Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 14, 2012

Title
Judicial Council–sponsored Legislation: Tribal Court Civil Judgment Act

Rules, Forms, Standards, or Statutes Affected
Amend Code Civ. Proc., § 1714 and add, §§ 1730–1740

Recommended by
Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
California Tribal Court/State Court Forum
Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Family and Juvenile Law Advisory Committee
Hon. Kimberly J. Nystrom-Geist, Cochair
Hon. Dean T. Stout, Cochair

Agenda Item Type
Action Required

Effective Date
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Executive Summary

The Policy Coordination and Liaison Committee, California Tribal Court/State Court Forum, Civil and Small Claims Advisory Committee, and Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council sponsor legislation to clarify and simplify the process by which tribal court civil judgments will be recognized and enforced in California—the Tribal Court Civil Judgment Act. Currently, tribal court judgments may be recognized under the provisions of the Uniform Foreign-Country Money Judgments Recognition Act (Code of Civ. Proc., §§ 1713–1724). Proceedings to obtain enforcement under that act can

be lengthy and costly. This proposal would provide a discrete procedure for recognizing and enforcing tribal court civil judgments, providing for swifter recognition of such judgments while continuing to apply the principles of comity appropriate to judgments of sovereign tribes.

Recommendation

The Policy Coordination and Liaison Committee, California Tribal Court/State Court Forum, Civil and Small Claims Advisory Committee, and Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council sponsor legislation to amend the Code of Civil Procedure by adding the Tribal Court Civil Judgment Act to provide discrete procedures for state courts' recognition and enforcement of civil judgments issued by tribal courts.

The text of the proposed legislation is attached at pages 15–21.

Previous Council Action

The council has not previously taken any action in this area of law.

Rationale for Recommendation

Background and legal framework

California is home to more people of Indian ancestry than any other state in the nation. At this time, there are 111 federally recognized tribes in California, second only to the number of tribes in the state of Alaska. Each tribe is sovereign, with powers of internal self-government, including the authority to develop and operate a court system. Currently, 18 tribal courts are operating in California, and several other courts are under development.

The California Tribal Court/State Court Forum was established by former Chief Justice Ronald M. George in May 2010. The forum brings together tribal court and state court judges from throughout California.[1] The charge of the forum is "to develop measures to improve the working relationship between California's tribal and state courts and to focus on areas of mutual concern." Over the last two years, the forum has identified the enforcement and recognition of tribal court judgments in civil actions as a priority area of concern.

Currently, tribal courts in California are hearing a variety of case types, including child abuse and neglect cases; domestic violence and protective orders; domestic relations (i.e., parentage and dissolution) cases; contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatements, and possession of tribal lands; name changes; and civil harassment protective orders.

[1] In addition to chief judges of tribes throughout the state, the forum includes the chairs of several Judicial Council advisory committees, including the chair of the Civil and Small Claims Advisory Committee and a cochair of the Family and Juvenile Law Advisory Committee.

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"). Tribes have no criminal jurisdiction over non-Indians. Tribes may exercise civil jurisdiction over non-Indians generally only when 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 the health or welfare of the tribe.

Although tribes are recognized as sovereign, they are not "states" for the purpose of the full faith and credit requirements of Article IV of the U.S. Constitution. Under the full faith and credit requirements, California courts must recognize and enforce the judgments of the courts of another state as if they had been issued by a California court, generally with no inquiry into the fairness of the underlying proceedings. Judgments from the courts of foreign sovereigns, on the other hand, are accorded the stricter scrutiny applied under the principles of comity.

There is general consensus (but no U.S. Supreme Court authority) that tribes are not covered by the federal full faith and credit statute (28 U.S.C. § 1738). In *Wilson v. Marchington* (9th Cir. 1997) 127 F.3d 805, the Ninth Circuit Court of Appeals determined that, as a general rule, the recognition of a tribal court order within U.S. federal courts was instead governed by the principles of comity. In some areas, particularly laws dealing with children and family issues, federal and state statutes provide that tribal court judgments and orders are to be accorded full faith and credit.[2] Where no such specific statutory mandate exists, the rule is that civil tribal court orders are entitled to comity. It is to these judgments and orders—those recognized under the principles of comity—that the proposed legislation is directed.

Currently in California, parties seeking to have a tribal court judgment recognized by a state court must proceed under the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), found at sections 1713–1724 of the Code of Civil Procedure. Tribal court judges

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[2] Federal and state laws mandate full faith and credit for and between tribal and state courts in specific types of actions as described below, all of which have been expressly excluded from the scope of the proposed legislation:

Indian Child Welfare Act requires full faith and credit for tribal court custody orders concerning Indian children. ICWA also addresses the issue of jurisdiction over child welfare proceedings involving Indian children (25 U.S.C. § 1911(d));
Violence Against Women Act mandates full faith and credit for domestic violence protection orders (18 U.S.C. § 2265; see also the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, § 6400 et seq.));
Child Support Enforcement Act mandates full faith and credit for child support orders (28 U.S.C. § 1738 B);
Uniform Child Custody Jurisdiction and Enforcement Act mandates full faith and credit for child custody orders (Fam. Code, § 3404); and
Uniform Interstate Family Support Act (Fam. Code, § 4900 et seq.) provides that tribes are to be treated as states for purposes of support orders (child and spousal) and for parentage determinations.

report that these provisions are inadequate and overly burdensome. The UFCMJRA does not cover the entire range of issues currently being dealt with in California's tribal courts but is instead limited to money judgments (although not those for fines, penalties, or taxes) and some family law judgments. In addition, the UFCMJRA process can be very lengthy and time-consuming. Tribal court judges report that, in some instances, matters that have been fully litigated in tribal court must essentially be relitigated in state court in order to obtain recognition under these provisions. This relitigation adds significantly to the costs to both litigants and the court systems and is an inefficient and ineffective use of judicial resources. The recommended legislation is intended to simplify and streamline the procedures to be used in recognizing tribal court civil judgments, without changing the legal standards the courts are to apply under the current law.

Summary of proposal

The proposed Tribal Court Civil Judgment Act (proposed Code Civ. Proc., §§ 1730–1740) applies to judgments issued by a court or other tribunal of any federally recognized Indian tribe throughout the country. (Proposed § 1732(a)(5).[3])

The proposed act is intended, to the extent possible, to parallel the Sister State Money Judgments Act (§§ 1710.10–1710.65) procedurally, while still applying the principles of comity rather than the full faith and credit accorded to sister state judgments. The act applies to civil judgments and orders by the tribal courts for money judgments (including money judgments in proceedings to enforce civil regulatory laws), for possession of real or personal property, for sale of real or personal property, or requiring performance of or forbearance from performing an act. (Proposed § 1732(a)(6).) However, the proposed act expressly exempts judgments in actions encompassed within the Indian Child Welfare Act, the Violence Against Women Act, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, the Child Support Enforcement Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act because procedures for recognizing such judgments are already in place. (See proposed § 1731(b).) Judgments for taxes and fines are also excluded, as are judgments in proceedings that would, if conducted in California, be brought under the Probate Code.[4] (*Ibid*.)

As proposed, applications for recognition of tribal court judgments would be filed in the superior court of the county in which the respondent resides or owns property or, if no respondent is a resident of California, in any county in the state. (Proposed § 1733.) The application must be made under penalty of perjury and include all the information required in an application for recognition of a sister state judgment, including name and address of the tribal court; name and address of the petitioner; name and address of the respondent, and, if a business entity, certain other information; a statement that the action is not barred by the applicable statute of limitations; a statement that no stay of enforcement is in effect in the tribal court; a statement of

[3] All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

[4] The California Tribal Court/State Court Forum is currently working with the Probate and Mental Health Advisory Committee on issues concerning recognition of judgments and orders in such proceedings.

the monetary relief that remains unpaid, if any, and any applicable interest calculation; and a statement that no action based on the tribal court judgment is currently pending elsewhere. (Proposed § 1733.1(b).)

Because the proposed act would also provide for recognition and enforcement of nonmonetary tribal court judgments, the application must also include a statement of the terms and provisions of such relief as provided in the tribal court judgment and a statement that such relief is not barred by state law. (Proposed § 1733.1(b)(7).)

All applications must be accompanied by an authenticated copy of the judgment, a copy of the tribal court rules of procedure, and a declaration by the court clerk, applicant, or counsel that the case resulted in the entry of the judgment in compliance with those rules. (Proposed § 1733.1(c).)

After filing the application, the applicant must serve a notice of filing (on a form to be developed by the Judicial Council) on the respondent, along with a copy of the application and other papers filed. Service must be in the manner provided for service of summons. (Proposed § 1733.2.) The respondent has 30 days from service of the notice to file any objections. (Proposed § 1735.)

If no objections are filed within the requisite time period, judgment must be entered by the superior court based on the provisions and terms of the tribal court judgment and will have the same effect as any other civil judgment, order, or decree issued by the superior court. (Proposed § 1734.)

If an objection is filed within the 30 days, the court is to set the matter for hearing within 45 days from the date the objection is filed and set a time for replies. (Proposed § 1735(a).) The objections that may be considered by the court are stated in the proposed statute at section 1735(b) and (c). At the hearing, the applicant has the burden of showing that the application complies with section 1733 and hence that the order falls within the purview of the act. The responding party has the burden of proving that the grounds for the objections exist. (Proposed § 1735(d).)

The proposed legislation also contains sections providing for stays of enforcement (proposed § 1736); providing that an action to enforce a tribal judgment may be initiated only at a time when the tribal judgment is effective within the tribal territory or within 10 years from issuance, whichever is earlier (proposed § 1737); and permitting the superior court, in the presence of the parties, to contact a tribal court judge to attempt to resolve issues raised in the application or objections (proposed § 1738).

Comments, Alternatives Considered, and Policy Implications

Comments received

Precirculation comments. The proposal was circulated for comment three times. Before the formal circulation of the proposal by the Judicial Council's Policy Coordination and Liaison

Committee (PCLC), the forum sought input informally in March 2011. The forum circulated the proposal to all federally recognized tribal leaders in the state. The Administrative Office of the Courts Office of Governmental Affairs circulated the proposal to key legislative staff and lobbyists for organizations representing the bar (civil and criminal), business, tort reform, and consumer groups. The precirculation was not a formal circulation and had no set period of time for submission of comments. At that time, 10 comments were received, from Colorado River Indian Tribes, Elk Valley Rancheria, Rincon Band of Luiseño Indians, Shingle Springs Rancheria, and Tribal Alliance of Sovereign Indian Nations (an association of 10 federally recognized tribes in Southern California); sheriffs' offices in Los Angeles County, Imperial County, and San Diego County; the Academy of California Adoption Lawyers; and attorney Ronald Reiter. Later comments were also received on the circulated proposal from the Chicken Ranch Rancheria.[5]

The tribes that commented generally approved the proposal, although some asked that it be expanded in scope to include fines and penalties, and some requested that the legislation provide that the standard for recognizing tribal judgments in state court be full faith and credit rather than the current recognition under the principles of comity. The forum and advisory committees disagreed with these suggestions for the reasons stated in more detail in the discussion of these issues below. Several tribes also requested less substantive modifications, each of which was incorporated into the proposal.

The three sheriffs' offices that responded to the informal circulation were also generally supportive, although they raised some concerns regarding enforcement of orders and judgments under the proposed act, which are reported in the comment chart.

The Academy of California Adoption Lawyers opposed the proposal on the stated grounds that it would deprive state courts of jurisdiction in adoption, juvenile, guardianship, and other child custody proceedings and interfere with parental and guardianship rights protected under the Indian Child Welfare Act. The forum and advisory committees note, however, that the proposed legislation does not affect the jurisdiction of state or tribal courts in any way. The new provisions are procedural only, not jurisdictional. The scope of tribal court jurisdiction is determined by principles of federal and tribal law, and nothing in the proposed legislation would affect the existing jurisdictional landscape. Further, tribal judgments for which federal law requires that states grant full faith and credit recognition under the Indian Child Welfare Act and Child Support Enforcement Act are expressly exempted from the proposal, as are judgments for which state law provides recognition under section 3404 of the Family Code and orders and judgments in guardianship and conservatorship actions. (See proposed section 1731(b).)

[5] A summary of the comments received in response to the Invitation to Comment and the forum and advisory committees' joint responses is in the chart attached to this report at pages 22–69, titled *Pre-ITC Circulation: Recognition and Enforcement of Tribal Court Civil Judgments*.

Commentator Ronald Reiter raised concerns about the application of the act to judgments in actions arising from payday loans made by businesses operating under arrangements with tribes, which may not be subject to consumer laws because of tribal sovereignty. To the extent such arrangements are problematic, the forum and advisory committees note that the proposed act has no impact on the problem. Such judgments currently fall within the scope of the UFCMJRA, which provides a mechanism for the recognition and enforcement of money judgments from tribal courts. The forum and committees conclude that the legislation does not lessen the protections that a consumer in the circumstances described by the commentator would currently have. To the extent that the concerns raised specifically address sovereign immunity issues, those issues fall outside the scope of this proposal.

First invitation to comment. The PCLC circulated the proposal, revised to reflect many of the comments from the informal circulation, for sixty days, from July 1, 2011, through August 31, 2011—the standard amount of time for circulation, although not during the normal comment cycle. Special notice of the request for comments was provided to tribal leaders, administrative presiding justices, presiding judges, clerk/administrators and court executive officers, and local and specialty bar associations. Six comments, several of which were quite detailed, were received. Commentators were Lily Boyd, California Indian Legal Services, California State Association of Counties, Judge Michael Leverson of the Superior Court of Orange County, attorney Richard W. Nichols, and Stand Up for California.[6] A comment chart is attached summarizing these comments and the committees' and forum's responses.

Two commentators, Judge Leverson and attorney Nichols, opposed the proposal. Judge Leverson questioned the fairness of the tribal courts, where some judges do not have legal backgrounds and where tribal judges are making decisions concerning tribal lands and so may be interested in the outcome. However, the question of whether to recognize and enforce tribal judgments is outside the scope of this proposal. As noted above, it is established law that state courts are required to recognize and enforce tribal court civil judgments under principles of comity.

Attorney Nichols raised numerous concerns, as did other commentators, all of whom either agreed with the proposal if modified to address their concerns or took no position. The forum and advisory committees reviewed and considered each concern raised by the commentators. The principal concerns are addressed below.

Second invitation to comment. Two commentators objected that the comment period had been insufficient. In light of those concerns, the proposal was circulated for a second period, from October 5, 2011, through January 2, 2012. Two revisions were made in the proposal before this circulation, in response to comments received to the first invitation to comment, which were noted in the second invitation and underlined in the proposal.

[6] A summary of the comments and the forum and advisory committees' joint responses is attached beginning at page 59, entitled *LEG11-03: Recognition and Enforcement of Tribal Court Civil Judgments*.

Special notice was again provided to tribal leaders, administrative presiding justices, presiding judges, clerk/administrators and court executive officers, and local and specialty bar associations. Further comments were received from the Hoopa Valley Tribe, Robinson Rancheria Citizens Business Council, Shingle Springs Band of Miwok Indians, and the San Manuel Band of Mission Indians. All of these commentators agreed with the proposal.[7]

Principal issues and alternatives considered

All issues raised by the commentators were considered by the advisory committees and forum. Issues raised by multiple commentators were given heightened consideration. The major issues are described below.

1. Standard for recognition of tribal court judgments

Several tribal commentators requested that the act be expanded be provide that judgments from tribal courts be granted full faith and credit in state courts. The advisory committees and forum considered this request but concluded that it was outside the scope of the proposal, which is intended to be procedural only, to provide a better process for implementing current law in the state courts, but not to change that law. As noted above, the Ninth Circuit Court of Appeals held in *Wilson, supra*, 127 F.3d at p. 805, that the recognition and enforcement of tribal court orders in federal courts are governed by principles of comity. Hence the forum and advisory committees concluded that comity is, under the law as it now stands, the appropriate framework for the California state courts to recognize tribal judgments.

Several nontribal commentators sought modification of the proposal in the other direction, to require some stricter standard or place further restrictions on the way state courts would evaluate tribal court judgments. The forum and advisory committees concluded that this change also would be inappropriate in light of the *Wilson* holding. Comity has commonly been applied by states to tribal judgments and vice versa.[8] Comity is designed to facilitate intergovernmental cooperation, evidenced by the fact that if a "[judgment] was issued in a nation that abides by the rule of law and the court issuing the judgment has fair procedures, it is exceedingly rare for a United States court to refuse to enforce the foreign judgment."[9] The underlying reason behind this policy is that there is "no one particular set of procedures that embody due process."[10] This doctrine "is premised on the mutual respect that nations have for the ability of each nation to govern events there in accord with their own norms and procedures."[11] It is also based on the policy that litigants deserve finality.

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[7] These comments are included in the chart summarizing comments received in response to the pre-circulation invitation to comment at page 21.

[8] *See* Felix S. Cohen, *Cohen's Handbook of Federal Law* (Nell Jessup Newton et al. eds., ed. 2005) 660 [hereafter COHEN].

[9] *Id.* at p. 659.

[10] *Ibid.*

[11] *Ibid.*

One commentator asked for "[s]tronger guidelines for comity" or additional safeguards like those contained in the Tribal Law and Order Act (TLOA). First, the TLOA pertains only to criminal, not civil, cases. Second, only Congress can impose restrictions on Indian tribes, and in the civil context, Congress has acted and required only the conditions contained in the Indian Civil Rights Act (see 25 U.S.C. §§ 1301–1303 (2000)). State attempts to impose additional requirements, such as those contained in section 234 of the TLOA, would be inappropriate given the constitutional structure that vests such authority in Congress and would be inconsistent with Ninth Circuit precedent governing recognition and enforcement of tribal court orders. (See *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (2002) and *Wilson, supra*, 127 F.3d at p. 805.)

2. Reciprocity

The forum and advisory committees considered the question of whether a reciprocity clause should be included in the proposed legislation. If California state courts are to recognize judgments from tribal courts, should they do so only for judgments from those tribal courts that have procedures in place to recognize state court judgments? Because this proposal invokes principles of comity, the forum and advisory committees do not recommend that a reciprocity provision be included in the proposal.

Reciprocity is not currently required for California state courts to recognize tribal court civil judgments. The UFCMJRA grants comity to foreign-nation—including tribal—judgments without regard to reciprocity. The Ninth Circuit Court of Appeals held that the recognition and enforcement of tribal court orders under principles of comity do not require reciprocity. (*Wilson, supra*, 127 F.3d at pp. 811–12.) Although states that provide full faith and credit to tribal judgments—that is, enforcement without inquiry into the fairness of the underlying proceeding leading to the judgment—do tend to require reciprocity, full faith and credit is not the standard being applied here. States that provide for comity do not generally require reciprocity.[12] California law currently recognizes tribal court judgments under principles of comity. This proposal seeks only to institute a better judicial procedure for recognizing and enforcing tribal court civil judgments, not to change the standards for doing so.

