of child support orders, including the appearance by our attorneys and/or staff in the Tribal Court telephonically. P. 372-375
- Our welfare department has an agreement regarding transfer of welfare cases. P. 104-112

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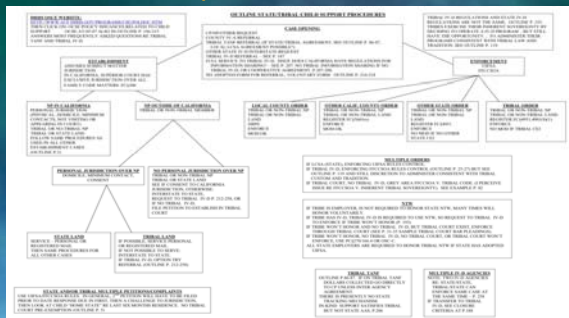
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Resources (1) WEBSITES

- OCSE <http://www.acf.hhs.gov/programs/cse>
then click on "Tribal"
- Tribal TANF <http://tribaltanf.cdss.ca.gov>
- CA ICWA <http://childsworld.ca.gov>
- CFR (45) <http://ecfr.gpoaccess.gov>
- P.L. 280 <http://aidaino.net>
- Hoopa Tribe <http://hoopa-nsn.gov>
- Yurok Tribe <http://yuroktribe.org>
- CDCSS (secure) <https://central.cdss.ca.gov>

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219 - 227	DCL 06-03, Tribal IV-D programs contact information
228 - 254	IM 05-06, Building a Tribal IV-D program - A guide to the start-up application process

For your information, if you have a Tribe in your county to pass on or if you are interested in the process.

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George Chance, Tribal Liaison

STRATEGIES FOR WORKING WITH TRIBAL
COMMUNITIES

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- The California Department of Child Support Services (DCSS) collaborates with the Child Support Directors Association and forms the *Working Effectively With Tribal Governments* workgroup (2009)
- A major element in establishing government to government relations with tribes is recognition of their inherent right to self-rule (Tribal sovereignty); promotion of mutual respect and trust is a long term commitment
- DCSS commits to establishing open and respectful communication with tribal governments; education and understanding are key to positive state – tribal relations

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- DCSS establishes Tribal Liaison position
- Provides statewide IV-D program leadership in building and strengthening relationships, trust, and mutual respect with tribes/tribal organizations
- Supports coordination among local child support agencies (LCSA) and Tribal TANF programs in support of high quality, coordinated, and efficient service delivery to tribal families
- Disseminates educational and other tribal resource material
- Coordinates the development and delivery of tribal training curriculum
- Assists with the development of DCSS tribal policy positions

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- DCSS requires each LCSA to identify a Tribal Liaison to serve as a local expert on tribal matters and to promote cooperative relations with tribes and tribal organizations; encourages Tribal Liaison to:
 - Convene regular meetings to discuss areas of mutual concern
 - Identify common goals, share experiences, learn from each other

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▪ Cooperative Agreement/Memorandum of Understanding between state/local IV-D program and a tribal government can be helpful in the coordination of services to tribal children and families

- Tribal IV-D
- Tribal TANF
- Tribal Court



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Questions?

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