Indian Child Welfare Act (ICWA): Best Practices Guide for California Courts and Judicial Officers

A TOOLKIT OF POLICIES, PRACTICES, PROCEDURES, AND TIPS TO IMPROVE COMPLIANCE BY STATE COURTS WITH THE INDIAN CHILD WELFARE ACT AND OUTCOMES FOR INDIAN CHILDREN, FAMILIES, AND TRIBES

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Judicial Council of California

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Martin Hoshino
Administrative Director
Judicial Council

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Chief Deputy Director

Robert Oyung
Chief Operating Officer

Charlene Depner, Director
Center for Families, Children & the Courts

Ann Gilmour, Attorney
Center for Families, Children & the Courts

Cory Jasperson, Director
Office of Governmental Affairs

Andi Liebenbaum, Attorney
Office of Governmental Affairs

Leily Arzy, Judicial Fellow
Office of Governmental Affairs

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ICWA BEST PRACTICES GUIDE FOR CALIFORNIA COURTS AND JUDICIAL OFFICERS

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Background and Purpose

California is home to more individuals with Indian ancestry than any other state in the nation. Representing 12 percent of the nation's tribal population, 720,000 Californians reported having American Indian/Alaskan Native ancestry in 2010.[i]

The Judicial Council of California is committed to serving Indian children, parents, and tribes in state courts, and this guide is intended to assist ongoing efforts to improve court service in cases governed by the Indian Child Welfare Act (ICWA). Enacted in 1978, ICWA is a federal law that attempts to reverse the historic practice of Indian children being removed from their homes and placed with non-Indian families and institutions. ICWA and corresponding California laws give an Indian child's tribe the right to participate in and provide input on numerous key issues in child welfare cases, certain juvenile delinquency cases, family law cases, and probate guardianship cases, that could result in either someone other than the child's parent being granted custody of the child, or the termination of parental rights on behalf of the child.

Despite this right, a tribe's ability to represent its position in a case may vary depending on its available resources, staffing, and location. One tribe may only have one ICWA advocate to act on its behalf in ICWA cases while another may have several advocates and attorneys.[1] These disparities are further exacerbated by the fact that tribes often have active ICWA cases across multiple counties in California, and in multiple states across the country. Most problematic of all, since its enactment in 1978, ICWA has been inconsistently interpreted and applied throughout the country. In an effort to address these inconsistencies, in 2016, the federal government enacted comprehensive regulations for the implementation of ICWA, found at 25 Code of Federal Regulations part 23 (2016), and the Bureau of Indian Affairs (BIA) issued updated *Guidelines for Implementing the Indian Child Welfare Act*.[ii]

In the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice* (2017),[2] tribes described the difficulties they faced when engaging in California's court system and attempting to exercise their rights in ICWA cases. California's Legislature responded to the federal ICWA regulations and the updated BIA guidelines, as well

[1] This guide uses the term ICWA advocate to refer to the social workers who represent their tribes in ICWA proceedings. The term ICWA advocate is used by tribal social workers and should not be misinterpreted to mean that the social workers are advocating on behalf of the Indian Child Welfare Act. Some tribes are able to retain attorneys, who are referred to in this guide as tribal attorneys. Together, tribal attorneys and ICWA advocates are referred to as tribal representatives.

[2] Hereafter referred to as the *ICWA Compliance Task Force Report.*

as the issues outlined in the *ICWA Compliance Task Force Report*, by taking legislative action including, most significantly, the passage of AB 3176[3] in 2019 to align California statutory law with federal requirements.

California's judicial branch has also taken action to respond to federal regulations, the BIA guidelines, and the issues raised in the *ICWA Compliance Task Force Report.* Effective January 1, 2018, the Judicial Council amended California Rules of Court, rule 5.552, to provide tribes greater ease of access to juvenile case records involving their tribal children. In 2019, the Judicial Council amended California Rules of Court, rule 9.40, governing *pro hac vice* appearances to ease restrictions on appearances and fees for out-of-state attorneys representing tribes in ICWA cases. Effective January 1, 2020, additional comprehensive revisions were made to rules of court and Judicial Council forms concerning ICWA and juvenile cases to implement AB 3176 requirements and federal ICWA regulations and guidelines.