The Ninth Circuit Court of Appeals is instructive in that it states that "[t]he question of whether a reciprocity requirement ought to be imposed on an Indian tribe before its judgments may be recognized is essentially a public policy question best left to the executive and legislative

[12] Comity is designed to facilitate intergovernmental cooperation. "[I]t is premised on the mutual respect that nations have for the ability of each nation to govern events there in accord with their own norms and procedures." (COHEN, *supra*, at p. 662.) Because state courts are legally required to recognize and enforce tribal court judgments and such recognition is appropriate given that they are courts of sovereign nations, with which state courts share jurisdiction, it would be inconsistent with the underlying principles of comity to precondition recognition and enforcement of orders on reciprocity.

branches" (*Wilson, supra,* 127 F.3d at p. 812), and hence, including such a provision in this proposal is outside the scope of the judicial branch proposal.

3. Scope of the Act

The delineation of the scope of the proposed act is encompassed in two provisions. First, section 1731 expressly states what the act does *not* cover. Some of the precirculation comments from tribes suggested that fines and penalties (expressly excluded by section 1731) should be included in the act. However, recognition of fines and penalties is precluded to the extent that they arise from criminal, rather than civil, actions and so are outside the scope of this proposal, which covers only civil actions.

The second provision that delineates the scope of the proposed act is section 1732(a)(6), defining tribal court judgment. Whether and how to limit the types of judgment that would be encompassed by the act was subject to much discussion and consideration. One alternative limited the act to only money judgments, in light of potential enforcement issues for, among others, unlawful detainer judgments and stay-away injunctions. However, the forum and advisory committees concluded that, given that federal common law mandates that state courts recognize and enforce tribal court orders as a matter of comity and that tribal courts in California are increasingly exercising their jurisdiction—and so issuing judgments—in many different types of civil cases, litigants need a clear and simple process by which those tribal court civil judgments can be recognized and enforced. The advisory committees and forum concluded that if the procedure is limited to money judgments, the costs to both litigants and the court systems associated with having to essentially relitigate judgments in all other actions would still be an undue burden on courts and litigants.

The forum and advisory committees initially circulated for comment a proposal that would define the tribal judgments covered by the act to include all written judgments, decrees, and orders of tribal courts in civil actions or proceedings that are final and enforceable by the tribe, and not otherwise expressly excluded. This definition would have included, among other things, all orders in family law matters not expressly excluded in section 1731, name change orders, and judgments enforcing tribal civil regulatory laws. However the forum and advisory committees also considered, and sought comments on, a somewhat more narrow definition that would limit application of the act to those types of judgments covered by the state's Enforcement of Judgments Law, as stated in Code of Civil Procedure section 680.010, for which enforcement procedures currently exist under state law. It is this final definition that was ultimately included in the recommended provisions. This definition is substantially broader than mere money judgments, but more limited than all civil judgments.

4. Due process concerns

Some commentators raised concerns that due process of litigants would not be met under the act, particularly because of what they viewed as an overly narrow definition of "due process."[13] The forum and committees considered this point but concluded that the proposed statute is consistent with current law.

Federally recognized tribes are sovereign nations within the geographic bounds of the United States. Their sovereign powers are inherent and not derived from the federal government. (*United States v. Wheeler,* 435 U.S. 313, at pp. 322–323). An important and inherent power of any sovereign nation is the ability to make and enforce its own laws. (*Id*. at 322; enforcing laws is an "exercise of retained tribal sovereignty".) Tribal court jurisdiction to adjudicate matters arising in Indian country is broad, encompassing all civil and criminal matters absent limitations imposed by lawful federal authority.

Under the Constitution, the authority to impose limits on tribal exercise of sovereignty is vested with the U.S. Congress. Congress has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA; 25 U.S.C §§ 1301–1303). The ICRA contains the only due process rights Congress has mandated tribes to provide to people appearing before their courts.[14] The fact that the ICRA-protected rights are not as extensive as constitutionally protected rights is intentional. "The legislative history of the ICRA indicates that these omissions reflect a deliberate choice by Congress to limit its intrusion into traditional tribal independence."[15] "In its efforts to promote tribal self-government, Congress affirmatively legislated on the issue, and since Congress has exercised its plenary power in the area, federal courts should decline from extending or implying other due process restrictions on tribes." (*Santa Clara Pueblo*, 436 U.S. 49, 72 (1978) holding that tribal courts are an appropriate and available forum to vindicate rights created by the ICRA.)

Notwithstanding the different due process requirements that exist in tribal courts, a large body of case law supports the proposition that state and federal courts should grant comity to the valid judgments of tribal courts. Under principles of comity, a court that is asked to recognize and enforce another court's judgment must satisfy itself of the essential fairness of the judicial proceeding and make due process findings. A court using the principles of comity may refuse to enforce a foreign judgment, or tribal judgment in this case, either because it was enacted through procedures the receiving court views as fundamentally unfair (including lack of personal or

[13] Proposed section 1732(a)(1):

> "Due process," for purposes of this act, means the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross examine witnesses and to present evidence and argument to an impartial decision maker.

[14] COHEN, *supra*, at pp. 959–960. (Note: tribes can include other rights in their constitutions.)

[15] *Id.* at p. 953.

subject matter jurisdiction of the rendering court), or because the judgment violates a strongly held public policy. (See *Wilson, supra*, 127 F.3d at pp. 811–813).[16])

The traditional notions of due process implicit in the comity doctrine should not be applied in such a strict sense to tribal courts. (*Wilson*, *supra*, 127 F.3d at p. 810, "special considerations arising out of existing Indian law merit some modification in the application of comity to tribal judgments. In synthesizing the traditional elements of comity with the special requirements of Indian law, we conclude that, as a general principle, federal courts should recognize and enforce tribal judgments."). The Ninth Circuit cautioned that "courts must also be careful to respect tribal jurisprudence along with the special customs and practical limitations of tribal court systems. Extending comity to tribal judgments is not an invitation for the federal courts to exercise unnecessary judicial paternalism in derogation of tribal self-governance." (*Wilson*, *supra*, 127 F.3d at p. 811.)

Several commentators also expressed concerns that the burden of proof outlined in the proposal did not comply with due process. The forum and advisory committees disagree, concluding that the structure is consistent with current law, which does satisfy due process requirements. Under UFCMJRA, a party seeking recognition of a foreign-country money judgment has the burden of establishing that the judgment is covered by that act. (Code Civ. Proc., § 1715(c).) When that burden has been met, a party resisting recognition has the burden of establishing the existence of a ground for nonrecognition. (Code Civ. Proc., § 1716(d).)

Similarly, under the proposed act, the party seeking to enforce a tribal court judgment has the initial burden of establishing that a tribal court judgment is entitled to recognition under the act by providing certain information, all of which must be in the application. (Proposed § 1733.1.) If no objections are filed, the clerk certifies that no objections have been received and a state judgment is issued based on the tribal judgment. (Proposed § 1734.) If objections are raised, the opposing party then bears the burden of establishing a ground for nonrecognition. This is the same burden that the parties currently have under UFCMJRA.

5. Contacts between judicial officers

As originally circulated, the proposed act allowed for state court judges, after notice to the parties, to contact the tribal court judge who issued the order to attempt to resolve certain issues raised in the applications or regarding the content or terms of the tribal court judgment. (Proposed § 1738(a).) Similar, and sometimes even broader, provisions exist in other states' procedures for recognition of tribal court judgments. This provision is intended to allow for expedited communication between the courts when needed and was requested by the tribal court judges. Several members of the advisory committees (and one commentator) expressed concern about ex parte contacts, even with notice provided to the parties. Additional concerns were raised about the lack of details regarding how that notice would be provided to the parties.

[16] This approach is also consistent with U.S. Supreme Court precedent that limits the basis for review of a judgment otherwise entitled to comity (see, e.g., *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895)).

Because such contacts are not unusual in certain child custody matters, the group looked to Family Code section 3410, part of the Uniform Child Custody Jurisdiction and Enforcement Act, and considered whether a similar provision regarding how such contacts are to be handled would be appropriate. The invitations to comment asked for specific comments on such a provision.[17]

The commentator who addressed this issue (California State Association of Counties) raised concerns about ex parte contacts between the courts and did not agree that this modification would address these concerns. The commentator pointed out that the Family Code allows such contacts because of strong state interest in the needs of children, interests that would not be present under this act.

Upon further consideration, the advisory committees and forum agreed with the commentator and modified the provision further, to allow for contacts between the courts, but to require the state court to allow the parties to participate in any such communications. (Proposed § 1738(b).)

Implementation Requirements, Costs, and Operational Impacts

Expected costs and operational impacts include necessary training for judicial officers and court staff in the new procedures and, eventually, new statewide forms. In addition, the procedures call for an expedited hearing schedule when objections are filed (within 45 days of the filing of the objections), which may affect civil calendars. Some of this impact will be offset by the decrease in complaints or petitions filed under UFCMJRA.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal supports Goal I (Access, Fairness, and Diversity) and Goal IV (Quality of Justice and Service to the Public) of the judicial branch strategic plan.

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[17] As included in the final circulation, section 1738, reads as follows:

> (a) The superior court may, after notice to all parties, attempt to resolve any issues raised regarding a tribal court judgment under section 1733.1 or section 1734 of this title by communicating with the tribal court judge who issued the judgment.
>
> (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on whether to recognize the tribal court judgment is made.
>
> (c) Communication between courts on court records and procedural matters may occur without informing the parties. A record need not be made of the communication.
>
> (d) Except as otherwise provided in subdivision (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
>
> (e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Attachments

1. Proposed amendments to Code of Civil Procedure, at pages 15-22
2. Chart of comments, Pre-ITC Circulation, at pages 22–69
3. Chart of comments, LEG11-03, at pages 70-129

Code of Civil Procedure, section 1714, would be amended, and sections 1730–1740 would be added to read:

Section 1714.

(a)* * *

(b) "Foreign-country judgment" means a judgment of a court of a foreign country.

~~"Foreign-country judgment" includes a judgment by any Indian tribe recognized by the government of the United States.~~

Section 1730. Tribal Court Civil Judgment Act.

Section 1731.

(a) This title governs the procedures by which the superior courts of the State of California recognize and enter tribal court judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this title, the California Code of Civil Procedure shall apply.

(b) This title does not apply to the following tribal court judgments:

(1) for taxes, fines, or other penalties;

(2) for which federal law requires that states grant full faith and credit recognition under Section 1911 of Title 25 of the United States Code (for custody orders concerning Indian children under Indian Child Welfare Act), Section 2265 of Title 18 of the United States Code (for protection orders under the Violence Against Women Act), Section 1738B of Title 28 of the United States Code (for child support orders under the Child Support Enforcement Act);

(3) for which state law provides for recognition under Section 3404 of the Family Code (for child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act); Section 4900 et seq. of the Family Code (for other forms of family support orders under the Uniform Interstate Family Support Act); or Section 6400 et seq. of the Family Code (for domestic violence protective orders), or

(4) for decedent estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court judgments that arise in proceedings that are or would be governed by the Probate Code in California.

(c) Nothing in this title shall be deemed or construed to expand or limit the jurisdiction of

either the State of California or any Indian tribe.

Section 1732.

(a) As used in this title:

(1) “Due process,” for purposes of this act, means the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decision maker.

(2) “Good cause” means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this title.

(3) “Applicant” means the person or persons who can bring an action to enforce a tribal court judgment.

(4) “Respondent” means the person or persons against whom an action to enforce a tribal court judgment can be brought.

(5) “Tribal court” means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including courts of Indian Offenses organized pursuant to Title 25, Part 11, of the Code of Federal Regulations.

(6) “Tribal court judgment” means any written judgment, decree, or order of a tribal court that (A) was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued; (B) is duly authenticated in accordance with the laws and procedures of the tribe or tribal court; and (C) is one of the following: (i) a money judgment (including judgment in a civil action or proceeding to enforce civil regulatory laws of the tribe), (ii) a judgment for possession of personal property, (iii) a judgment for possession of real property, (iv) a judgment for sale of real or personal property, or (v) a judgment requiring the performance of an act not described in subdivisions (i) to (iv), inclusive, or requiring forbearance from performing an act. As used in this section, “civil action or proceeding” refers to any action or proceeding that is not criminal, except for those actions or proceedings from which judgments and orders are expressly excluded in section 1731.

Section 1733.

(a) An application for entry of a judgment under this act shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this title pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court judgment amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

Section 1733.1.

(a) An applicant may apply for recognition and entry of a judgment based on a tribal court judgment by filing an application pursuant to section 1733.

(b) The application shall be executed under penalty of perjury and include all of the following:

(1) A statement setting forth the name and address of the tribal court that issued the judgment to be enforced and the date of the tribal court judgment or any renewal thereof.

(2) A statement setting forth the name and address of the party seeking recognition.

(3) (A) Where the respondent is an individual, a statement setting forth the name and last known residence address of the respondent.

(B) Where the respondent is a corporation, a statement of the corporation’s name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(C) Where the respondent is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and if it is a foreign partnership, whether it has filed a statement pursuant to Section 15800 of the Corporations Code designating an agent for service of process.

(D) Where the respondent is a limited liability company, a statement of the company’s name, whether it is a foreign company, and if so, whether it has filed a statement pursuant to Section 17060 of the Corporations Code.

Except for facts that are matters of public record in this state, the statements required by this paragraph may be made on the basis of the applicant's information and belief.

(4) A statement that an action in this state to enforce the tribal court judgment is not barred by the applicable statute of limitations.

(5) A statement, based on the applicant's information and belief, that the tribal court judgment is final and that no stay of enforcement of the tribal court judgment is currently in effect.

(6) If seeking recognition and entry of a money judgment, a statement of the amount of award granted in the tribal court judgment remaining unpaid, and if accrued interest on the tribal court judgment is to be included in the California judgment, a statement of the amount of interest accrued on the tribal court judgment (computed at the rate of interest applicable to the judgment under the law of the tribal jurisdiction in which the tribal court judgment was issued), a statement of the rate of interest applicable to the money judgment under the law of the jurisdiction in which the tribal judgment was issued, and a citation to supporting authority.

(7) If seeking entry of a judgment, order, or decree providing for relief other than monetary relief:

(A) A statement of the terms and provisions of such relief as provided in the tribal court judgment, order, or decree and the extent to which the responding party has complied with such terms and provisions; and

(B) A statement that the tribal court judgment is not barred by state law.

(8) A statement that no action based on the tribal court judgment is currently pending in any state court and that no judgment based on the tribal court judgment has previously been entered in any proceeding in this state.

(c) The following items shall be attached to the application:

(1) An authenticated copy of the tribal court judgment, certified by the judge or clerk of the tribal court;

(2) A copy of the tribal court rules of procedure pursuant to which the judgment was entered; and

(3) A declaration under penalty of perjury by the tribal court clerk, applicant, or applicant's attorney stating, based on personal knowledge, that the case that resulted in the entry of the judgment was conducted in compliance with the tribal court's rules of procedure.

Section 1733.2.

(a) Promptly upon the filing of the application, the applicant shall serve upon the respondent a notice of filing of the application to recognize and enter the tribal court judgment, together with a copy of the application and any documents filed with the application. The notice of filing shall be in a form prescribed by the Judicial Council and inform the respondent that the respondent has 30 days from service of the notice of filing within which to file objections to the enforcement of the judgment. The notice shall include the name and address of the applicant and the applicant's attorney, if any, and the text of sections 1734 and 1735 of this title.

(b) Except as provided in subdivision (c) of this section, service shall be made in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(c) If a respondent is the State of California or any of its officers, employees, departments, agencies, boards, or commissions, service of the notice of filing on that respondent may be by mail to the Office of the Attorney General.

(d) The fee for service of the notice of filing under this section is an item of costs recoverable in the same manner as statutory fees for service of a writ as provided in Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9 of Part 2, but the recoverable amount for such fee may not exceed the amount allowed to a public officer or employee of this state for such service.

(e) The applicant shall file a proof of service of the notice promptly following service.

Section 1734.

(a) If no objections are timely filed in accordance with section 1735, the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court judgment. The judgment shall be entered in the same manner and have the same effect and shall be enforceable in the same manner as any civil judgment, order, or decree of a court of this state.

Section 1735.

(a) Any objection to the recognition and entry of the tribal court judgment shall be served and filed within 30 days of service of the Notice of Filing. If any objection is filed within this

time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing must be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court judgment are the grounds set forth in subdivisions (b) and (c) of this section.

(b) A tribal court judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

(1) The tribal court did not have personal jurisdiction over the respondent.

(2) The tribal court did not have jurisdiction over the subject matter.

(3) The tribal court judge was not impartial.

(4) The respondent was not afforded due process.

(c) The superior court may, in its discretion, recognize and enter or decline to recognize and enter a tribal court judgment on any one of the following equitable grounds:

(1) The tribal court judgment was obtained by extrinsic fraud.

(2) The tribal court judgment conflicts with another final judgment that is entitled to recognition.

(3) The tribal court judgment is inconsistent with the parties' contractual choice of forum.

(4) Recognition of the tribal court judgment or the cause of action upon which it is based is against the fundamental public policy of this state or the United States.

(d) If objections have been timely filed, the applicant has the burden of establishing that the tribal court judgment is entitled to recognition under section 1733.1. If the applicant has met its burden, a party resisting recognition of the tribal court judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b) or (c) exists.

Section 1736.

The superior court shall grant a stay of enforcement if the respondent establishes one of the following to the superior court:

(a) An appeal from the tribal court judgment is pending or may be taken in the tribal court. Under this subdivision, the superior court shall stay state execution of the tribal court judgment until the proceeding on appeal has been concluded or the time for appeal has expired.

(b) A stay of enforcement of the tribal court judgment has been granted by the tribal court. Under this subdivision, the superior court shall stay enforcement of the tribal court judgment until the stay of execution expires or is vacated.

(c) Any other circumstance exists where the interests of justice require a stay of enforcement.

Section 1737.

An action to recognize a tribal court judgment or any renewal thereof shall be commenced within the earlier of the time during which the tribal court judgment is effective within the territorial jurisdiction of the tribal court or 10 years from the date that the tribal court judgment became effective in the tribal jurisdiction.

Section 1738.

(a) The superior court may, after notice to all parties, attempt to resolve any issues raised regarding a tribal court judgment under section 1733.1 or section 1734 of this title, by communicating with the tribal court judge who issued the judgment.

(b) The court must allow the parties to participate in the communication.

(c) A record must be made of a communication under this section.

Section 1739.

(a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3) applies to all actions commenced in superior court before the effective date of this title in which the issue of recognition of a tribal judgment is raised.

(b) This title applies to all actions to enforce tribal court judgments as defined herein commenced in superior court on or after the effective date of this title. A judgment entered under this act does not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this act.

