

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

Jan. 20, 2015

Ms. Anne M. Ronan
Legal Services
455 Golden Gate Avenue,
San Francisco, CA. 94102-3688
anne.ronan@jud.ca.gov

RE: Comment - Notice of Application for Recognition and Entry of Tribal Court Money Judgment (form EJ-115)

Dear Ms. Ronan,

Stand Up For California appreciates the opportunity to make comment on the proposed *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* (form EJ-115). Overall the form does what the act prescribes. Nonetheless, the Judicial Council in its invitation to comment readily acknowledged that implementation, costs and operational impacts will require training for Court Clerks and Judicial Officers. Additional documents and forms as suggested in the paragraph labeled “Alternatives Considered” must be developed to assist in this training process.

It would be beneficial if the Application form specify the factual “jurisdictional basis” for the tribal court judgment. As you know, tribal court jurisdiction over non-Indians is based on federal law. A Tribe submitting an *Application for Recognition and Entry of Tribal Court Money Judgment* should be required to thoroughly explain and document its jurisdictional exception under federal law. It will be important in training documents for the Court Clerk or other Judicial Officers unfamiliar with Indian Law to be made aware of federal law limiting civil regulatory jurisdiction of tribal courts over non-Indians.

In 1981, *Montana v United States* (450 U.S. 544), the Supreme Court ruled as to both the criminal and civil position of tribal government authority over non-Indians. Tribal governments generally do not have civil regulatory jurisdiction over non-Indian activities on fee lands or owned lands inside of tribal reservations. Tribes simply do not have full regulatory authority over non-Indians. Moreover, the Supreme Court broadly states that tribes do not have inherent jurisdiction over non-Indian civil matters at all although tribal governments may regulate hunting and fishing on tribal lands. There are however, two exceptions in this ruling:

1. citizens who enter into contracts with tribes are subject to tribal jurisdiction as to the contractually-related activities; or, .
2. when the civil activity of non-Indian citizens threatens the political integrity of the tribal government or the health or security of the tribe. *(This exception has a very high standard to meet; the history of this standard must be provided in training documents to Court Clerks and Judicial Officers.)*

Failure to include this information potentially provides a forum for the creation of judge-made-law for tribal jurisdiction in state courts that is inconsistent with federal law. Further, without a detailed description of tribal court jurisdiction any attempt to bring resolution to complex multi-jurisdictional situations given the nature of tribal sovereign immunity would be made more difficult.

I hope you find this comment helpful to the Judicial Council in the development of the form(s), additional training materials and instruction to the Court Clerks and Judicial Officers regarding this new procedure.

Sincerely,



Cheryl Schmit, Director
Stand Up For California
916 663 3207
cherylschmit@att.net
www.standupca.org