The purpose of this guide is to supplement and build on this earlier work in areas within the judicial branch's purview that are not amenable to remedy by legislative action or statewide rule of court. The Judicial Council has identified areas of court culture, practices, formal and informal policies, and communications that impact the ability of tribes to fully and meaningfully participate in cases involving their tribal children and, by extension, affect ICWA implementation. This report identifies appropriate policies, procedures, and practices courts may wish to implement when interacting with tribal parties and handling ICWA cases. Depending on their local needs, courts can consider and adopt some or all of these innovative recommendations and practices. At the very least, we hope that this guide encourages communication between tribes and their local courts regarding the unique needs and circumstances that tribes face.

Methodology

Judicial Council staff reviewed the California *ICWA Compliance Task Force Report* to identify court-related concerns raised and reported in that document. To clarify and further understand the concerns identified in preparation for this guide, staff sought and incorporated direct input from tribes and tribal experts throughout the state. In total, 20 tribal representatives, including ICWA advocates and tribal attorneys, were interviewed over the course of several months in late 2019 and early 2020.[4] The advocates and attorneys interviewed represent over 20 federally recognized tribes in California with experience in at least 36 of California's 58 counties.[5] The advocates and attorneys interviewed also represent their tribes in ICWA cases in other states including Oregon, Washington, Texas, Nevada, Kansas, and Indiana. Judicial Council staff also

[3] The enactment of AB 3176 (Stats. 2018, ch. 833) brought California law into compliance with the BIA guidelines discussed above. This legislation updated the state's Welfare and Institutions Code to align with the federal government's regulations.

[4] It is important to note that interviews were, for the most part, conducted before the emergence of the COVID-19 pandemic. COVID-19 has since created challenges for the courts and tribes, which this guide does not address.

[5] See page 34 for details. Notably, some tribal representatives, due to confidentiality concerns, did not feel comfortable disclosing the exact counties or courts they had experience working in, so it is not known whether additional counties are included in this guide.

attempted to contact representatives from out-of-state tribes due to concerns that they may have amplified challenges in navigating the California court system. Unfortunately, we were unable to interview out-of-state tribal representatives for this study.[6] Courts should be aware that out-of-state tribal representatives may face additional challenges to effective participation including different time zones, which courts should make efforts to accommodate. In addition to tribal input, we solicited court practices from judicial officers who tribal representatives have identified as effective implementers of ICWA in state courts.

These conversations brought to light how the policies and practices impacting tribal representatives vary substantially depending on the nature of the tribal population in a given location and the court overseeing the case. As will be discussed in greater depth below, tribal representatives reported that ICWA implementation depends on the actions of and interactions with a county's child welfare agency, county counsel, court staff, and the judge overseeing the case.

For ICWA to be implemented effectively, it is essential that all participants not only have a full understanding and appreciation of the law and tribal sovereignty, but also understand and appreciate the nature of a tribe's relationship to its children and families. Further, system participants must recognize the different roles that tribes play in an ICWA case as government, party, expert, and service provider. In order to achieve ICWA compliance in each individual case and improve overall outcomes for the Indian children, families, and communities that a court serves, all stakeholders must recognize the need for robust tribal engagement as system and case participants. The variation across courts creates challenges for tribes—from different jurisdictions both inside and outside of California—trying to participate in cases and navigate different procedures throughout the state.

This guide highlights best practices that have been identified and implemented by some juvenile courts in California in an effort to promote the uniform application of the Indian Child Welfare Act throughout the state and foster just outcomes for tribal parties, Indian parents, children, and families in child welfare proceedings. Other courts in California may consider implementing some or all of these policies and practices within their courts and justice systems to improve ICWA compliance and, most significantly, enhance outcomes for Indian children, families, and tribes throughout the state.

[6] Sixty-nine tribes, predominantly located in California, were contacted through email and phone to arrange for interviews. Of those contacted, 20 Californian tribal representatives were willing and able to arrange for an interview.