Section 1740.

The Judicial Council shall adopt rules and forms as necessary to implement this title.

Pre-ITC Circulation
Recognition and Enforcement of Tribal Court Civil Judgments (Code of Civ. Proc. §§ 1730 –1739)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Academy of California, Adoption Lawyers by Alison Foster Davis President		I am writing as the President of the Academy of California Adoption Lawyers and the Academy of Family Formation Lawyers (ACAL/ACFFL, referred to herein as "the Academy"). The Academy strenuously objects to the Tribal Court Legislative Proposal as set forth in the Judicial Council's announcement of March 16, 2011, and is requesting support for these objections from the California Association of Adoption Agencies, the National Foster Parent Association, and Flexcomm, among others. The problems with the proposal are far reaching, and not obvious on the bill's face. Although most California tribes don't have tribal courts, that will not be the case for very long. California Indian Legal Services is in the process of establishing "regional courts" to ensure that every tribe in California has a tribal court. The process is nearly completed in the San Diego/Riverside area. If passed in its current form, this bill would give the ability to any tribe which has a	The proposed legislation does not affect the jurisdiction of state and tribal courts in any way. It is procedural, not jurisdictional. The scope of tribal court jurisdiction is determined by principles of federal and tribal law, and nothing in the proposed legislation would affect the existing jurisdictional landscape. In order to receive recognition and enforcement under the proposed legislation any order or judgment of a tribal court would have had to have been made in a case in which the tribal court had both personal and subject matter jurisdiction. Further, tribal judgments for which federal law requires that states grant full faith and credit recognition under the Indian Child Welfare Act and Child Support Enforcement Act are expressly exempted from the proposal, as are judgments for which state law provides recognition under Section 3404 of the Family Code. See proposed section 1731(b). Orders and judgments in guardianship and conservator actions are also expressly exempt. Id.

	Commentator	Position	Comment	Committee Response
			tribal court (which could soon be every tribe in California) to issue orders which would deprive state courts of jurisdiction in adoption, juvenile court, guardianship and other child custody proceedings. This would deprive many Indian and non-Indian birth parents, foster parents, guardians, prospective adoptive parents, and others, of an entire body of long-established protections under state and federal laws, as well as their Constitutional right to have their cases heard and determined in a state court of appropriate venue. Although the bill has some due process and fairness provisions, they only apply to whomever the tribe deems "respondents." Whether these protections, such as they are, would extend to adoptive parents, foster parents, or even children **would be up to the tribal court**. To put it another way, the tribal court would be empowered to decree that foster parents, legal guardians, and prospective adoptive parents are not "respondents," and are therefore not to be afforded the rights to which they are entitled under state law, and which may conflict with the customs of the	

	Commentator	Position	Comment	Committee Response
			tribe. Again, this deprives many non-tribal members of their rights to due process and opportunity to be heard at all, let alone heard in state court, and heard according to the laws of California, rather than those of the tribe. Under current law, state court proceedings regarding custody (including parental custody, guardianship, foster care, adoption, and termination of parental rights) of Indian children not domiciled within a reservation cannot be transferred to tribal jurisdiction over the objection of either parent. Under this new proposal, this protection would be gone. In fact, under this proposal, a non-parent who is a tribal member could "race" to file in tribal court, and thereby deprive both parents of the right to have their case heard in state court, under state laws. This would be true even if one of the parents is not a tribal member. Under current law, the protections of the UCCJEA and PKPA extend to ICWA cases. Under the new proposal, these protections would be gone. By racing to the tribal court, tribal members can force their opponents to	

	Commentator	Position	Comment	Committee Response
			travel to distant tribal courts to protect their legal interests in the custody of a child, rather than having the case heard in a state court venue that is local to the litigants and the children. Under current law, "tribal customary adoptions" are only available in juvenile court proceedings, and are specifically excluded from application to non-dependency adoptions. The new proposal requires full faith and credit to "**any** written judgment, decree, or order of a tribal court . . .duly authenticated in accordance with the laws and procedures of the tribe or tribal court." Thus, it would extend the ability of a tribe to grant a "tribal customary adoption" in any case, and would require the state court to give that order full faith and credit, because the protections of the UCCJEA would be gone. While the Academy understands and supports the tribe's desire to be self-governing, this proposal reaches far beyond that. This proposal gives tribal courts the ability to effectively govern non-Indians, and to do so in ways that contradict	

	Commentator	Position	Comment	Committee Response
			established protections of state and federal laws. This proposal absolutely will interfere with parental and other custodial rights guaranteed by those laws, including the existing ICWA. Although the Academy does not take official positions on matters unrelated to child welfare, it would appear from the face of the bill that other civil litigants would be subject to the same loss of protection of state laws and the right to have their cases heard in state court. To summarize, this bill is seriously flawed and subject to Constitutional attack on its face and as applied. Therefore, the Academy will vigorously oppose this bill unless it is amended to: 1) specifically and unequivocally exempt all child custody proceedings (as defined by ICWA) from the scope of the bill, and 2) specifically and unequivocally provide that the full faith and credit shall only be applied so as to affect the rights of tribal members who consent in writing to tribal court jurisdiction, and shall not be applied to any	

	Commentator	Position	Comment	Committee Response
			other persons. Thank you for your consideration of our concerns. We look forward to working with the other stakeholders on this matter.	
2.	Chicken Ranch Rancheria of Me-Wuk Indians of California Lloyd Mathiesen, Chairman Cindy L. Smith, Secretary of the Tribal Council Jamestown, California		RESOLUTION# 12-02-15-01 A RESOLUTION OF THE TRIBAL COUNCIL OF THE CHICKEN RANCH RANCHERIA OF ME-WUK INDIANS OF CALIFORNIA SUPPORTING THE INTRODUCTION AND PASSAGE OF LEGISLATION ENTITLED "TRIBAL COURT CIVIL JUDGMENT ACT." WHEREAS, under existing federal law, California State Courts, as a matter of comity, must recognize and enforce tribal court judgments, and WHEREAS, at the present time, there are no California Rules of Court or California Codes of Civil Procedure that establish a process by which State Courts recognize and enforce Tribal Court judgments; and	No response required.

	Commentator	Position	Comment	Committee Response
			WHEREAS, as a result, Indian tribes that go into State Court to have their Tribal Court judgment recognized and enforced by State Courts must file a new lawsuit in State Court and, in many cases, re-litigate the issues in State Court that were litigated in the Tribal Court; and WHEREAS, the re-litigation of facts and issues of law in State Court, previously litigated in Tribal Court costs Indian tribes needless time and money that they would not otherwise have to incur if State Courts had a summary procedure for the recognition and enforcement of Tribal Court judgments; and WHEREAS, there is a need to enact new provisions of the California Code of Civil Procedure that will establish a process by which State Courts can summarily recognize and enforce Tribal Court judgments; and WHEREAS, the Chemehuevi Indian Tribe has proposed legislation ("Legislation"), a copy of which is hereby incorporated by this reference as if set forth here in full and	

	Commentator	Position	Comment	Committee Response
			attached hereto as Exhibit A, which will accomplish this goal; and WHEREAS, the Legislation, as drafted, does not infringe on any tribe's right to seek Federal Court recognition of a Tribal Court judgment; and WHEREAS, the Legislation, as drafted, promotes tribal sovereignty by requiring State Courts to give recognition and enforcement to Tribal Court judgments in a manner similar to how State Courts recognize and enforce sister-state judgments; and WHEREAS, the enactment and adoption of said Legislation is in the best interests of the Indian tribes of the State of California because it will establish a summary procedure that will allow tribes, if they so desire, to go into State Court and have California State Courts recognize and enforce their Tribal Court judgments in an expeditious manner. NOW THEREFORE BE IT RESOLVED that based on the foregoing facts, the	

	Commentator	Position	Comment	Committee Response
			Chicken Ranch Rancheria of Me-Wuk Indians of California urges the California Judicial Council to support the introduction and passage of the Legislation, attached hereto as Exhibit A, by the California Legislature and request that the California Legislature introduce and pass the proposed Legislation. CERTIFICATION The foregoing Resolution was adopted at a regular meeting of the Tribal Council of the Chicken Ranch Rancheria of Me-Wuk Indians of California on February 15, 2012, with a quorum present, by the following vote: AYES: 3 NOES: 0 ABSENT: 2 ABSTAIN: 0 ATTEST: Lloyd Mathiesen, Chairman and Cindy L. Smith, Secretary of the Tribal Council	
3.	Colorado River Indian Tribes Colorado River Indian Reservation by Eldred Enas Tribal Council Chairman Parker, Arizona		The Colorado River Indian Tribes (Tribe) supports the efforts of the Judicial Council to clarify and simplify the process by which Tribal Court civil judgments are recognized by the State Courts of California, The Tribe	The forum and advisory committees note the general support of the proposal, but decline to expand it as proposed by this commentator. The Ninth Circuit, in *Wilson v. Marchington* (9th Cir. 1997) 127 F.3d 805, confirmed that,

	Commentator	Position	Comment	Committee Response
			has reviewed the draft Tribal Court Judgment Act (Act) prepared by the Judicial Council of California. The Tribe believes the Act ought to go farther and accord full faith and credit to Tribal Court civil judgments. However, the Tribe recognizes that the Act is a significant improvement on the current system in which Tribal Court civil judgments are treated in the same manner as judgments from the courts of foreign nations. The Tribe supports the Act but believes the it should be expanded to include all Tribal Court civil judgments, including those for taxes, fines and other penalties, for which full faith and credit is not already established by 25 U.S.C. 1911, 18 U.S.C. 2265, 28 U.S.C. 1738B or California Family Code Section 3404 or other law of the State of California or the United States. If you have any questions or if you require additional information or support from the Tribe, please do not hesitate to call the Tribe's Attorney General, Eric Shepard, at (928) 669-1271.	as a general matter, the recognition of a tribal court order within the United States courts was governed by the principles of comity and not subject to the full faith and credit requirement of the Constitution or 28 U.S.C. § 1738. The forum and advisory committees are recommending the proposed legislation only as a means of clarifying and streamlining the procedures for implementing current law, not as a means for substantively changing it. To the extent judgments issued in tribal court are in civil, not criminal actions, and result in the types of judgments covered by the state's Enforcement of Judgment Act, as set forth in Code of Civil Procedure section 681.010, they are within the scope of the procedures set forth within the proposal.
4.	Elk Valley Rancheria		The Elk Valley Rancheria, California, a	The forum and advisory committees note the

	Commentator	Position	Comment	Committee Response
	by Mike Mattz Vice-Chairman Cresent City, California		federally recognized Indian tribe (the "Tribe"), hereby responds to the Memorandum dated March 9, 2011 regarding a legislative proposal regarding recognition of California tribal court judgments by California courts. The Tribe initially reviewed the proposal to add provisions to the California Code of Civil Procedure ("CCP") to address judgments issued "by any Indian tribe recognized by the government of the United States" referred to as the Tribal Court Judgment Act. Upon initial review, it appears that the proposal attempts to create a separate, hybrid process that melds the Sister-State Judgment and Foreign Country Money Judgment provisions of the CCP in an attempt to differentiate tribal court judgments from those of foreign countries. The Tribe appreciates the effort to provide a better procedure than exists currently under the Uniform Foreign-Country Money Judgments Recognition Act. **Background** Federally recognized Indian tribes are	general support of the proposal, but decline to expand it as proposed by this commentator. The Ninth Circuit, in *Wilson v. Marchington* (9th Cir. 1997) 127 F.3d 805, confirmed that, as a general matter, the recognition of a tribal court order within the United States courts was governed by the principles of comity and not subject to the full faith and credit requirement of the Constitution or 28 U.S.C. § 1738. The forum and advisory committees are recommending the proposed legislation only as a means of clarifying and streamlining the procedures for implementing current law, not as a means for changing it. Responses to comments on specific parts of the proposal are set forth below, next to the specific suggestion or concern.

	Commentator	Position	Comment	Committee Response
			neither states of the United States nor foreign countries. However, California law currently treats judgments rendered by tribal courts of federally recognized Indian tribes the same as those rendered by the courts of foreign countries. The Tribe finds it ironic that such treatment is afforded to tribal court judgments considering the status of Indian tribes under federal law and federal policy encouraging self-governance and self-determination. Tribal courts are playing an increasingly important role in the development of tribal self-government. Tribes can and do establish tribal courts as an exercise of their inherent sovereign rights of tribal self-government. The different approaches to the question of recognition of tribal court judgments reflect a wide range of opinion, Some states are highly respectful of tribal court civil judgments, Courts in New Mexico and Idaho provide full faith and credit to tribal court judgments. Others such as Oklahoma,	

	Commentator	Position	Comment	Committee Response
			have a limited form of "full faith and credit" that is less respectful of tribal court judgments than those of sister states, but is not quite the same as "comity." Others utilize the concept of "comity" much the same as is proposed here. The CCP provides for two different types of "foreign" judgments to be recognized in California courts, "Sister state judgments" are those judgments decrees, or orders of a state of the United States, other than California, which requires the payment of money. See CCP §1710.10(c). "Foreign country judgments" are judgments of a foreign country and includes a judgment by an Indian tribe. The Tribe would much prefer to be treated as a state for purposes of recognition of tribal court judgments, i.e., full faith and credit rather than the federal concept of comity. The Tribe appreciates the presumption of recognition of tribal court judgments in California courts unless a timely objection is filed and substantiated and believes that the proposal strikes a balance and reflects a cautious approach.	

	Commentator	Position	Comment	Committee Response
			Enforcement of Sister State Judgments The Tribe understands there is a procedure to obtain a judgment based upon a sister-state judgment that is set forth in CCP §§ 1710.10-1710.65. That procedure requires that a judgment creditor apply for entry of a judgment on the sister-state judgment by filing an application under oath that includes the information required by CCP § 1710.15. Upon application, the Tribe understands that the court clerk must enter judgment based on the application for the total amount shown in the application consisting of the unpaid balance under the sister-state judgment, interest, and the filing fee for the application. Notice of entry of judgment is then promptly served by the judgment creditor on the judgment debtor in the same manner as for service of a summons. Further, the Tribe understands that notice of entry of judgment must be in a form prescribed by the Judicial Council and must inform the judgment debtor that he or she has 30 days in which to move to vacate the judgment. Once satisfied, a judgment entered as described above has the same effect and may be enforced or satisfied in	

	Commentator	Position	Comment	Committee Response
			the same manner as an original money judgment of the California court. Enforcement of Foreign Money Judgments The Tribe understands that the procedure to obtain a judgment based on a foreign money judgment is set forth in the Uniform Foreign-Country Money Judgments Recognition Act (CCP§§ 1713-1724). Unlike a sister-state judgment, a foreign money judgment is not simply a registration procedure; rather it is a new civil action with limited defenses. The Tribe understands that the foreign money judgment is conclusive as between the parties, however, the judgment debtor may contest the judgment on limited grounds designed to test the foreign system to see that the due process rights that would have been available in a California action were available in the foreign action. In essence, the fewer rights afforded the defendant, the less conclusive the judgment will be in California. The Tribe understands that in any event, once the judgment is entered, it is enforceable for 10 years after the date the judgment is entered, with limited	

	Commentator	Position	Comment	Committee Response
			exceptions. **Comments Regarding Proposal** Here, the proposal appears to be based more on the principle of comity, a sovereign seeking to gain recognition of their judgments in the courts of another sovereign. However, unlike full faith and credit, comity is not a matter of right and the law (including the proposal) does not mandate that comity be applied in every case presented to the California courts. Thus, comity depends on voluntary action by each state court and is interpreted as each state court wishes to interpret it. The Tribe understands and appreciates the effort to treat tribal court judgments differently from those of foreign countries. The attempt to limit the grounds for attack are similar to other states' rules such as Arizona and North Dakota and have proven to be workable solutions because of the perception that tribal courts do not fit squarely within the concept of tribes as states for application of the full faith and credit clause.	

	Commentator	Position	Comment	Committee Response
			In light of the above, the Tribe offers the following specific comments: • The Tribe is concerned that the proposal does not address one of the most popular business forms in California - the limited liability company. o §1733(b) The application shall be executed under penalty of perjury and include all the following... (3) [add limited liability company provisions] • Nowhere in either the Sister-State Judgment or Foreign County Judgment provisions are the laws of the issuing sovereign or court rules of procedure required to be produced. They should not be required for recognition of a tribal court judgment. Should the rules (or lack thereof) or failure to comply with said rules indicate a violation of due process, the respondent will surely demonstrate said situation. The applicant should not be required to submit potentially voluminous documentation in support of the recognition of the judgment. o § 1733(c)(2) ~~A copy of the tribal court rules of procedure pursuant to which the judgment was entered.~~	The proposal was modified to include provisions re limited liability companies. The forum and advisory committees concluded that copies of the rules or written procedures should be required, because there is no single source where the state courts can locate the rules.

	Commentator	Position	Comment	Committee Response
			• The Tribe recommends that evidentiary standards be included to guide a superior court judge in considering a collateral attack on a tribal court judgment. For instance, the U.S. Supreme Court has held that a tribal court should in the first instance be the arbiter of its own jurisdiction. Similarly, the tribal court should be the arbiter in the first instance whether the tribal court's process (es) satisfies the requirements of the Indian Civil Rights Act, i.e., due process. It should not be sufficient that a respondent simply raises the issue(s) and sends the superior court on a "seek and destroy" mission whereby the superior court dissects tribal law, process or procedures. Rather, any such attack on a tribal court judgment should be supported properly with documentary proof - not simple conjecture and rhetoric. o § 1735(b) - A tribal court judgment shall not be recognized and entered if the respondent demonstrates by clear and convincing evidence to the superior court that at least one of the following occurred:	The burden of proof in the proposal is consistent with the UFCMJRA and federal law governing recognition and enforcement of tribal judgments. Under current statutory law, a party seeking recognition of a foreign-country money judgment, has the burden of establishing that the judgment is covered by the act. Code of Civ. Proc. Section 1715(c)). When that burden has been met, a party resisting recognition has the burden of establishing the existence of a ground for non-recognition. Code of Civ. Proc. Section 1716(d). Similarly, under principles of comity, courts must recognize and enforce tribal court judgments unless it can be shown that the tribal court did <u>not</u> afford due process. *Wilson v. Marchington*, 127 F.3d 805 (1977). The forum and advisory committees provide

	Commentator	Position	Comment	Committee Response
			1. The tribal court did not have personal jurisdiction over the respondent; 2. The tribal court did not have jurisdiction over the subject matter; 3. The tribal court judge was not impartial and that the lack of impartiality substantially affected the outcome of the case; or 4. The respondent was not afforded due process and that the lack of due process substantially affected the outcome of the case.	for a similar structure here. Under proposed section 1733.1, the party seeking to enforce a tribal court judgment has the initial burden of establishing that a tribal court judgment is entitled to recognition under the act by completing the application. If no objections are filed, the clerk certifies that no objections have been received and a state judgment is issued based on the tribal judgment. (Proposed section 1734) If objections are raised, then the opposing party then bears the burden of establishing a ground for nonrecognition. (proposed section 1733.) Further, as to the standard of proof, the forum and advisory committees have concluded that there is no need to include a specific standard of proof in the proposed statute. California law provides that the standard of proof is by the preponderance of the evidence, unless the law provides otherwise. (Evid. Code section 115) Because the proposal is silent on the standard of proof, to the extent the law already provides for a stricter standard for proving one or more of the objections, it will continue to apply, but otherwise the preponderance of the evidence standard will apply.

