

Judicial Guidance on Learning About Pending Tribal Court Cases or Orders

How do I learn whether the parties before me have a pending case in tribal court or a relevant tribal court order?

The subject matter jurisdiction of each tribal court is defined by the tribe that establishes it. The extent to which tribes may exercise personal jurisdiction over individual litigants is defined in a body of federal law. As a general rule tribes may exercise full civil and criminal jurisdiction over Indians within the tribe's reservation or trust lands ("Indian Country" (link to 18 U.S.C. 1151)). Generally, tribes have no criminal jurisdiction over non-Indians except for "special domestic violence criminal jurisdiction." (link to DV and Tribal Communities benchguide pp. 7-8) Tribes may exercise civil jurisdiction over non-Indians generally only where the non-Indians have entered into consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or welfare of the tribe.

Currently tribal courts in California are hearing a variety of case types including child abuse and neglect cases; child support; conservatorships; domestic violence and protective orders; domestic relations (i.e. divorce and dissolution, etc.); guardianships; contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatement, and possession of tribal lands; name changes; and civil harassment protective orders. For a directory of tribal courts in California, see <http://www.courts.ca.gov/14400.htm>, and for a map of where they are located, see <http://www.courts.ca.gov/programs-tribal.htm>.

In order to avoid conflicting tribal and state court orders, judges in California are reaching out to tribal court judges to develop cooperative relationships so that they can share information about pending cases. To learn more about these cooperative relationships, see link to forum page <http://www.courts.ca.gov/3065.htm> and resources for tribal/state collaborations <http://www.courts.ca.gov/17422.htm>.

In tribal court, tribal judges may simply ask the parties whether they have cases pending on the same matter in state court. In state court, state court judges may simply ask the parties whether they have cases pending on the same matter in tribal court. In family cases, the court may direct family court services to inquire of the tribal court whether there is a pending tribal court case or order. In child welfare cases, some courts have a standing order to allow for the sharing of this information between tribal and county social services. In other types of cases, the courts may ask their court clerks to inquire of the other court.

Guide

- Judicial decision makers can act only on the information they are provided by litigants, attorneys, court staff, or other participants in the court process.
- Consider improving information sharing in the following ways:
 - ✓ Through a protocol with a tribal court in your county
 1. As part of an existing protocol, the court case manager, case coordinator, or clerk, when researching to find related cases, can also seek information from the tribal court in your county to see if the parties have a pending tribal court case or has issued an order. The protocol can then address how to allocate jurisdiction, transfer jurisdiction, or defer to the tribal court jurisdiction if it has already exercised jurisdiction.
 - ✓ Through the use of technology:
 1. For cases involving protective orders, search the California Courts Protective Order Registry, which is a statewide repository that provides complete, accessible information to judicial officers and law enforcement on restraining and protective orders. (As of the writing of this, 32 counties and 11 tribal courts are using this database.)
 2. Searching case registries of actions if the court has a protocol for obtaining information on pending tribal court cases