The Indian Child Welfare Act in California

ICWA was enacted in an effort to curtail child welfare practices that threatened Indian tribes, families, and children. Hearings held in the U.S. Congress during the 1970s shed light on the profound harm caused by the removal of Indian children from their homes, families, and tribal communities throughout the country. Nationwide, approximately 25 to 35 percent of all Indian children were removed from their homes and placed in foster care, adoptive homes, or boarding schools.[iii] This made Indian children six to seven times more likely than non-Indian children to be removed from their families and housed in institutions.[iv]

In California, the rates were worse than the national average: Indian children were over eight times more likely than non-Indian children to be removed from their tribal homes and families. Further, when removed from their tribe, over 90 percent of the state's Indian children were placed in non-Indian homes and institutions.[v]

Congress enacted ICWA in 1978, but California did not amend state law to reflect the Act until decades later. In 2006, California enacted SB 678, referred to as Cal-ICWA, which incorporated ICWA requirements throughout the California Family, Probate, and Welfare and Institutions Codes. In 2016, the federal government, for the first time, enacted comprehensive regulations implementing the Indian Child Welfare Act[vi] and updated *Guidelines for Implementing the Indian Child Welfare Act*. The regulations were intended to promote the uniform application of the Indian Child Welfare Act throughout the country. In 2017, a group of tribal representatives in California compiled the experiences of tribes and tribal advocates involved in ICWA cases in California and presented their findings to the California Attorney General in the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice.*[vii] This report stated that tribal representatives "experience frequent resistance and dismissiveness from child welfare agencies, county attorneys and even courts when appearing in dependency cases."[viii] The report contained issues both within and outside the purview of the judicial branch. For those issues within its purview, the Judicial Council has taken action through implementation of rules and forms, updating guides, and educational materials. The council has also developed ICWA job aids which are documents—such as check lists, informational sheets, recommended findings and orders, and resources—that assist tribal representatives, court employees, social workers, and judicial officers in child welfare proceedings pertaining to ICWA.[ix]

Now in 2020, this guide was prepared with the goal of filling in the gaps that state law, court forms, and documents cannot address. It presents a series of best practices that are within the discretion and authority of local courts and individual judges that can be utilized to improve ICWA compliance and outcomes. These practices are consistent with the Judicial Council's 2014 Strategic Plan,[x] which outlines the branch's guiding principles. These best practices, intended to advance ICWA implementation and service to tribes, support and advance the following key principles of the Judicial Branch

Strategic Plan: (1) Access, Fairness, and Diversity; (3) Modernization of Management and Administration; and (5) Education for Branchwide Professional Excellence. In its totality, this guide is a vehicle to advance Principle (4) Quality of Justice and Service to the Public, which is concerned with ensuring quality justice for California's increasingly diverse population. Whether court users have limited English proficiency, literacy, financial means, or access to transportation, courts must adapt and innovate to meet their legal needs and help them resolve their disputes.[xi] Equal access to justice for tribes is no different.

Tribal Values and Traditions

The state of California has 109 federally[7] recognized tribes with additional tribes seeking federal recognition.[xii] While this guide intends to improve court services for all tribes, Indian children, and Indian families appearing in courts in California, it is essential to recognize that each tribe is different, and the makeup and needs of the tribal population in each California county is also different. Not all of the practices and policies discussed here will be appropriate in every court. In fact, this guide encourages courts to adopt policies that fit their local needs and their regional tribal communities' resources and practices. One of the challenges of implementing ICWA in California is the state's vast and diverse nature. Because the state is so large with numerous tribes that have different histories and circumstances, implementing ICWA can be challenging. Further, many Indian people in California are affiliated with tribes located out of state. This is particularly true in many of the urban areas that may have several large tribal populations, but no federally recognized tribes within the county itself. For example, a tribal community in Inyo County is going to be very different—historically and in the present—from a tribal community located in Los Angeles County. As a California judge put it, "there is no one size fits all problem or solution, [but] there are some common themes and promising strategies and approaches," as this guide highlights.