	Commentator	Position	Comment	Committee Response
			• There may be certain orders or judgments that federal law requires be recognized, e.g., Violence Against Women Act; Indian Child Welfare Act; and Full Faith and Credit for Child Support Orders Act. As such, the Tribe recommends a new section 1740 be added to the legislative proposal. o § 1740 This title shall not applied to those orders, decrees or judgments to which state or federal law requires that states grant full faith and credit recognition and such orders decrees or judgments shall be afforded full faith and credit. The Tribe appreciates the hard work that the judicial council has undertaken to prepare it. Thank you for the opportunity to review the legislative proposal and for your consideration of the Elk Valley Rancheria California's comments. Should you have any questions regarding these comments, please contact the undersigned at (707) 465-2600.	Such judgments are expressly exempted from the proposed legislation, at section 1731(b) and (c).

5.	Hoopa Valley Tribe Leonard E. Masten, Jr. Chairman Hoopa, California	A	RESOLUTION OF THE HOOPA VALLEY TRIBE HOOPA INDIAN RESERVATION HOOPA, CALIFORNIA RESOLUTION NO: 12-07 DATE APPROVED: FEBRUARY 21, 2012 SUBJECT: SUPPORTING THE INTRODUCTION AND PASSAGE OF LEGISLATION ENTITLED "TRIBAL COURT CIVIL JUDGMENT ACT" WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified by Act of Congress on October 31, 1988, and by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council; and WHEREAS: under existing federal law, California state courts, as a matter of comity, must recognize and enforce tribal court judgments, and WHEREAS: at the present time, there are no California Rules of Court of California Codes of Civil Procedure that establish a process by which State Courts recognize and enforce tribal judgments; and	

			WHEREAS: as a result, Indian tribes that go into state court to have their Tribal Court judgment recognized and enforced by State Courts must file a new lawsuit in State Court and, in many cases, re-litigate the issues in State Court that were litigated in Tribal Court; and WHEREAS: re-litigation of facts and issues of law in State Court, previously litigated in Tribal Court, costs Indian tribes needless time and money that they would not otherwise have to incur if State Courts had a summary procedure for the recognition and enforcement of Tribal Court judgments; and WHEREAS: there is a need to enact new provisions of the California Code of Civil Procedure that will establish a process by which State Courts can summarily recognize and enforce Tribal Court judgments; and WHEREAS: the Chemehuevi Indian Tribe has proposed legislation, a copy of which is attached to this Resolution, which will accomplish this goal; and WHEREAS: the legislation, as drafted, does not infringe on any tribe's right so seek Federal Court recognition and enforcement of a Tribal Court Judgment; and WHEREAS: the enactment and adoption of	

			said legislation in the best interests of the Indian tribes and the State of California because it will establish a summary procedure that will allow tribes, if they so desire, to go into State Court and have California State Courts recognize and enforce their Tribal Court Judgments in an expeditious manner. NOW, THEREFORE, BE IT RESOLVED, that, based upon the foregoing facts, the Hoopa Valley Tribe urges the California Judicial Council to support the introduction and passage of the legislation, attached hereto, by the California Legislature and request that the California Legislature introduce and pass the proposed legislation. CERTIFICATION I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which eight (8) were present, constituting a quorum, at a Regular meeting thereof, duly and regularly called, noticed, convened and held this 21st day of February, 2012; and that this Resolution was adopted by a vote of seven (7) FOR and zero (0) AGAINST, and that	

			said Resolution has not been rescinded or amended in any way. Dated this 21st day of February, 2012. Leonard E. Masten, Jr., Chairman Hoopa Valley Tribal Council Attest Darcy A. Miller, Executive Secretary Hoopa Valley Tribal Council	
6.	Robinson Rancheria Tracey Avila Chair Nice, California	A	RE: Support by the Robinson Rancheria Citizens Business Council of the Introduction and Passage of Legislation Entitled 'Tribal Court Civil Judgment Act" Our File No. 07-4.10 Dear Jenny: Attached please find Robinson Rancheria Citizens Business Council Resolution No. 02-29-2012-A, "A Resolution of the Robinson Rancheria Citizens Business Council Supporting the Introduction and Passage of Legislation Entitled "Tribal Court Civil Judgment Act." If you have any questions, please do not hesitate to contact me. Yours very truly, Lester J. Marston LJM/cf Enclosure cc: Tracey Avila, Chair	

			Mikaley Vasquez, Executive Secretary **Robinson Rancheria** Citizens Business Council Resolution No. 02-29-2012-A **A RESOLUTION OF THE ROBINSON RANCHERIA CITIZENS BUSINESS COUNCIL SUPPORTING THE INTRODUCTION AND PASSAGE OF LEGISLATION ENTITLED "TRIBAL COURT CIVIL JUDGMENT ACT.** **WHEREAS,** under existing federal law, California State Courts, as a matter of comity, must recognize and enforce tribal court judgments, and **WHEREAS,** at the present time, there are no California Rules of Court or California Codes of Civil Procedure that establish a process by which State Courts recognize and enforce Tribal Court judgments; and **WHEREAS,** as a result, Indian tribes that go into State Court to have their Tribal Court judgment recognized and enforced by State Courts must file a new lawsuit in State Court and, in many cases, re-litigate the issues in State Court that were litigated in the Tribal Court; and **WHEREAS,** the re-litigation of facts and	

			issues of law in State Court, previously litigated in Tribal Court, costs Indian tribes needless time and money that they would not otherwise have to incur if State Courts had a summary procedure for the recognition and enforcement of Tribal Court judgments; and **WHEREAS,** there is a need to enact new provisions of the California Code of Civil Procedure that will establish a process by which State Courts can summarily recognize and enforce Tribal Court judgments; and **WHEREAS,** the Chemehuevi Indian Tribe has proposed legislation ("Legislation"), a copy of which is hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit** A, which will accomplish this goal; and **WHEREAS,** the Legislation, as drafted, does not infringe on any tribe's right to seek Federal Court recognition of a Tribal Court judgment; and **WHEREAS,** the Legislation, as drafted, promotes tribal sovereignty by requiring State Courts to give recognition and enforcement to Tribal Court judgments in a manner similar to how State Courts recognize and enforce sister-state court	

			judgments; and **WHEREAS,** the enactment and adoption of said Legislation is in the best interests of the Indian tribes of the State of California because it will establish a summary procedure that will allow tribes, if they so desire, to go into State Court and have California State Courts recognize and enforce their Tribal Court judgments in an expeditious manner. **NOW, THEREFORE, BE IT RESOLVED** that, based upon the foregoing facts the Robinson Rancheria of Porno Indians urges the California Judicial Council to support the introduction and passage of the Legislation, attached hereto as Exhibit A, by the California Legislature and request that the California Legislature introduce and pass the proposed Legislation. **CERTIFICATION** The foregoing Resolution was adopted at a regular meeting of the Robinson Rancheria Citizens Business Council Tribal Council of the Robinson Rancheria of Porno Indians by the following vote: A YES: _4_NAYS: 0 ABSENT: 0 ABSTAIN: Tracy Avila, Tribal Chairperson ATTESTED: Michelle Iniguez, Tribal Secretary-Treasurer	

7.	Ronald Reiter Attorney Sacramento, CA		I wanted to raise a potential consumer protection concern regarding the proposal to expedite the recognition of tribal judgments in California courts. A number of tribes or even small bands of tribes have entered into a variety of business arrangements with nontribal members to conduct consumer transactions via the internet. The biggest problem about which I am aware concerns internet payday loan transactions. These transactions are not subject to state law because of tribal sovereign immunity. See, e.g., Ameriloan v. Superior Court (2008) 169 Cal.App.4th 81. Often, the businesses are operated entirely or almost entirely by nontribal, private players with only tenuous connections to the tribe and may even be conducted from premises located off reservations or other Indian-owned land. The problem has risen to the level where it has acquired the dubious name "rent-a-tribe" where private parties seek to operate free of state law restrictions by operating under the aegis of an Indian tribe or group for the payment of a fee or small slice of the business. My worry is that consumers are induced to	The kinds of judgments that the commentator refers to (pay-day loans) are matters which currently fall within the scope of the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA) (CCP §§ 1713 – 1724) which currently provides a mechanism for the recognition and enforcement of money judgments from tribal courts. The forum and committees conclude that the legislation does not lessen the protections that a consumer in the circumstances described by the commentator would currently have.

			enter transactions such as loans and may subject themselves through choice-of-forum and choice-of-law provisions to jurisdiction in a tribal tribunal often in a remote location within some other state for disposition of the matter according to the terms of an onerous contract that are perhaps expressly valid under tribal laws. These courts could deliver assembly line judgments that would then be easily enforceable in California under this proposal. Although there are grounds set forth in proposed section 1735(b) and (c) to question a judgment, California consumers are going to have no practical way of litigating the factual bases for a challenge (they weren't there) or affording to retain counsel to object to the issuance of a California judgment based on the tribal judgment during the period provided in the proposed bill. Some of the legal issues could be complex. For example, the proposal allows a challenge to the judgment on the ground that it or the cause of action on which it is based violates fundamental state policy. (Proposed sec. 1735(c)(4).) This suggests the possibility of assailing an obnoxious choice-of-law provision. But, the litigation	

			steps needed to mount a choice-of-law challenge involves many steps. (See *Klussman v. Cross Country Bank* (2005) 134 Cal.App.4th 1283.) This is way beyond the ken of consumers. Moreover, the grounds for challenge provided in the proposal may seem superficially reasonable but may pose problems. Note, for example, that a due process challenge would be limited to the proposed statutory definition (proposed sec. 1732(1)) dealing with aspects of procedural but not substantive due process. Also, the proposal appears to support choice of forum provisions by only allowing a challenge if the judgment was entered in a forum inconsistent with the forum stated in the contract. (See proposed sec. 1735(c)(3).) Does that mean that choice-of-forum provisions are to be recognized even if they would be unconscionable under other California law? How does the proposal square with CCP sec. 116.225 which invalidates contractual choice of forum provisions in consumer transactions subject to the small claims court's jurisdiction.	

			I suggest that the tribal judgment proposal contain an exception, as in CCP sec. 116.225, for actions arising out of an offer or provision of goods, services, property, or extensions of credit primarily for personal, family, or household purposes.	
8.	Rincon Band of Luiseño Indians by Bo Mazzetti Chairman Valley Center, CA		The Rincon Band of Luiseño Indians (the "Rincon Band") SUPPORTS UPON AMENDMENT the legislative proposal, referred to as the Tribal Court Judgment Act (the "Act"), to amend Section 1714(b) of Title 11 of Part 3 of the Code of Civil Procedure (Code) to clarify and simplify the process by which tribal court civil judgments will be recognized by the state courts of California and enforced the same as any state court judgment. Specifically, you requested our assessment of whether this legislation is necessary and if so, then for which types of tribal civil judgments. The legislation proposes to add a new Title 11.1 of Part 3 of the Code to govern the procedures for recognition of tribal court judgments of any federally recognized Indian tribe. However, Section 1731 (b) of the Act does not apply to tribal court judgments for taxes, fines, or other penalties	See response to comment 2 above. Further, the preclusion of fines, taxes and penalties from the provisions of the proposed legislation in no way affects the jurisidiction of any tribe. It simply precludes parties from using this particular set of procedures from obtaining state court aid in enforcing such orders or judgments.

			or for which any federal law requires states to grant full faith and credit. The exclusion of "taxes, fines or other penalties" from the Act is very problematic for the Rincon Band, and most likely objectionable to all federally recognized tribes, because the Act does not recognize tribal court judgments, orders or decrees in a civil action or proceeding to enforce the civil regulatory laws of a tribe that result in fines and other penalties. As a general matter, Indian tribal governments, and the Rincon Band in particular, assert legislative and adjudicatory authority over all lands and civil matters within the exterior boundaries of the Rincon Reservation (the "Reservation"). With growing populations adjacent to the Reservation and continued economic growth on the Reservation, the number of Rincon Tribal Court cases involving Indians and non-Indians is rapidly changing. The Rincon Band has enacted tribal ordinances authorizing tribal jurisdiction to protect the Reservation environment and the health, welfare and safety of the Rincon Band.	

			These tribal laws regulate animals, livestock, building codes, dumping, water quality and natural resource management on the Reservation. In many instances, the laws of the Rincon Band permit the Rincon Tribal Court to determine the civil penalty to be imposed for violations of tribal law, including legal remedies such as fines and penalties as well as equitable remedies such as the eviction and removal of individuals. The exceptions in Section 1731 (b) of the Act for taxes, fines and other penalties eliminate the discretion of the Rincon Tribal Court in determining the remedy appropriate under the circumstances of the case before it. In addition, the proposed exceptions nullify the legislative intent of tribal law to authorize Rincon Tribal Court judges to exercise discretion to fashion a remedy appropriate to the specific circumstances of each case. From this perspective, the exceptions in Section 1731 (b) fail to recognize the tribal sovereignty and right to self-government of the Rincon Band because they do not recognize the legislative authority of or the costs to the Rincon Band to recoup even very nominal amounts to discourage future violations and	

			off-set the costs of enforcement incurred by the Rincon Band in bringing an action in the Rincon Tribal Court. Without amending the proposed legislation, the recognition of tribal court judgments would not be enforced "the same as any state court judgment" because California state law, pursuant to Section 1710.10, recognizes sister state judgments that require the payment of money without imposing the same exception for "taxes, fines and other penalties." The Act preserves and extends the exceptions (for taxes, fines or other penalties) previously codified in Section 1715(b) applicable to foreign country judgments. Therefore, from this perspective, the exceptions set forth in the proposed legislation makes the Act unnecessary and much less useful as an effective means for tribal governments to enforce tribal civil regulatory laws off-reservation in so far as fines and other penalties are concerned. Therefore, we recommend that Section 1731 (b) of the Act be revised to read: This title does not apply to tribal court judgments for which federal law requires	

			that states grant full faith and credit recognition under 25 U.S.C. sec. 1911, 18 U.S.C. sec. 2265, 28 U.S.C. sec 1738B or California Family Code sec. 3404. Nothing in this title shall be deemed or construed to expand or limit the jurisdiction either of the State of California or any Indian tribe. However, the proposed legislation, even with the exceptions in Section 1731 (b), may prove to be very useful to tribal governments from two perspectives. First, recognition of tribal court judgments for trespass violations would assist the Rincon Band in enforcement of its Peace and Security Ordinance to exclude non-residents and non-tribal members from the Reservation and advance enforcement of trespass violations. The San Diego County Sheriff will not enforce Rincon Tribal Court decrees for trespass violations. From this standpoint, the Act would increase protections of Rincon Band members. In addition, the current split of authority, between the Ninth and the Eleventh Circuit Courts of Appeals, on whether federal courts have jurisdiction to	

			enforce tribal court judgments is pending writ of certiorari in the United States Supreme Court this term. The existence of this case, *Miccosukee Tribe* of *Indians* v. *Kraus-Anderson Construction Company*, increases the need for state legislatures to provide a mechanism to enforce tribal court judgments off-reservation.	
9.	San Manuel Band of Mission Indians James C. Ramos, MBA, Chairman Highland, California	A	Re: San Manuel Band of Mission Indians Letter of Support for Legislation for State Court Recognition and Enforcement of Tribal Court Judgments Dear Judicial Council of California: On behalf of the San Manuel Band of Mission Indians ("Tribe"), a federally recognized Indian tribe located on the San Manuel Indian Reservation in San Bernardino County, California, I write to express the Tribe's support for proposed legislation to recognize and enforce decisions issued by· tribal justice systems. A copy of the proposed legislation is attached. As you know, the development and recognition of effective tribal justice	

			systems in California have been historically hampered by the lack of dedicated resources at the federal, state and tribal level. Despite these challenges, many California tribes have worked diligently, sometimes over a decade, to develop justice systems to meet the social, political, economic and cultural needs of their communities. The increased presence and use of tribal justice systems in California naturally requires a vehicle by which litigants participating in these systems can enforce judgments issued in the course of a tribal judicial proceeding. Currently, the only vehicle to enforce a tribal court judgment is costly, time-consuming and generates no deference to validly-issued judgments. The Tribe believes this proposed legislation, though limited in scope, is a positive step toward improving the government-to-government relationship between California's tribes and the State of California. The proposed legislation respects tribal sovereignty and does not inhibit the administration of justice by state or tribal courts. We also understand that steps are already being taken to address	

			subject matter specifically excluded from recognition and enforcement, such as probate matters. We hope that the continued collaboration between the Tribal Court-State Court Judges Coalition will produce positive results. The San Manuel Band of Mission Indians appreciates your efforts to secure the passage of this important legislation. Sincerely, SAN MANUEL BAND OF MISSION INDIANS James C. Ramos, MBA Chairman JCR:MD:cjt	
10	Sherriff's Office County of Imperial by Steven Gutierrez Chief Deputy El Centro, CA		We have reviewed the attached legislative proposal along with San Diego County Sheriff's Office comments and will provide our agencies input below. This has been a big concern in Imperial County since we do have a Tribal Court within our jurisdiction. This topic has been contentious between the Tribal Court, State Courts, and the Sheriff's Office. The primary issue to clarify and simplify the	The queries from the commentator concerning entry of civil court judgments into Department of Justice databases go beyond the scope of this proposal in that they deal with enforcement procedures protective orders and restraining orders that are excluded from the provisions of this proposal, and are handled under other procedures.

			process how tribal civil judgments/orders would be recognized and enforced by the California State Courts is exactly what we our seeking. Upon reading the ***Tribal Court Judgment Act***, it is clear how some of the processes would work, but unclear in other areas. For example, a few questions that we have about the Act itself is the following: 1. Is it the State Courts that would solely be responsible for the proof of service/removal entries into the DOJ databases? 2. Would the Tribal police agencies be responsible for the civil service/proof of service/ data entry or data removal into state data bases or is it the local state law enforcement agencies responsibility? It seems like either party could receive, serve, enforce, and record the tribal civil judgments/order(s), but it is not clear who is the primary law enforcement agency that is mandated to complete the process. So, if we could receive information in reference to these questions we would also support ***Tribal Court Judgment Act!*** If I could be of further assistance, please	

			contact me using the information below.	
11	Sheriff's Department County of Los Angeles by Michael Torres (Ret.) Civil Advisor Section Civil Management Unit Los Angeles, CA		The March 16, 2011 draft of the Tribal Court Judgment Act codifies the registration of a tribal court judgment with the California Superior Court for enforcement. It is likely that most enforcement actions will be pursuant to a writ of execution. As written, the requirement for a statement indicating whether the respondent is a corporation or partnership appears to be too restrictive. The respondent may also be a limited liability company, unincorporated association, public entity or limited liability partnership. Section 699.520 of the Code of Civil Procedure governs the contents of a writ of execution and is more inclusive: "If the judgment debtor is other than a natural person, the ***type of legal entity*** shall be stated." Accordingly, the following is submitted for consideration. Revise proposed Section 1733.1(b)(3) of the Code of Civil Procedure to read: *(3) Where the respondent is an individual, a statement setting forth the name and last known residence*	In response to this and other comments, proposed section 1733 (b)(3) has been modified to include limited liability companies. The provisions in the proposed statute require more information than that suggested in this comment, and the forum and advisory committee have concluded that the additional information should remain in the application. The current statutory provisions regarding writs of execution are not exempted by this proposal and would apply to any writ issued as part of state court's enforcement of a tribal court judgment.

			address of the respondent. ***If the respondent is other than a natural person, the type of legal entity and last known address of the respondent shall be stated.*** *~~Where the respondent is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21(commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code. Where the respondent is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15800 of the Corporations Code designating an agent for applicant's attorney stating, based on personal knowledge, that the case that resulted in the entry of the judgment was tried in compliance with the tribal court rules of procedure~~*	
12	Sheriff's Office County of San Diego. (transmitted by California State Sheriffs' Association Legislative Analyst		[Comment was provided by California State Sherriff's Association, on behalf of San Diego County Sheriff's Office.] **San Diego County S O Preliminary Comments**:	The forum and advisory committees thank the commentator and acknowledge the general support of the proposal. However, they note that the proposal does not provide for recognition of tribal court civil

	Cathy Coyne Sacramento, CA)		Supportive of the Tribal Court Judgment Act. The legislation, if enacted will create a procedure by which California courts can give the judgments of tribal courts full faith and credit. Currently, tribal courts preside over regulatory matters occurring on tribal lands. This legislation would require that state courts treat judgments rendered by Tribal Court judges in the same fashion it treats the judgments of courts in other states. This makes sense in light of the sovereignty granted tribal governments by Congress. How does this affect state Sheriffs? The sheriff would be required to handle the orders of tribal courts in the same fashion it does state courts. Significantly, the Sheriff would be authorized to enforce restraining orders issued by a tribal court in the same way it enforces those orders issued by the state courts. This will require that the judgments be recorded and available to deputy sheriffs in the same way other court orders are made available. The legislation contemplates such a procedure. The number of such orders will naturally be small, yet each order can make a significant difference in the safety of the individual being protected by the order. The order essentially empowers the deputy sheriff to protect someone who sought and obtained a	judgments under the doctrine of full faith and credit, but only under the more limited standards within the principles of comity, as the law currently provides. It would however, in those cases in which a tribal court judgment is recognized by the state court, result in an order or judgment that should be enforced in the same fashion as any similar state court order.

			restraining order. The legislation represents good policy and has the potential to raise the level of public safety.	
13	Shingle Springs Rancheria by Nicholas H. Fonseca Chairman Shingle Springs, CA		The Shingle Springs Band of Miwok Indians appreciates the opportunity to review and comment on the legislative proposal for Section 1714 (b) of the California Code of Civil Procedures. The proposal establishes a procedure for filing Tribal court judgments for recognition by California state courts. The Tribe has a concern that Section 1735(b)(1-4) is not comity or full faith and credit. For example, if recognition of the Tribal court judgment is challenged, a California superior court (superior court) is required to have a hearing. The superior court may then refuse to recognize the Tribal court judgment for several reasons, including, if the respondent demonstrates that "the tribal court judge was not impartial." See Section 1735(b)(3). This essentially allows the superior court to make an assessment about whether the Tribal court acted properly before recognizing the judgment. This does not appear to be comity	The burden of proof in the proposal is consistent with the UFCMJRA and federal law governing recognition and enforcement of tribal judgments under the principles of comity. Under current statutory law, a party seeking recognition of a foreign-country money judgment, has the burden of establishing that the judgment is covered by the act. Code of Civ. Proc. Section 1715(c). When that burden has been met, a party resisting recognition has the burden of establishing the existence of a ground for non-recognition. Code of Civ. Proc. Section 1716(d). Similarly, under principles of comity, courts must recognize and enforce tribal court judgments unless it can be shown that the tribal court did not afford due process. *Wilson v. Marchington,* 127 F.3d 805 (1977). The forum and advisory committees provide for a similar structure here. Under proposed section 1733.1, the party seeking to enforce a tribal court judgment has the initial burden of

			or full faith and credit. Therefore, the Tribe recommends that this section in its entirety be deleted from the proposal. Further, neither the standard nor burdens of proof are clear form reading this proposal (i.e., Clear and convincing? Beyond a reasonable doubt?). On a practical level, the proposal specifically excludes fines, so Tribal courts will still be required to use private enforcement (i.e. collection agencies) for fines. The Tribe applauds your efforts to improve collaboration and coordination within the Tribal and State court processes. If you have any questions, please contact Rhondella Dickerson,	establishing that a tribal court judgement is entitled to recognition under the act by completing the application. If no objections are filed, the clerk certifies that no objections have been received and a state judgment is issued based on the tribal judgment. (Proposed section 1734) If objections are raised, then the opposing party bears the burden of establishing a ground for nonrecognition. (proposed section 1733.) Further, as to the standard of proof, the forum and advisory committees have concluded that there is no need to include a specific standard of proof in the proposed statute. California law provides that the standard of proof is by the preponderance of the evidence, unless the law provides otherwise. (Evid. Code section 115) Because the proposal is silent on the standard of proof, to the extent the law already provides for a stricter standard for proving one or more of the objections, it will continue to apply, but otherwise the preponderance of the evidence standard will apply.
14	Tribal Alliance of Sovereign Indian Nations (TASIN) by Lynn “Nay”Valbuena Chairwoman		Tasin Resolution No. 041111 A Resolution Supporting The Introduction And Passage Of Legislation Establishing State Court Procedures For The Recognition	No response required.

			And Enforcement Of Tribal Court Judgments **WHEREAS**, the Tribal Alliance of Sovereign Indian Nations (TASIN) is an intergovernmental association of 10 federally recognized Indian tribes throughout Southern California; and **WHEREAS**, TASIN's mission is to protect and promote tribal sovereign government rights, cultural identity, and interests of federally recognized; and **WHEREAS**, tribal government members of TASIN include: Agua Caliente Band of Cahuilla Indians, Augustine Band of Mission Indians, Cahuilla Band of Indians, Chemehuevi Indian Tribe, Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, San Manuel Band of Mission Indians, Santa Rosa Band of Mission Indians, Santa Ynez Band of Chumash Indians, and Soboba Band of Luiseño Indians; and **WHEREAS**, under existing federal law, California State Courts, as a matter of comity, must recognize and enforce tribal court judgments, and **WHEREAS**, at the present time, there are no California Rules of Court or California Codes of Civil Procedure that establish a	

			process by which State Courts recognize and enforce Tribal Court judgments; and **WHEREAS**, as a result, Indian tribes that go into State Court to have their Tribal Court judgment recognized and enforced by State Courts must file a new lawsuit in State Court and, in many cases, re-litigate the issues in State Court that were litigated in the Tribal Court; and **WHEREAS**, the re-litigation of facts and issues of law in State Court, previously litigated in Tribal Court, costs Indian tribes needless time and money that they would not otherwise have to incur if State Courts had a summary procedure for the recognition and enforcement of Tribal Court judgments; and **WHEREAS**, there is a need to enact new provisions of the California Code of Civil Procedure that will establish a process by which State Courts can summarily recognize and enforce Tribal Court judgments; and **WHEREAS**, the Chemehuevi Indian Tribe, which is a member of TASIN, has proposed legislation ("Legislation"), a copy of which is hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit A**, which will accomplish this goal;	

			and **WHEREAS**, the Legislation, as drafted, does not infringe on any tribe's right to seek Federal Court recognition of a Tribal Court judgment; and **WHEREAS**, the Legislation, as drafted, promotes tribal sovereignty by requiring State Courts to give recognition and enforcement to Tri bal Court judgments in a manner similar to how State Courts recognize and enforce sister-state court judgments; and **WHEREAS**, the enactment and adoption of said Legislation is in the best interests of the Indian tribes of the State of California because it will establish a summary procedure that will allow tribes, if they so desire, to go into State Court and have California State Courts recognize and enforce their Tribal Court judgments. **NOW, THEREFORE, BE IT RESOLVED**, that, based upon the foregoing facts, the Tribal Alliance of Sovereign Indian Nations supports the introduction and passage of the Legislation, attached hereto as Exhibit A, by the California Legislature and encourages all other California Indian tribes to support the Legislation.	

			CERTIFICATION This resolution was adopted unanimously on the 11th day of April 2011 by the Tribal Alliance of Sovereign Indian Nations.	

LEG11-03
Recognition and Enforcement of Tribal Court Civil Judgments (Code of Civ. Proc. §§ 1730 –1739)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lily Boyd 1230 Columbia Street #1140 San Diego CA	AM	Reciprocity is a must if this proposal is to be enacted.	The forum and advisory committees considered whether reciprocity should be required and concluded that, because such a requirement is not required for state court recognition of tribal court civil judgments under current law (see *Wilson v. Marchington* (9th cir. 1977) 127 F.3d 805; and the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), Code Civ. Proc.. §§ 1713 *et seq.*), it should not be made a requirement under the proposed statute. Currently, the state courts are required to recognize and enforce tribal court civil judgments under principles of comity. This proposal is intended to streamline the procedures for applying those principles, but not to change the applicable law.
2.	California Indian Legal Services, by Mark A. Vezzola, Directing Attorney, Escondido, California	AM	Thank you for extending to California Indian Legal Services and other interested parties an opportunity to comment on this groundbreaking legislation. The proposed legislation for the Recognition and Enforcement of Tribal Court Civil Judgments represents one step further in achieving respect for the authority of tribal judicial systems and thereby the sovereignty of tribal governments throughout the state. [1.] Our comments on the legislation are	The forum and advisory committees respond to the two specific concern raised in the comments below. [1]The forum and advisory committees have

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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			brief and straightforward yet significant in terms of recognizing the diversity and creativity of tribal courts in California. This state is home to more federally recognized tribes than any other state except Alaska, and currently has approximately twenty functioning tribal courts, a number that has grown steadily in recent years. But the proposed legislation's definition of "tribal courts" overlooks some models tribes actively use to implement a judicial system on their land and interpret their own laws. In San Diego County, for example, is currently home to eighteen different tribes, which run the gamut from successful gaming tribes to those without any economic development opportunities. Several years ago eleven local tribes joined forces to create and participate in the Intertribal Court of Southern California. A retired state superior court judge presides over a variety of cases on a part time basis, always applying the law of the particular tribe involved in the proceeding. We recommend expanding the definition of "tribal courts" in Section 1732(5) to include intertribal courts and tribal court consortia	considered this comment and concluded that the definition of tribal court contained in the proposal is broad enough to encompass an inter-tribal court of the kind described by the commentator.

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			to recognize that different models exist for court development. Intertribal courts are an inventive and efficient way to interpret tribal laws and adjudicate disputes involving members while legitimizing tribal governments on all sides of the financial spectrum. [2] We are more concerned about Section 1735(b)(3) that specifies that a tribal court judgment shall not be recognized and entered if the respondent demonstrates to the superior court that…" [t]he tribal court judge was not impartial." The proposal fails to include any standards that should be applied in making this determination. The language of the provision suggests the superior court will ultimately make the decision, but we are concerned that there appear to be no standards in place to make what is ultimately a very subjective decision. We suggest adding to the proposed legislation some kind of clear standards for parties to follow to support their claim that a tribal court judge was not impartial. Such standards could include the standard of proof or evidence necessary to support such a claim.	[2] The forum and advisory committees have concluded that there is no need to include a specific standard of proof in the proposed statute. California law provides that the standard of proof is by the preponderance of the evidence, unless the law provides otherwise. (Evid. Code section 115) Because the proposal is silent on the standard of proof, to the extent the law already provides for a stricter standard for proving one or more of the objections, it will continue to apply, but otherwise the preponderance of the evidence standard will apply.

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			Aside from these comments, we are pleased with the current draft of the proposed legislation. Again, thank you for your work in this important but as of yet unchartered area of tribal law and tribal-state relations.	
3.	California State Association of Counties, by Jennifer B. Henning, Litigation Counsel, Sacramento, California	NI	Dear Honorable Members of the Judicial Council: The California State Association of Counties (CSAC) submits these comments in response to the recently-issued legislative proposal to place the full faith and credit of the California court system behind tribal court civil judgments. While reform to extend the reach of tribal court judgments may be desirable in some instances, CSAC provides these comments to raise important issues regarding the proposal and to encourage a reexamination of the scope of the proposed legislation under consideration. **Description of CSAC and its Interest in the Tribal Court Judgment Proposal** CSAC is a nonprofit association comprised of the State's 58 counties. The primary purpose of CSAC is to represent county	Responses to specific concerns raised in this comment are provided below. (The detailed comments have been numbered to make it easier to follow the responses.) The committees note, however, that the proposal does not incorporate the standard of full faith and credit, but instead retains the current standard of applying the prinicples of comity in determining whether to recognize tribal court judgments.

	Commentator	Position	Comment	Committee Response
			government before the California Legislature, administrative agencies and the federal government. CSAC places a strong emphasis on educating the public about the value and need for county programs and services. CSAC supports government-to-government relations that recognize the role and unique interests of tribes, states, counties, and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all—Indian and non-Indian alike. CSAC recognizes and respects the tribal right of self-governance to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and promotes self governance by counties to provide for the health, safety and general welfare of all members of their communities. CSAC does not take a position on the legislative proposal under consideration, but has identified questions or issues that warrant further consideration. County interactions with community members cut across a wide spectrum of services potentially impacted by this proposal, including the provision of social	

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			services to tribal members and enforcement of court orders through the County Sheriffs. Because of the direct impact on county operations, CSAC believes several issues deserve further study and should be clarified or narrowed before this proposal is adopted by the Judicial Council. **[1.] Tribal Governments Vary Significantly and Should Not Be Treated as a Monolith** As noted in the background discussion of this proposal, there are 107 federally recognized tribes in California. The relative population of those tribes illustrates their vast differences. According to statistics maintained by the Bureau of Indian Affairs, in 2005 there were 61,644 enrolled tribal members in California. [1] (Bureau of Indian Affairs, Office of Indian Services, *2005 American Indian Population and Labor Force Report*, p. 1.) [1] There appears to be some confusion in the background discussion of the proposal, which states that "California is home to more people of Indian ancestry than any other state in the nation." Most native people in California are not members of a federally-recognized tribe, and therefore appear to be unaffected by this proposal. At least for purposes of being entitled to enroll in a federally-recognized tribe, California's Native American population is lower than several other	[1.] Congress has exclusive authority over the recognition of tribes. Once a tribe has been federally recognized its sovereign status and the rights that accrue as a result are established as a matter of federal law. It is beyond the scope of this proposal to attempt to draw distinctions between the various federally recognized tribes in California or the country at large. The forum and advisory committees note that the question of whether to recognize and enforce tribal court judgments is also outside the scope of this proposal. Federal courts, including the Ninth Circuit Court of Appeals in *Marchington, supra*, have established that state courts are to apply principles of comity in recognizing and enforcing judgments and orders from the courts of federally recognized tribes. Currently, state courts in California do

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			states, including Oklahoma (692,421), Arizona (269,778), New Mexico (174,199), Alaska (140,339), South Dakota (115,513) and Montana (66,962). (Bureau of Indian Affairs, Office of Indian Services, 2005 American Indian Population and Labor Force Report, p. 1.) Only fourteen of the 107 federally recognized tribes have enrollments of 1,000 or more. (*Id.* at p. 13.) The remaining 93 tribes have enrolled membership ranging from 963 to five, with at least four tribes having less than ten enrolled members. (*Id.* At pp. 12-14.) It goes without saying that such differences in size results in a wide variety of governing structures. Some of California's tribes have very well-established governmental systems, including highly developed judicial structures. Others have no tribal court at all, or are in the very early stages of developing a more formal tribal court. There are no accreditation or approval standards (other than not violating the Indian Civil Rights Act) for the tribal courts that are developed in the state. As such, there are no uniform procedures used by tribal courts, nor do they offer a uniform set of protections to their litigants.	so under the UFCMJRA, which was drafted to apply to money judgments from foreign countries and which, when applied to judgments from tribal courts can be burdensome for both the courts and the parties. The proposed legislation does not make new substantive law, but only streamlines the procedures for implementing existing law. The United States Constitution vests with Congress (and tribes) the authority to set requirements for tribal courts and tribal court judges. The forum and advisory committees have concluded that it would be inappropriate to attempt to impose educational requirements on tribal court judges as a condition to recognition of tribal court orders given that Congress has chosen not to impose any such requirements. Section 1735 (b) of the proposal provides for objection to the enforcement of a tribal court order on several grounds, including the grounds that the tribal court judge was not impartial or the respondent was not afforded due process. The forum and advisory committeess conclude that this is consistent with the principles of comity articulated by

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			The legislative proposal defines "tribal court" as "any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, ban, or Alaska Native village, duly established under tribal or federal law...." (Proposed § 1732(5)(emphasis added).) The proposal requires certain documentation about the tribal court to be submitted with an application to enforce a judgment, including a copy of the tribal court rules of procedure. However, there is no mechanism within the proposal for a superior court to independently review those procedures. Indeed, there is no requirement that the superior court do anything with those rules other than to receive them. In other words, under the proposal, all tribal court judgments are treated the same regardless of the significant differences in their histories, structures, traditions, ability to meet minimum standards of judicial fairness, or any other criteria. Tribal government should not be treated as a single monolith, but as separate sovereign entities each with their own characteristics. This aspect of the proposal, which provides	the Ninth Circuit. The forum and committees agree with the commentator that tribes have unique histories, governmental structures, and traditions, but not with the conclusion that further study is needed. As discussed above, exclusive authority for tribal recognition rests with Congress.