The most basic and common theme underlying the best practices gathered from tribal experts is this: courts need to know and understand their local tribal populations. Every tribe has its own unique customs and traditions. Over the course of a case, the court must become aware of the implications of its orders or decisions on tribal values or customs. For example, one tribal attorney describes the consequences of a court ordering the placement of an Indian child in a nontribal placement. Nontribal guardians may not allow the Indian child to attend certain tribal ceremonies or events that are important to the child's tribal community. In doing so, the Indian child is subsequently cut off from his or her culture.

Courts would benefit from a greater awareness of their regional tribes' values and traditions, such as important ceremonies for tribal youth discussed above. Tribal advocates and attorneys have noted that they would appreciate being asked about these values and traditions in court. It appears that a better understanding of tribal culture could serve as a useful tool in ICWA proceedings.

[7] See Figure 1: California Tribal Lands.

FIGURE 1: CALIFORNIA TRIBAL LANDS[8]

Source: Bureau of Indian Affairs and the U.S. Census Bureau (2011).[xiii]

[8] Note that this map does not show all of the tribal communities in the state. It is missing the Rincon and La Jolla tribes, as well as all of the tribal communities which are not federally recognized.

Areas for Improvement and Best Practices

This section presents practices and policies that tribal representatives identify as hindering their ability to represent their tribes as equal parties in courts. After presenting the issue from the tribal representatives' perspectives, we offer best-practice resolutions that some judicial officers implement in their courts to address the issue.

1. *Consideration of unnecessary burdens on tribal resources and time could be improved.*

Tribal resources and time are fundamental to the tribes' ability to access the courts. Tribal representatives report that, in some counties, courts and social workers do not adequately consider tribal resources and time when scheduling hearings, calling court calendars, and making decisions about whether it is appropriate to delay or continue a hearing. Most nontribal system participants in dependency proceedings are dedicated to the court or calendar in which they appear. County counsel, agency staff, and attorneys appointed to represent minors and parents are generally assigned to a specific court calendar. This is not true of tribal representatives who may have only one case in a particular court at any given time, but whose presence and participation are nonetheless critical.

The great distances that some tribal representatives must travel and limited financial resources can create barriers for representing tribal interests in courts. First, inadequate court consideration is given to the distance that tribal representatives must travel for any given hearing or case. Some tribes are quite remote, and tribal representatives must drive long distances to get to the juvenile court. Families living on tribal trust lands—also referred to as reservations—also face serious challenges when trying to get to court for their proceedings. They are often poorly serviced by public transportation and, in some cases, it is unrealistic to expect a tribal family or representative to appear in court by 8 a.m. Tribes located outside of California face heightened resource and temporal barriers, having to take time differences into account when trying to appear for court hearings held in California.

In terms of limited resources, some tribes are disadvantaged financially and have limited access to legal counsel. These issues are especially exacerbated when court cases are continued. When cases are continued, the tribe must expend its limited resources to pay its tribal representative to return to court at a later date. Further, if a contested matter is continued, tribal representatives highlighted the severe financial burden on tribes to pay for an attorney to return to court once again.

Best practice/opportunity:

To alleviate this issue, some judicial officers and their court staff prioritize communication with tribes regarding travel time and place them on the court calendar at a more agreeable time. Tribal parties expressed appreciation when greater consideration was given to the distance they must travel to appear in court. If a tribe is three hours away from the court and the case is scheduled

for 9 a.m., this creates logistical burdens that could be alleviated if, through improved communication, the court schedules that hearing for a later time.

In addition to considering travel time and setting a hearing for a realistic hour, some judicial officers have arranged for all ICWA cases to be heard together, creating a *de facto* "ICWA calendar" for the day. A bench officer who oversees child welfare and juvenile matters describes how establishing an "ICWA calendar is a serious proposal in [his] mind given the complexities of ICWA, especially from a civil and cultural perspective." Tribal representatives spoke of the benefits that come with ICWA calendars, and how they have reduced hurdles for their tribes. Instead of returning three times in one week to hear three separate ICWA matters, for example, the court will collect a tribal representative's cases and place them together on the calendar on the same day. In this way, the tribal representatives do not have to make three round trip journeys to the court.