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			for the wholesale adoption of all California tribal court systems, current and future, deserves further study. The 107 federally recognized tribes in California are each separate tribal governments and their court operations should similarly be separately evaluated. As discussed more fully below, there should be some demonstration, whether or not an objection to the application is raised, that minimum standards are met before the Superior Court enters a tribal court judgment. (*See Carijano v. Occidental Petroleum Corp.* (9th Cir. 2010) 626 F.3d 1137, 1153 ["California generally enforces foreign judgments, as long as they are issued by impartial tribunals that have afforded the litigants due process."].) **[2.] The Legislative Proposal Raises Procedural Issues that Require Further Consideration** Enforcement of judgments in superior court allows a tribe to enforce judgments against non-Indians whose property is located outside of the tribe's jurisdiction, and	[2]. The legislation establishes and clarifies the procedures by which parties (tribal and non-tribal) who obtain judgment in tribal court may seek to have that judgment recognized and enforced through a California court. Presently, tribal courts in California are exercising their inherent jurisdiction to

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			against tribal members who leave tribal jurisdiction to avoid legal burdens. (Comment, *Full Faith and Credit in Cross Jurisdictional Recognition of Tribal Court Decisions Revisited* (2010) 98 Calif. L.Rev. 1393, 1404.) While CSAC can certainly understand the desire to achieve these goals, it has concerns about certain procedural aspects related to the proposal. These concerns are directly relevant to counties because many superior court judgments spill over into county functions, particularly where enforcement of these judgments falls to the County Sheriff (such as unlawful detainer orders, evictions, foreclosures, judgments for possession of personal property, injunctions, restraining orders and so on). CSAC is cautious of its member counties being placed in an enforcement role in proceedings over which counties have very little knowledge. The concern is compounded when the respondent to the proceeding perceives that the process is less than completely fair and open, and thus may be more likely to resist the Sheriffs attempts to enforce the judgment. A possible limitation that would reduce	adjudicate civil matters that properly come before them. When the parties seek to have these judgments recognized and enforced in state courts, as already permitted under current law, the procedures can be overly burdensome to both courts and parties. The forum and advisory committees did consider limiting the proposal to money judgments, but concluded that, in light of the mandate under federal law that state courts recognize and enforce tribal court civil orders as a matter of comity, and that tribal courts in California are increasingly exercising their jurisdiction in a range of civil cases, litigants need a clear and simple process by which a tribal court civil judgment can be recognized and enforced. The committees and forum conclude that if the procedure is limited to money judgments, the costs to both litigants and the court systems associated with relitigation of non-money judgments will still pose a problem and undue hardship on litigants. The forum and advisory committees have

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			some of CSAC's concerns with the proposal would be to limit the proposal to money judgments, as is currently done under the Foreign-Country Money Judgments Recognition Act (Code Civ. Proc, §§ 1713 et seq.). This makes sense for two reasons. First, such a limitation would take the County Sheriff out of the role of enforcing judgments related to restraining orders and property, which can be dangerous for the officers, particularly where the parties may view the process for obtaining a superior court judgment as unfair or biased. Second, since comity, and not full faith and credit, is the basis for recognition under the proposed legislation, there is no apparent reason for statutory recognition of tribal judgments to be any broader than that afforded to foreign county judgments. Under existing law, judgments from foreign courts granting injunctions are generally not entitled to enforcement. (Restat. 3d of the Foreign Relations Law of the U.S., § 481; *Global Royalties v. Xcentric Ventures* (D.AZ. Oct. 10, 2007, No. 07-956-PHX-FJM) 2007 U.S.Dist.LEXIS 77551.)	decided, however, to modify the proposal in light of concerns over enforcement, limiting the application of the act to those types of judgments covered by the state's Enforcement of Judgment Act, as set forth in Code of Civil Procedure section 681.010, for which enforcement procedures currently exist under state law. As to the issue of the added costs of enforcement, in several counties local law enforcement offices are already enforcing tribal court orders which are recognized on the basis of comity. In fact, when the proposal was pre-circulated, two county sherriffs submitted comments supportive of the proposal, without expressing concerns regarding additional costs. (See comments from Imperial County Sherriff's Office San Diego Sherriff's Office in chart of Pre-ITC Comments.). The San Diego Sheriff's Office noted that "The number of such orders will naturally be small."

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			Another concern that is not addressed in the background materials is that adding a new category of judgments that require enforcement through the County Sheriff may amount to a state mandate requiring a subvention of funds under section 6 of article XIII B of the California Constitution. There is no information to help counties or the Legislature understand the potential financial impact the proposal could have on law enforcement and the State general fund. With that in mind, CSAC urges the Judicial Council to give further consideration to the following aspects of the proposal: <u>[2a.] Proof of Due Process in the Tribal Court</u> Under the proposal, a respondent may object to an application on the basis that due process was lacking in the tribal court proceeding. (Proposed § 1735, subd. (b)(4).) If an objection is raised, then the applicant has the burden "of establishing that the tribal court judgment is entitled to recognition under section 1733.1." (Proposed § 1735, subd. (d).) If the applicant meets his or her burden, then the	[2a.]. The burden of proof in the proposal is consistent with the UFCMJRA and federal law governing recognition and enforcement of tribal judgments. Under the principles of comity, a party seeking recognition of a foreign-country money judgment has the burden of establishing that the judgment is covered by the act. Code of Civ. Proc. Section 1715(c). When that burden has been met, a party resisting recognition has the burden of establishing the existence of a ground for nonrecognition. Code of Civ.

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			respondent has the burden of establishing a ground for nonrecognition[2]." *(Ibid.)* [2] The standard of proof is not specified, though the invitation requests comments on what standard of proof should be required to prove a ground for non-recognition. CSAC would urge the Judicial Council to consider that whatever standard of proof is used, it be applied equally to establishing entitlement to recognition and to evidence of fact constituting grounds for an objection. CSAC has concerns about this process. First, it requires that a respondent raise an objection about due process rather than requiring an applicant to show as an initial matter that due process was afforded in the tribal court proceeding. (Cf. Code Civ. Proc, §1715, subd. (c) [the party seeking recognition of the foreign judgment has the burden of establishing the judgment is entitled to recognition even where no objection has been raised].) There are many reasons that a respondent might not raise an objection in these proceedings—lack of resources to hire counsel to assist in responding to the application, pressure from the tribal community not to challenge the tribal court process, confusion over the requirements for satisfying due process. There is, therefore, the very real risk that	Proc. Section 1716(d). Similarly, under principles of comity, courts must recognize and enforce tribal court judgments unless it can be shown that the tribal court did not afford due process. *Wilson v. Marchington*, 127 F.3d 805 (1977). The forum and advisory committees provide for a similar structure here. Under proposed section 1733.1, the party seeking to enforce a tribal court judgment has the initial burden of establishing that a tribal court judgement is entitled to recognition under the act by completing the application. If no objections are filed, the clerk certifies that no objections have been received and a state judgment is issued based on the tribal judgment. (Proposed section 1734.) If objections are raised, then the opposing party then bears the burden of establishing a ground for nonrecognition. (proposed section 1733.) Further, as to the standard of proof, the forum and advisory committees have concluded that there is no need to include a specific standard of proof in the proposed

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			due process violations will go undetected by the court because the only mechanism for the court to consider the issue is when it is raised as an objection by the respondent. At a minimum, the legislative proposal should not conflict with the protections found under current California law (e.g., Code Civ. Proc, § 1715, subd. (c)). Second, if an objection is raised under the proposed legislation, the applicant must then show that the judgment is entitled to recognition under proposed section 1733.1. However, proposed section 1733.1 only requires basic information about the matter (names of relevant parties, that the action is not barred by the statute of limitations, etc.). Nothing in section 1733.1 requires a showing of meeting minimum due process requirements. After the applicant proves that the basic elements of section 1733.1 are met, which elements do not relate to the due process provided in the tribal court proceeding, the burden is on respondent to prove a lack of due process. As a result, the sole burden relative to establishing the due process (or lack thereof) of a tribal court order rests with the respondent.	statute. California law provides that the standard of proof is by the preponderance of the evidence, unless the law provides otherwise. (Evid. Code section 115.) Because the proposal is silent on the standard of proof, to the extent the law already provides for a stricter standard for proving one or more of the objections, it will continue to apply, but otherwise the preponderance of the evidence standard will apply.

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			CSAC suggests that the Judicial Council amend this process so that the applicant bears the initial burden of establishing that the tribal court judgment satisfied due process requirements, as defined, whether or not an objection is raised.	
			2b. Discretion of the Superior Court Proposed section 1735, subdivision (c), provides the superior court with discretion to either grant or deny an application to enter a tribal court judgment based on four specified equitable grounds: fraud, conflict with another judgment, inconsistency with contractual choice of forum, or violation of fundamental policy of the United States. It is unclear to CSAC why a superior court is afforded discretion to grant an application where any of these four grounds are present. Rather, if a superior court determines, after examining the facts of a given case and the relevant law, that one of these grounds exists, the application should be denied.	2b. Given that the UFCMJRA on which this legislation is modeled, and the applicable principles of comity set out by the Ninth Circuit in *Marchington*, *supra*, at p. 810, distinguish between mandatory and discretionary grounds, the committees and forum did the same here. This allows for the possibility that facts might be alleged under the discretionary grounds which would not be material or prejudicial to the parties, and in those instances, the decision to recognize the tribal court order would be at the sound discretion of the state court judge.
			2c. Contacts Between Judicial Officers Proposed section 1738 permits, with notice to all parties, contact between the state court	2c. In light of this comment, section 1738 has been further modified to provide that the court must allow parties to be present during

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			and tribal court judge who issued the tribal judgment. The section states its purpose is to resolve any issues regarding a tribal court judgment. CSAC has concerns about permitting such contact, as it could certainly raise questions about the fairness of the proceedings in the mind of the parties. As the Judicial Council well knows, this type of contact between judicial officers is procedurally irregular. CSAC does not believe such contact is part of the procedure for recognizing or enforcing foreign judgments under existing state or federal laws. The invitation for comment suggests that Family Code section 3410 might serve as the model for this contact. However, Family Code section 3410 only applies to family custody proceedings due to the specialized needs of child custody cases, and child custody cases are specifically excluded from the proposal, which removes the policy justification for relaxed standards for communication with the judge. As such, CSAC questions the need for this contact and urges further consideration. It seems that communication between judges should be a rare exception, and only where	any communications between two courts.

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			absolutely necessary because of special circumstances. <u>3. The Issue of Reciprocity Deserves Further Discussion</u> The invitation for comment specifically asks whether the proposed statute should be limited in application to judgments from tribes that have reciprocal provisions for recognition of California court judgments. CSAC believes this issue warrants further discussion. As mentioned above, CSAC understands the goal of more easily enforcing tribal judgments in state court as a means to access those persons that are avoiding legal burdens by staying outside of tribal jurisdiction. Counties are facing the same issues with tribal members avoiding legal burdens by staying within tribal jurisdiction. Certainly, garnishment of wages from child support orders is an example of this[3]. [3] Amendments made in 1996 to the Uniform Interstate Family Support Act (which each State must enact in order to be eligible for certain federal aid grants) specify that reciprocity is not required between States and Indian Tribes, unlike the provision made for foreign nations.	3. The forum and advisory committees considered whether reciprocity should be required and concluded that, because such a requirement is not required for state court recognition of tribal court civil judgments under current law, it should not be made a requirement under the proposed statute. See response to comment 1. Moreover, Section 1731 of the proposal expressly excludes child support cases, because Congress enacted statutes affording tribal court judgments in these cases full faith and credit. Congress could also, but has chosen not to, impose obligations on tribes concerning child support ordinances, garnishment for child support or the other matters mentioned. In light of tribal sovereignty, federal constitutional authority over Indian affairs and existing law concerning the recognition and enforcement of tribal court judgments, the forum and advisory committees have concluded that it would not be appropriate to condition recognition of other valid tribal court

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			The Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B(b)) defines "State" to include "Indian country" for purposes of recognizing child support enforcement orders across jurisdictional boundaries, but the provision only works in practice if a tribe has a judicial system that includes full faith and credit for State child support orders. (See U.S. Dept. for Health and Human Services, Admin, for Children and Families, Office of Child Support Enforcement, Essentials for Attorneys in Child Support Enforcement (3d ed.) pp. 180- 183.) A recent investigative report highlights this problematic issue in California. (Weiss, Native American Tribes Shield Parents From Child Support, California Watch (Aug. 5, 2011) [available at: http://californiawatch.org/health-and-welfare/native-american-tribes-shieldparents-child-support-1 18721.') When those wages cannot be collected from tribal members to support their children, the children may require financial and other support that the counties are obligated to provide. The hardship caused by those attempting to avoid legal burdens exists on both sides, and to the extent tribal judgments are afforded comity by California courts, the corresponding reciprocal recognition should be required. **<u>4. Additional Information is Needed on the Scope of the Problem this Legislation</u>**	judgments on the adoption by the tribe of any policies or ordinances with respect to child support. 4. Presently, tribal courts in California are exercising their inherent jurisdiction to

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			is Intended to Address The precise need for this legislative proposal is not made clear in the background materials provided. There are unqualified statements that the existing process is "lengthy and time consuming," and that some tribal court judges report the current procedures are "inadequate" and "immensely" inefficient and ineffective. Yet there is no indication of the number or type of tribal judgments that are currently brought to superior court for enforcement, the length of time it takes to move through the existing process, the number of tribal judgments that are rejected in superior court because of the inadequacy of the existing system, or any other data that would put the nature of the problem in perspective as compared to the proposed solution. As noted above, the number of enrolled tribal members in the state is roughly 62,000, which accounts for something less than two-tenths of one percent of California's total population. Given the relatively small population benefiting from this legislative proposal, there should be more effort to identify the scope of the	adjudicate civil matters that properly come before them. Parties to such actions already have the right to seek recognition and enforcement of the judgments in those actions in state courts if appropriate due process has been met. The proposal does not expand existing rights, but is intended to clarify and streamline the procedures for implementing current law.

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			problem the legislation intends to address. In addition, the recently-enacted Tribal Law and Order Act of 2010 (25 U.S.C. §§ 2801 et seq.) includes funding and other federal resources to help develop and enhance the effectiveness of tribal courts. Because of the concerns raised here, and the development and changes to tribal courts that may result from the new federal law, it seems that further study of the problem would be appropriate. If the proposal is adopted, it should be significantly narrowed to build a record of the benefits and concerns with enforcing tribal court judgments in superior court before moving forward with such a broad program with unknown impacts on both county government and the courts. **Conclusion** CSAC has absolute respect for the judicial process that a tribe may have developed, but that is not the focus of this legislative proposal. Instead, this proposal is about using the power of the state courts, including the enforcement authority available through county law enforcement, to effectuate tribal court judgments beyond the jurisdiction of the tribe. The reach of	

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			this legislation, as proposed, has impacts on counties that should be addressed before moving forward. Further, more work should be done to quantify the need for this legislation. CSAC appreciates the opportunity to comment on this proposal. Should you have any questions about these comments, please do not hesitate to contact me at (916) 327-7537.	
4.	Hon. Michael Leversen Judge Superior Court of Orange County 700 Civic Center Drive West Santa Ana, California	N	I have dealt with the Tribal court as an attorney and have witnessed the dealings of others many times in the Tribal courts. The Tribal Court does not necessarily have a person with a legal background as the Judge. It seemed to me that the tribe was acting not as a neutral ground in which a person presents evidence and receives a fair hearing but rather that the deck is stacked against you before you enter the tribal court. Giving Tribal court judgments full faith and credit in the State Courts without the benefit of a level playing field despenses no justice what so ever. Every litigant should be able to a fair, impartial trial. The dealings I have seen in tribal Court involved land disputes and the lands were on the reservations and the Tribe was bringing the action and the trial held in the tribal court. Where is the	The forum and advisory committees have concluded that the proposed statute will provide due process. The committees and forum also note that the statute does not provide full faith and credit to the judgments, but continues to provide that they be reviewed under principles of comity, as they are now. As to the background of tribal court judges, the United States Constitution vests with Congress (and tribes) the authority to set requirements for tribal courts and tribal court judges. In the recently enacted Tribal Law and Order Act, Congress chose to set certain educational requirements for tribal court

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			fair, unbias hearing? How can we recommend that the judgment rendered in tribal court involving tribal lands presided over be a tribal member with an interest in the outcome be a fair hearing? I would urge that this legislation not be passed. Due process will not be served.	judges only when the court sought to impose enhanced criminal sanctions (see section 234 of PL 111-211). The forum and advisory committees have concluded that it would be inappropriate to attempt to impose educational requirements on tribal court judges as a condition of recognition of tribal court orders given that Congress has chosen not to impose any such requirements. As to impartiality of the judges: lack of an impartial decision maker is a grounds for objection to recognition of a tribal court judgment under section 1735 (b)(4) of the proposed legislation.
5.	Richard W. Nichols, Esq., Retired 5361 Reservation Road Placerville, CA 95667-9768	N	Dear Justice Hull: I am writing to you in your capacity as Co-Chair of the California Tribal Court/State Court Forum, to comment on the referenced proposed legislation. I have some experience with tribal/local relationships, living in a subdivision that immediately adjoins the Shingle Springs .Rancheria in El Dorado County. [time for comments] In my view, the time for comment on this proposed legislation needs to be extended. Although I am generally familiar with tribal/ state activities for the above-stated reason, this proposed	[time for comments] The Invitation to Comment was initially circulated for sixty days, July 1, 2011, through August 31, 2011, the standard amount of time for circulation, although it was not during the normal period.

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			legislation came to my attention only last week, and the deadline for comment is August 31. I suspect that there are many other interested persons in my position who are either unaware, or only recently became aware, of the proposal. Now, to substance.	Special notice of the request for comments was provided to tribal leaders, administrative presiding justices, presiding judges, clerk/administrators and court executive officers, and local and specialty bar associations. In response to this comment, however, an additional 60 days was provided, with notice to the same groups. No additional comments were received. Prior to the formal circulation of the proposal, the forum and committees also sought input in March, 2011. The forum circulated the proposal to all federally recognized tribal leaders in the state. The Office of Governmental Affairs circulated the proposal to key legislative staff and lobbyists for organizations representing the bar (civil and criminal), business, tort reform, and consumer groups. The pre-circulation was not a formal circulation and there was no set period of time. A summary of the comments and draft responses to these comments is attached to the report as the Pre-ITC Chart, at pages 22-69.
			1. It seems most odd to define the term "due process" in the limited manner set forth in	1. The grounds for objection set out in section 1735 of the proposal and the

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			proposed §1732(1). As you know, courts not infrequently find new rights and procedures to fall within the common law rubric of "due process," but proposed §1732(1) fails to recognize this ongoing evolution of the law. Moreover, the United States Constitution does not apply in "Indian Country;" see *Santa Clara Pueblo v. Martinez,* 436 *U.S.* 49 (1978), and the California Constitution, which affords even greater due process rights, is similarly inapplicable there. It seems to me that if tribal judgments are to be afforded the same type of treatment as California judgments, the litigants (and system) in favor of which the, proposed legislation is directed should be required to comply with *all* of the same obligations that California litigants must obey. In part, this involves considerations of reciprocity, about which the Forum has sought comment. I can tell you from personal experience that persons who live in areas adjoining Indian Country (not just those who have voluntary dealings with tribes) frequently feel like they are treated as "second class citizens" in the judicial	definition of "due process" found in section 1732: (1) are consistent with existing law governing the recognition and enforcement of tribal court judgments. (See *Marchington*, supra, 127 F.3d 805 at 811-813.) They are also consistent with U.S. Supreme Court precedent which limits the basis for review of a judgment otherwise entitled to comity (See e.g. *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895)). The forum and committees have concluded that it is useful for litigants and promotes the goals of consistency and clarity for the grounds upon which an objection may be based to be clearly set out in the statute. It is beyond the purview and scope of this proposal to place requirements on tribal justice systems that they adopt and operate under California law. Congress has exclusive authority to determine the constraints which are placed on tribal judicial systems. The forum and advisory committees considered whether reciprocity should be required and concluded that, because such a requirement is not required for state court recognition of tribal court civil judgments under current law it should not be made a

	Commentator	Position	Comment	Committee Response
			system whenever they are involved in litigation with tribes and tribal members, because of the continued existence of tribal sovereign immunity. Most of them are essentially "mom and pop" businesses providing services to tribes, and they have no attorneys on retainer because they cannot afford them. The proposed legislation will exacerbate these impressions of inequity. Unlike me, most persons who live near, or have dealings with, tribes have no idea that tribal sovereign immunity exists, much less the extent to which they are disadvantaged in litigation by reason thereof. To put it mildly, tribes do not go out of their way to inform those persons on the subject! The Forum notes that the Uniform Foreign-Country Money Judgments Recognition Act does not contain a reciprocity provision, which apparently is viewed as "unfair to foreign nationals" because of their governments' policies. As to tribes, however, they are subordinate to the will of Congress. Is California prepared to say that the existing policies of Congress with regard to Indians and Indian tribes are "unfair?" In my view, the Forum should consider	requirement under the proposed statute. See response to comment 1 above. With respect to the issue of sovereign immunity, Congress has exclusive authority to limit tribal sovereign immunity. This issue is beyond the purview and scope of this proposal and it would be inconsistent with the decisions of the Ninth Circuit to try to condition recognition of tribal court orders on any limitations of tribal sovereign immunity.

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			adding a provision to the effect that the bringing of an affirmative claim in tribal court by a tribe or tribal member against a non-tribal member constitutes a waiver of tribal sovereign immunity against any counterclaim, cross-claim or cross-complaint that might be brought by the defendant against the tribe or tribal member relating or pertaining either to the subject-matter of the affirmative claim or to any other contacts or dealings between the parties, at the inception of the litigation, before any tribal court judgment will be eligible for registration and enforcement under California law. 2. Similarly, the term "good cause" in proposed §1732(2) should not be limited to the subject of notice, or timeliness, of hearings. The term is great breadth under California law; it should have similar breadth with regard to tribal proceedings which seek the benefits of judgment enforcement under California law. 3. The provisions of proposed §1735(c) are, to me, shocking. They permit the court, in its discretion, to recognize and enter tribal	2. In the proposed legislation, the term "good cause" is used only in section 1735(a), and only as the standard for holding a hearing on objections more than 45 days after the objections have been filed. The forum and committees determined that such a narrow definition is appropriate for this purpose. 3. The forum and advisory committee decided to distinguish between mandatory and discretionary grounds for denying recognition

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			court judgments notwithstanding the existence of (i) extrinsic fraud, (ii) conflict with existing final judgments, (iii) inconsistency with contractual choice of forum, or (iv) violation of the public policy of California or of the United States. What California litigant would *ever* be entitled to entry of a favorable judgment in the face of any of those facts?[18] I recognize that this defect is present in the Uniform Foreign Country Money Judgments Recognition Act as well. That does not make it acceptable!	of a judgment in the same manner as done in the UFCMJRA and in *Marchington, supra*. See response to comment 3, at point 2b.
			4. Although it does not say so expressly, the proposed legislation appears to switch the burden of proof of the propriety of tribal court judgments from the party seeking enforcement thereof to the party opposing such enforcement. Section 1735(b) uses the term "demonstrates," which, to say the least, is ambiguous on the subject. While I agree that the opposing party can legitimately be compelled to present "some evidence" in support of its objection, it is the party seeking enforcement of the tribal	4. The burden of proof in the proposal is consistent with the UFCMJRA and federal law governing recognition and enforcement of tribal judgments. See detailed response to comment 3, point 2a.

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			court judgment that should have the burden of proving the legitimacy of the proceedings that led to that judgment. Judgments from other states can be assumed, in the absence of evidence to the contrary, to have been rendered in compliance with constitutional requisites. Tribal court judgments, however, afford no ground for such an assumption because the Constitution simply does not apply to them. 5. Sections 1738 and 1740 [sic] of the proposed legislation fail to recognize the fact that tribal interests have automatic access to tribal judges, whereas nontribal interests do not. Some (perhaps the majority and possibly all) tribes refuse to allow access to their Rancherias (except for the casinos located thereon) to any non-tribal members, so access to tribal judges is virtually impossible except as permitted by the tribe itself.	5. Parties' access to tribal courts are beyond the scope of this proposal, which deals with access to state courts. To the extent a party to a tribal court action believes the parties were not treated fairly or impartially in a tribal court action, that is a ground for objecting to a state court recognizing or enforcing the tribal court order. (See proposed section 1735(b).). Further, to the extent that a tribe might deny parties access to tribal lands and impede the party's ability to defend or prosecute the case, the forum and committee conclude that this would be a clear denial of due process within the meaning of proposed sections 1732 and section 1735.

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			6. The proposed legislation is, in my opinion, premature. Many tribes, particularly in Northern California, are effectively nothing more than extended families, the descendents of "landless Indians" for the benefit of whom Congress appropriated funds early in the 20th century to purchase lands which ultimately became "Rancherias." Most of them have not yet developed tribal law enforcement systems, much less tribal courts and ancillary judicial systems[19]. As indicated in the Forum's "Invitation to Comment," "the subject matter jurisdiction of each tribe is defined by the tribe that establishes it." [20] [2] The so-called "rich" tribes, those with casinos in populated areas or on heavily-travelled interstate highways, are exceptions, although not all casino tribes are "rich." It is likely that the "rich" tribes are sufficiently organized that, because of their wealth, they can afford to fund significant judicial systems. Most tribes, however, cannot. [3] This, of course, must necessarily be subject to the	6. The forum and advisory committees note that the question of whether to recognize and enforce tribal court judgments is outside the scope of this proposal. Tribal recognition is a matter within the exclusive authority of Congress. As noted above, federal courts, including the Ninth Circuit Court of Appeals, have established that state courts are to apply principles of comity in recognizing and enforcing judgments and orders from the courts of federally recognized tribes. Currently, state courts in California do so under the UFCMJRA, which was drafted to apply to money judgments from foreign countries and which, when applied to judgments from tribal courts can be burdensome for both the courts and the parties. The proposed legislation does not make new law, but only streamlines the procedures for implementing existing law. As noted above, section 1735 (b) of the

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			limitations of Congress and the Supreme Court with regard to what is, and what is not, permitted in "Indian Country." See, e.g., *Montana* v. *United States. 450 U.S.* 544 (1981). At this point we simply don't have adequate experience with more than a few of the more than 110 tribes within California as to how they intend to operate their individual judicial systems. How, for example, can tribal fact-finders reasonably be expected to rule against members of their own family in contested situations? California law (as well as federal law and the law of all other states with which I am familiar) provides a remedy whereby potentially biased fact-finders with conflicts of interest can be removed from a case as a matter of right. The proposed legislation does not address this problem. 7. Finally, the Forum's "Summary" of the proposed legislation contains language that causes me to infer that the proposal is being driven specifically by tribal political interests, without much consideration being given to efforts to balance the interests of local non-tribal interests. It is hard to see how there can be any "balancing" of	proposal provides for objection to the enforcement of a tribal court order on the grounds that the tribal court judge was not impartial. 7. The purpose of this proposal is to institute a discrete procedure for recognizing and enforcing tribal court civil judgments in order to provide swifter recognition of such judgments while applying the principles of comity appropriate to judgments of sovereign tribes throughout the country. By clarifying and simplifying the process by which tribal

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			interests when the majority of California tribes do not now even have any tribal courts with procedures which can be considered in the balancing process. It is hard to see how a "one size fits all" set of judicial enforcement procedures is appropriate when each tribe establishes its own tribal judicial procedures. It is hard to see how the fact that "California is home to more people of Indian ancestry' than any other state in the nation" is relevant when the appropriate measure of persons to be impacted by this proposed legislation is "members of federally recognized Indian tribes," not "people of Indian ancestry." [21] It is hard to see, even if the law were to prescribe "reciprocity," how state court family support orders can be enforced in those portions of Indian Country which provide no social services directed toward such enforcement.[22] This focus upon tribal interests alone, rather than upon a balance between tribal interests	court civil judgments are recognized and enforced in California, the forum and advisory committees hope to prevent unnecessary costs to litigants and the court systems, as well as the hardship on litigants who, in some instances, have had to fully re-litigate cases in state court after they have been adjudicated in tribal court.

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			and local interests, is succinctly set forth on page 3 of the Forum's "Summary" as follows: "*Tribal court judges report* that these provisions [the Uniform Foreign-Country Money Judgments Recognition Act, CCP §§ 1713-1724] are inadequate." No doubt from their perspective this is true. No doubt it would be *easier* for tribal interests to be able to proceed under the proposed legislation. But what of the larger picture? What of the inequities inflicted upon locals who run afoul of those tribal interests? This proposed legislation, in my view, gives short shrift to those local interests. [4] "Persons of Indian ancestry" who have been assimilated into general society in California are, legally, no different from non-Indians. [5] The proposed legislation seems to assume, without any evidence provided, that such enforcement vehicles uniformly exist in Indian Country in California. They do not. As is true with regard to many subjects, the "rich" [casino] tribes may be able to fund such vehicles, but the poorer ones are not. And, I suspect, the "tribal court judges" whose expertise is visible in the Forum's "Summary" are probably judges whose courts serve those "rich" tribes and not the poorer ones.	
6.	San Manuel Band of Mission	A	On behalf of the San Manuel Band of	No response required.

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	Indians by James C. Ramos, MBA, Chairman		Mission Indians ("Tribe"), a federally recognized Indian tribe located on the San Manuel Indian Reservation in San Bernardino County, California, I write to express the Tribe's support for proposed legislation to recognize and enforce decisions issued by· tribal justice systems. A copy of the proposed legislation [draft proposal circulated for comment], is attached. As you know, the development and recognition of effective tribal justice systems in California have been historically hampered by the lack of dedicated resources at the federal, state and tribal level. Despite these challenges, many California tribes have worked diligently, sometimes over a decade, to develop justice systems to meet the social, political, economic and cultural needs of their communities. The increased presence and use of tribal justice systems in California naturally requires a vehicle by which litigants participating in these systems can enforce judgments issued in the course of a tribal judicial proceeding. Currently, the only	

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			vehicle to enforce a tribal court judgment is costly, time-consuming and generates no deference to validly-issued judgments. The Tribe believes this proposed legislation, though limited in scope, is a positive step toward improving the government-to-government relationship between California's tribes and the State of California. The proposed legislation respects tribal sovereignty and does not inhibit the administration of justice by state or tribal courts. We also understand that steps are already being taken to address subject matter specifically excluded from recognition and enforcement, such as probate matters. We hope that the continued collaboration between the Tribal Court-State Court Judges Coalition will produce positive results. The San Manuel Band of Mission Indians appreciates your efforts to secure the passage of this important legislation.	

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7.	Shingle Springs Band of Miwok Indians Shingle Springs Rancheria Placerville, California by AmyAnn Taylor, General Counsel	A	RESOLUTION 2012-06 SUBJECT: RESOLUTION OF THE TRIBAL COUNCIL OF THE SHINGLE SPRINGS BAND OF MIWOK INDIANS ("TRIBE") SUPPORTING THE INTRODUCTION AND PASSAGE OF LEGISLATION ENTITLED "TRIBAL COURT CIVIL JUDGMENT ACT". **WHEREAS,** the Shingle Springs Band of Miwok Indians (the "Tribe") is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and is recognized as possessing powers of self-government; and **WHEREAS,** the Shingle Springs Tribal Council (the "Council") is the duly-elected governing body of the Shingle Springs Band of Miwok Indians and is authorized to act on behalf of the Tribe; and **WHEREAS,** under existing federal law, California State Court, as a matter of comity, must recognize and enforce tribal court judgments; and **WHEREAS,** at the present time, there are no California Rules of Court or California Codes of Civil Procedure that establish a	No response required.

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			process by which State Courts recognize and enforce Tribal Court judgments; and **WHEREAS,** as a result, Indian tribes that go into State Court to have their Tribal Court judgment recognized and enforced by State Courts must file a new lawsuit in State Court and, in many cases, re-litigate the issues in State Court that were litigated in the Tribal Court; and **WHEREAS,** the re-litigation of facts and issues of law in State Court previously litigated in Tribal Court, costs Indian tribes needless time and money that they would not otherwise have to incur if State Court had a summary procedure for the recognition and enforcement of Tribal Court judgments; and **WHEREAS,** the Chemehuevi Indian Tribe has proposed legislation ("Legislation"), a copy of which is incorporated by this reference as if set forth here in full and attached hereto as **Exhibit A** [draft proposal circulated for comment], which will accomplish this goal; and **WHEREAS,** the Legislation, as drafted, does not infringe on any tribe's right to seek Federal Court recognition of a Tribal Court judgment; and	

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			WHEREAS, the Legislation, as drafted, promotes tribal sovereignty by requiring State Courts to give recognition and enforcement to Tribal Court judgments in a manner similar to how State Courts recognize and enforce sister-state court judgments; and **WHEREAS,** the enactment and adoption of said Legislation is in the best interests of the Indian tribes of the State of California because it will establish a summary procedure that will allow tribes, if they so desire, to go into State Court and have California State Courts recognize and enforce their Tribal Court judgments in an expeditious manner. **NOW, THEREFORE, BE IT RESOLVED** that based upon the foregoing facts, the Shingle Springs Band of Miwok Indians urges the California Judicial Council to support the introduction and passage of the Legislation, attached hereto as Exhibit A, by the California Legislature and request that the California Legislature introduce and pass the proposed Legislation, and the Council authorizes the Chairperson or his/her designee to execute any and all documents and agreements necessary as	

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			may be required to give effect to the transactions, herein contemplated, and to take such other actions as may hereby be necessary and appropriate to carry out the obligations there under. **BE IT FURTHER RESOLVED** that this resolution shall take effect immediately. **CERTIFICATION** *As a duly-elected official of the Shingle Springs band of Miwok Indians, I do hereby certify that, at a meeting duly, called, noticed, and convened on the 2nd day of February, 2011 at which time a quorum of 6 FOR, 0 AGAINST and 0 ABSTAINED, and said resolution has not been rescinded or amended in any form.*	
8.	Stand Up for California "Citizens making a Difference" by Cheryl Schmit, Director, Penryn, California	NI	*Stand Up For California!* is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs and the state lottery. We have been involved in the ongoing debate of issues raised by tribal gaming and its impacts for over a decade. Since 1996, we have assisted individuals, community groups, elected officials, and members of law enforcement, local public entities and the State of California as respects to gaming impacts. We are recognized and act as a	Responses to the specific concerns raised are are provided below.

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			resource of information to local, state and federal policy makers. Our organization wishes to express a number of concerns with this proposal. The most serious being: (1) inadequate notification and comment period (2) inadequate grounds for objection, (3) often difficult multi-jurisdictional issues, (4) potential impact of tribal state gaming compact language on patrons, employees, and affected local governments, (5) the need for additional safeguards for civil defendants in tribal court, (6) Reciprocity- agreed-upon respect between two sovereigns and, (7) Treatment as Sister-State judgments - expands tribal sovereignty over non-Indian citizens. Additionally, we would like to make suggestions that in our view would greatly improve the proposed legislation. **DISCUSSION** Before the discussion begins, there is a need to correct information in the very first paragraph of the "background information" of the "Invitation to Comment." California and Oklahoma according to the 2010 census	The forum and advisory committees note that the question of whether to recognize and enforce tribal court judgments—whether from in state or out of state tribes—is outside the scope of this proposal. Tribal recognition is a matter within the exclusive authority of

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			have 25% of the nation's 3,151,000 individuals of Indian ancestry. While the 2010 Census identified citizens of "Indian ancestry" it is unlikely that it is this population that would use tribal courts. Rather, it is California's 108 tribal governments that will be involved or participate in a tribal court. California Tribal governments have the "smallest population" of enrolled tribal members nationally. This legislation is thus being created to address the needs of approximately 34,000 individuals who are enrolled tribal government members in the State of California, and the very few tribally established courts. This said it is even more problematic in your request for comments to suggest, that California Superior courts should recognize tribal court civil judgments from states other than California. It is stated that, tribal court judges have reported that the Uniform Foreign-Country Money Judgments Recognition Act (Civil Procedure section 1713-1724) provisions are inadequate, that the act does not cover the range of issues and that in some instances matters that have been fully	Congress. As noted above, federal courts, including the Ninth Circuit Court of Appeals, have established that state courts are to apply principles of comity in recognizing and enforcing judgments and orders from the courts of federally recognized tribes. Currently, state courts in California do so under the UFCMJRA, which was drafted to apply to money judgments from foreign countries and which, when applied to judgments from tribal courts can be burdensome for both the courts and the parties. The proposed legislation does not make new law, but only streamlines the procedures for implementing existing law.

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			litigated in tribal court must essentially be re-litigated in state court in order to obtain recognition under these provisions. Arguably, civil defendants will tell you that tribal courts are courts of unfamiliar jurisdiction, that there was not *due process* of law, civil rights were ignored and the tribal court was biased. Clearly, the Uniform Foreign-Country Money Judgments Recognition Act provides restrictions and safeguards for civil defendants. Justice is not always neat or efficient or an effective use of judicial resources. **I. Inadequate Notification and Comment Period** We have reviewed the proposed legislation that seeks to clarify and simplify the process by which tribal court civil judgments are recognized and enforced in California. We appreciate the efforts of this prestigious committee whose hard work encompasses two years. However, we would request that the comment period of 60 days be extended to 90 days or preferably, more. Citizens currently involved in tribal court actions are now only learning of this proposed	I. The Invitation to Comment was re-criculated for an addition 60 days in light of this and other comments. See detailed response to comment 5 above, re time for comments.

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			legislation and wish to comment. This proposed legislation affects a wide array of multijurisdictional issues and public policies that directly and indirectly affect the greater public in ways that perhaps the committee has not been made aware. We especially ask the committee to give judicious consideration to an extension of the comment period so that proper comments can be submitted. **II. Inadequate Grounds for Objection** The grounds for objection to the recognition of a tribal court judgment while standard, still fail to provide adequate protections for civil defendants. The proposed legislation (1735 (a)-(c)) places the burden of proof on the respondent to demonstrate why superior court should not recognize the tribal court judgment. Then the respondent is further limited by an inadequate list of criteria for objection. The ability of civil defendants to object under the concept of "*due process"* is shackled by the limited definition in section 1732(1). Due process as defined in 1732(1) is unduly constrained, leaving respondents	II. See response re burden of proof above, at comment 3, point 2a. As to the grounds for objecting to a state court's recognition of a tribal court judgment, the forum and committee concluded that it was appropriate to essentially parallel the grounds set for by the Ninth Circuit in *Marchington*, *supra,* at p. 810, for a court to not recognize a tribal court judgment, with one addition (lack of an impartial judge at the tribal court). See proposed sections 1735(b) (grounds for objections that mandate a state court not recognize a tribal court judgment) and 1735(c) (grounds for objections that permit a state court to not recognize the tribal court judgment).

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			with an impossible burden. Ultimately, this significantly affects the civil rights of non-tribal citizens under both the California and United States Constitutions. *"Due process"* is a common law concept. It is essentially "judge created" law that has evolved and continues to evolve. Different jurisdictions differ as to what is included in the concept of "due process." California's concept of "due process", as interpreted by its judges is more protective of individual rights than is the United States Constitution's as interpreted by the United States Supreme Court. One example dates back to 1961, the United States Constitution required states for the first time to exclude illegally obtained evidence in criminal trials. California already had that rule in place, voluntarily as an interpretation of the California Constitution since 1955. Similarly, the United States Supreme Court promulgated the "Miranda" rule in 1966 requiring that arrestees be advised of their constitutional rights. California had that rule in place for several years prior to 1966. In short, Californians enjoy greater protective rights than do citizens in other states. How will this limited definition of *"due*	See also response re due process concerns above, at comment 5, point no. 1. The forum and advisory committees also note that the proposed legislation deals solely with orders and judgments in civil actions, not criminal. As to the boundary litigation discussed in this comment, the forum and advisory committees cannot comment on specific cases. Finally, as discussed above in response to comment 5, point 6, the issue of whether or not to recognize and enforce tribal court judgments on any grounds beyond those provided under the principles of comity is settled law and hence outside the scope of this proposal.

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			process" affect California respondents objecting to the enforcement of a tribal court order against them? Californians as stated above, enjoy greater due process rights than do citizens of other states because of the liberal nature of the California Constitution. Citizens of *all* states have due process rights that differ from those of tribal members, because the United States Constitution applies to all states but not to tribes or in some cases, tribal members in Indian Country. Accordingly, tribes and tribal members in the tribal courts can obtain judgments under procedures and circumstances that might not be permitted either in California or in other states. A perfect example of a tribal court obtaining judgments under procedures and circumstances not permitted in California Court is the Colorado River Indian Tribes (CRIT) who reside in Arizona along the east side of the Colorado River. The issues along the Lower Colorado River are extremely complex and evolve around the questionable Western Boundary of the CRIT Reservation. As a matter of federal statutory law the "Disputed Area" is not	

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			reservation, nor is it trust land. Nevertheless, the CRIT tribal court continues with evictions, unlawful detainer actions, nuisance abatement orders, and money judgments against unfortunate non-Indian citizens. The CRIT Tribal Court with impunity seizes profitable businesses, modular homes, boats and jet skis. The current list of objections and the definition of due process will further harm these citizens and their families. • States should not enforce tribal court judgments if a tribe has refused to be sued under the Civil Rights Protections Act. **III. Difficult Multi-Jurisdictional Issues** Without doubt, tribal court jurisdiction is a complex determination. California as you know is a Public Law 280 state. Thus, jurisdiction often will be in both the state and tribal courts. For example, consider contracts between off-reservation non-Indian businesses and tribes or tribal members involving services on the reservation. When a tribal member orders goods to be delivered to an on-reservation home address, the tribal court will	III. The forum and advisory committees acknowledge that tribal court jurisdictional issues can be complex, but further note that those issues are outside the scope of this proposal, which does not expand, limit, or in any way address the jurisdiction of such courts. Whether a tribal court has personal or subject matter jurisdiction in any specific case is a matter first of tribal and ultimately federal law. Further, the proposed statute provides grounds for objecting to state court recognition of a judgment is no such

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			frequently have subject matter jurisdiction and will have personal jurisdiction over the off-reservation business *if* that business has a sufficient number of contracts with the reservation. It must be remembered that a tribal court is not a court of familiar jurisdiction to non-Indian defendants. Moreover, many businesses, small and large, dealing with tribes are simply unaware of the concept of tribal sovereign immunity. Tribes have not gone out of their way to advise non-tribal business of the existence of such immunity. Nor is the general public aware that even in tribal court a tribe can shield itself with immunity to civil liability. In June of 2005, the NINE Group of Palm Springs, a limited liability company of Delaware learned this lesson the hard way. The NINE Group operated an upscale nightclub restaurant at the Morongo Casino. A lease dispute erupted and the NINE Group learned that tribal corporations also share in a tribe's immunity to civil liability and cannot be sued under the federal diversity statute, 28 U.S. C. 1332 (a)(I). The federal court simply had no jurisdiction.	jurisdiction exists. (See proposed section 1735 (b).) With respect to the issue of sovereign immunity, Congress has exclusive authority to limit tribal sovereign immunity. This issue is beyond the purview and scope of this proposal and it would be inconsistent with the decisions of the Ninth Circuit to try to condition recognition of tribal court orders on any limitations of tribal sovereign immunity. With respect to due process concerns, see discussions in repsonse to comment 5, point 1 above. The forum and and advisory committees note that Congress has exclusive authority to establish due process and procedural requirements for tribal courts. To date Congress has exercised this authority in the provisions of the Indian Civil Rights Act and the Tribal Law and Order Act. It is outside the scope of this proposal to impose conditions that Congress has not seen fit to impose. As to the NINE Group litigation or the action regarding the allotment in San Diego,

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			While this was not a tribal court judgment, it demonstrates that even sophisticated businesses are unaware of tribal sovereign immunity. Waivers of immunity should be reciprocal, so that judgments against tribes and/or tribal members could be enforced in the same way the judgments in favor of tribes and/or tribal members would be under the proposed legislation. Where litigation and enforcement IS involved, the scales of justice must be level, and not tilted in favor of tribal interests. When a similar form of legislation was introduced in the State of Iowa, a lobbyist for the Iowa Bar Association, Jim Carney, opposed the legislation stating, "... the proposal has far-reaching implications for anyone who does business with the tribe. Every time you sign a contract for a phone or cable or banking, there's a clause that says what law applies. If you are dealing with the tribe, you won't know what law will be applied to your case. [1] The reasoning is that the tribal courts have not yet developed a body of common law that establishes a precedent. Further, tribal courts often interpret both written laws and	the forum and advisory committees will not comment on specific cases.

	Commentator	Position	Comment	Committee Response
			unwritten laws with consideration given to tribal norms, customs and practices, unknown to the civil defendant hauled into tribal court. An issue closer to home is occurring in San Diego County where an allottee in 1960 conveyed out of trust his property and sold the fee-land to non-Indians. The Rincon Band of Mission Indians has placed concrete barricades at the entrance of the property claiming it as reservation and alleging the property is a health and environmental hazard and ordered it cleaned up. The property owner states the land is not subject to the tribe's jurisdiction or laws. *Critics say it don't provide an adequate way to challenge verdicts*, by Jennifer Jacobs, Des Moines Register, March 29, 2007 There are reasonable arguments since local and state taxation applies to the land. Moreover, the history of the establishment of Mission Indian Reservations in federal statutory language presents facts that have not been litigated. Likewise, federal statutes prevent the blocking by tribes of Indian Reservation Roads.	

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			In an attempt to determine jurisdiction the property owner filed in federal court against tribal officials saying that tribal rules do not apply on his property because it is private land.[2] The court dismissed the case instructing the property owner to follow-through with the tribal court process. This appears to be a multi-jurisdictional issue that will require broader grounds for objection to the recognition of a tribal court judgment than offered in the proposed language. [2] Last Stand at Rincon www.stevenandsuzanneslaststandatrincoTI.com/ **IV. Potential impact of tribal state gaming compact language on patrons, Employees and affected local governments** On its surface this legislation does not appear to be related to California tribal-state gaming policy, but it does. In 2007/08, then Governor Schwarzenegger included in the Aqua Caliente tribal state compact and a few others, the following language: **Section 10.2 (d) (v) Patron Tort Claims:**	IV. Many gaming compacts in California require tribes to establish forums in which patrons and/or employees of tribal gaming establishments may bring complaints against the tribe. Without these provisions such complaints would generally be barred by the doctrine of tribal sovereign immunity. It is beyond the scope of this proposal to assess the adequacy of these bodies.

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			(v) At such time that the Tribe establishes a tribal court system, the Tribe may give notice to the State that it seeks to renegotiate in good faith this subdivision (d), in which case, the State shall be obligated to negotiate in good faith the arrangements, if any, by which the tribal court system will adjudicate claims of bodily injury, property damage, or personal injury covered under this subdivision (d). In so negotiating, the State shall give due respect to the sovereign rights of the Tribe, and due consideration to the due process safeguards established in the tribal court system, the transparency of the tribal court system, and the appellate rights afforded under the system. The Agua Caliente Compact 'obligates' the State to negotiate in *good faith with* the arrangements by which a tribal court system will adjudicate claims of bodily injury, property damage, or personal injury covered under its Compact. This component expands tribal sovereignty over non-Indian citizens in California. This is an expansion of tribal sovereignty that is not supported by federal law. If the state refuses the terms of the	

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			tribes proposed court system, will the tribe then challenge the State in a *bad faith* negotiation and seek a court mediated agreement to provide tribal authority over non-Indian citizens? Will the tribe use the litigation as leverage for the development of state legislation to further expand its authority and jurisdiction over non-Indian citizens, local governments, state agencies and the State itself? Tribal Casino patrons need greater civil protections that those afforded in tribal court. Here are two examples of tribal tort ordinance language typical of tribes that have 1999 tribal state compacts. In the Barona Band of Mission Indian's tort ordinance Section IV-B: The Barona Ordinance does not waive immunity for any judicial action in any court other than the Barona Tribal Court. Thus, there is no right of appeal from the Tribal Court's decision to any state or federal court. In the San Manuel's tort ordinance Section 14.11 Principles of Law Applicable to Determination of Claims, it states: "Any claim brought under this ordinance shall be	

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			determined in accordance with Tribal Law. Further, while not subject to state jurisdiction, claims under this Ordinance shall be determined generally in accordance with principles of law applicable to similar claims arising under California state laws to the extent that they are consistent with tribal law and established by Constitution, ordinances resolution, customs, traditions and other sources of tribal law. • Where does one find customs, traditions and other sources of tribal law in print? **V. The Need for Additional Safeguards for the Defendants.** There are no stated requirements in the draft concerning either the qualifications of tribal court judges, the right to trial by jury, or an objection based upon misapplication of state law. There are no guidelines for the principle of comity or reciprocity. In 2010, Congress passed the Tribal Law and Order Act (TLOA) which amended the Indian Civil Rights Act and provided additional protections for law enforcement, but more to the point authorized tribal courts to rule on offenses subject to greater	V. The commentator asks for "stronger guidelines for comity" or additional safeguards like those contained in the Tribal Law and Order Act (TLOA). First, the TLOA pertains only to criminal and not civil cases. The current proposal only applies to civil matters. Second, only Congress can impose restrictions on Indian tribes, and in the civil context, Congress chose only the rights contained in the Indian Civil Rights Act (See 25 U.S.C. 1301-03 (2000).) The forum and advisory commitees have concluded that a proposal to impose additional requirements, such as those contained in section 234 of the TLOA,

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			than 1 year imprisonment or a fine greater than $5000.00. The TLOA lists in -'Tribal Court Sentencing Authority" Section 234 (d) (2) through (5) requirements that provide protections to criminal defendants. We suggest that the honorable members of this committee review this section of the TLOA and consider developing similar requirements that tribal courts must meet in order to meet state court principles of comity in civil cases. For example: 1. Require that the judge presiding over the proceedings has sufficient legal training to preside 2. That the judge be licensed to practice law in at least one state jurisdiction 3. Prior to any proceeding, all court rules and tribal laws are made public and available including regulations and interpretative documents, rules of evidence, and rules governing the recusal of judges in appropriate circumstances of the tribal government 4. That the court maintains a record of the proceeding including an audio or other recording of the trial proceeding. 5. An assurance that rules governing the	would be inappropriate given the constitutional structure which vests such authority in Congress and would be incosistent with Ninth Circuit precedent governing recognition and enforcement of tribal court orders.

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			admission of evidence in civil cases are roughly comparable to those governing state courts in California 6. A guarantee of a fair and impartial tribal appellate process. Clearly, if there were more time to comment additional and necessary safeguards could be developed. Developing guidelines for tribal courts in order to meet the principles of comity is a mutually beneficial action. Stronger guidelines for comity will help improve the tribal court system. Likewise a tribal court system is beneficial to the state if the protections are strong and like that of a state. **VI. Reciprocity - Agreed-Upon Respect Between Two Sovereigns** The Act should include a provision to limit reciprocity to only those tribal courts that have reciprocal provisions recognizing California Court judgments. The principles of comity are designed to allow a foreign forum's decree to operate as a matter of agreed-upon respect between two sovereigns. A condition of comity recognition should be that the tribe allows suit (i.e., waives sovereign immunity) for violations under the	VI. See responses to comments re reciprocity at comment 1 and comment 3, point 3.

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			United States Constitution. A recent California Watch Report, both written and broadcast on KQED and NPR, *Native American tribes shield parents from child support,* August 5, 2011, by Kelley Weiss, reported that: "Mothers around the state are finding it almost impossible to collect child support from some Native American fathers because tribal governments and businesses are shielding them from court ordered payments, records and interviews show." California Tribal governments should be enacting ordinances to garnishee casino stipends to pay child support; rather tribal courts must reciprocate California State Orders. Citizens were promised that support for tribal gaming would lift Native Americans off of the welfare rolls and voters responded in 2000 with an overwhelming 64% on Proposition 1A. Tribal governments because of their lack of political will to act are forcing mothers and tribal children, the future of the tribes, onto state welfare rolls at the expense of the non-Indian taxpayers. Tribal interests argue that more California tribes should establish tribal courts in order to resolve this	

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			issue. In an August 15, 2011 article on Turtle Talk citing 18 GTB Code section 1609, established by the Grand Traverse Band (GTB) requires per capita gaming payments to be used to satisfy child support obligations first. The GTB ordinance states: § 1609 - Child Support Obligations The Tribal Council shall establish a program to ensure that, if the GTB has knowledge that any recipient of a per capita benefit is delinquent with respect to a duty of support under an order issued by the court of any state or Indian Tribe, such per capita benefit shall be allocated to the satisfaction of such support obligation in priority over any distribution or allocation of such benefit otherwise provided for under this RAO. Such program shall include cooperation with federal, state, and Tribal governments under the Uniform Reciprocal Enforcement of Support Act, the Social Security Act, and similar statutes. Nothing in such program shall create a duty of financial obligation on the part of the Tribe to any support obligee or third party. **History:** Revenue Allocation Ordinance adopted by Tribal Council on December	

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			27,1994; as amended by Tribal Act #98-16.635, enacted by Tribal Council in Special Session on August 31,1998; as amended by Tribal Council in Special Session on May 31, 2000; as amended by Tribal Council in Special Session on June 1, 2000. There are less than a handful of tribes in California that have developed such an ordinance. Developing the ordinance and enforcing it does not require the establishment of a tribal court. It does require "political will" and the administrative action of a tribal government. Garnishment of casino stipends could be resolved through a "memorandum of understanding" developed between a tribe and the local District Attorney for the collection of child support payments. **VII. Treatment as Sister-State Judgments - Expands Tribal Sovereignty Over Non-Indian Citizens** The Act should not give greater weight to tribal court judgments than to sister-state judgments. This component expands tribal sovereignty over non-Indian citizens in California. The proposed legislation would, at least in part, subordinate the rights of	VII. The proposal does not expand tribal court jurisdiction in any way. The new law is procedural only: it streamlines the procedures by which tribal court judgments may be recognized and enforced, while retaining the standards under which they must be evaluated - the principles of comity - which are already in effect. The proposal simply establishes consistent and clear

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			non-Indians to those of Indians in California's judiciary. The existing system of comity provides some protection for those rights, which the proposed legislation would degrade for all the reasons cited regarding the inadequate definition of *"due process"* and the narrow list of objections in the proposed language. For example, judgments from existing sister-states can be presumed to have been rendered under a system affording at least minimal constitutional rights. But the United States Constitution does not apply in Indian country, and judgments of tribal courts cannot be assumed to have afforded any such rights. Moreover, the California Constitution, in some areas, affords greater rights than does the United States Constitution. California litigants including those who seek to register foreign state judgments in California are bound by those rights. Tribal court litigants are not. **VIII. Conclusion** The proposed legislation is extremely broad in scope. Perhaps, the suggestion of only recognizing tribal court judgments under	procedures for the recognition of tribal court judgments which are already entitled to comity according to Ninth Circuit precedent. Sister state judgements are still treated differently, as they always have been, in that they are accorded full faith and credit. Hence such judgments are subject to fewer objections and less scrutiny by the state courts. The forum and advisory committees do not recommend that current law be expanded by this proposal to provide that state courts accord full faith and credit to tribal court

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			existing specific statutory mandate for full faith and credit or statutory procedures for recognition of tribal court judgments or orders is appropriate for the "initial trial period." Limiting the scope of judgments to only "California Tribes" is also prudent for an initial trial period to determine how the procedures are working. What period of time will the trial period cover and how will the effectiveness of the procedures be evaluated? The trial period and proposed methodology of evaluation is not discussed in the text provided for comment. The Court must be careful not to create unintended consequences or harm to citizens that will be difficult if not impossible to resolve. We hope our comments are useful and helpful to the committee. We believe our comments add the perspective of how tribal judgments affect ordinary citizens and a state's public policy. Should there be any further questions regarding our comments or the committee would like to talk with individuals who have experienced or are currently involved in tribal court actions	judgments. Instead, the decision was made to recommned that the principles of comity remain in effect. Further, the groups have concluded that limiting the scope of the act to only tribes located in California could lead to procedural burdens on the courts. Because federal law requires that the state courts apply the priciples of comity to all tribal judgments, no matter where the tribe is located, the fourm and advisory committees concluded that having different procedures for recognizing the judgments of different tribal courts based on the location of the tribe would be needlessly complicated.

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			firsthand, please do not hesitate to contact me.	