Another judicial officer explains how she is cognizant of the implications of continuing cases for tribal parties. If she continues a case, she always asks the tribal party if the date proposed to reconvene works for their schedule; if it does not, she will propose alternatives. Further, she orders legal counsel, if they anticipate that they will ask for a continuance at the next hearing, to call the tribal party to notify them so that the tribal representative can appear telephonically. She wants to avoid the great cost and inconvenience imposed on tribal parties, particularly those living far from the court, who have to appear in court for a two-minute continuance. Similarly, in another county, a judicial officer has indicated to all parties that there is an expectation of prior communication with the tribe if the party intends to ask for a continuance.

While remote participation in court proceedings is discussed in further depth below, several judges note that accessibility to remote court participation is an important element of recognizing limited tribal resources and time. One judge describes how she wants the tribal representatives, especially when located hours away from court, to be able to stay in their offices and call in for short, non-evidentiary court proceedings. A judge explains that many non-evidentiary court proceedings can be quite brief, so she will never require a party—especially tribal—to travel the distance when Zoom or another remote means is available. Further, she tries to be considerate about when she is scheduling evidentiary hearings.

The Judicial Council has further facilitated tribal participation by creating the *Tribal Information Form* (form ICWA-100).[xiv] The recently adopted form will increase access to the courts for California tribes with limited resources and for out-of-state tribes by allowing them to file documents by fax. It will allow tribes to provide information or declare positions early in a case, so tribal issues are less likely to disrupt the court process later.

2. *Judges should ensure that they solicit input from tribal representatives on key issues like active efforts, case planning, placement, and more, prior to making their rulings.*

Among the most frequent comments made during interviews with tribal attorneys and ICWA advocates was the perception that judges do not adequately scrutinize the child welfare workers' reports to ensure that ICWA is being implemented well or at all. Instead of routinely approving a county welfare worker's findings, tribal advocates and attorneys were most satisfied with the proceeding when judges asked critical questions of all parties regarding the validity of findings. In some cases, it was revealed through this questioning process that, in preparation of the child welfare report, the child welfare worker assigned to the case did not even contact the tribe.

Tribal advocates and attorneys identify those judges who actively consult the tribe throughout the case on placement, qualified expert witnesses, permanency planning, and more as those who implement ICWA most effectively. Judges should solicit tribal input early and frequently. This includes inviting tribal representatives to speak and share their insights when appropriate. Tribal representatives state that ICWA is best implemented when judges treat ICWA matters as standard and integrated into the court proceedings, as opposed to a brief or fleeting interruption. These thoughts are consistent with the 2017 *ICWA Compliance Task Force Report* recommendation that judicial officers should not allow child welfare workers, "to submit generic, conclusory findings of compliance with Cal-ICWA," and, instead, "the court should specify in exacting detail—on the record—what the good cause is and not allow unsupported findings."[xv]

Best practice/opportunity:

One judicial officer describes how she, in terms of her personal courtroom practice, goes around the counsel table, where tribal representatives are seated along with all other parties, and calls on each person to contribute to the conversation. Whether a party is appearing in person or by phone, every participant in the case gives input. She describes how some judges "may not have that as part of their routine or habit," especially because those "with heavy caseloads are often incentivized to keep their cases moving." She explains how judges need to be reminded that "[keeping the case moving] is not the most important thing" even if "it can be harder to slow down and make sure every voice is heard."

Another judicial officer describes why it is important to scrutinize child welfare reports submitted to the court. For example, simply accepting that active efforts or attempts to contact relatives of the child were made is insufficient. She wants to know the precise details of how attempts to contact family members were made and how often such attempts were made. She also emphasizes how, in regard to interpreting reports, if "we [the court] are missing the mark, tribal representatives should tell us, and we should listen."

As mentioned above, the Judicial Council's proposed *Indian Child Welfare Act (ICWA): Tribal Information Form*[xvi] could be helpful in making standard the solicitation of tribal input. This

form intends to facilitate tribal input during child welfare proceedings and improve ICWA compliance. The pending form includes a space for tribes to clearly indicate their views on communication with the court and other stakeholders, case planning, services, active efforts, placement, permanency planning, and other procedures in cases governed by ICWA.

3. *Tribes face challenges when trying to receive the county child welfare workers' reports prior to the hearings.*

Tribal representatives frequently stated that they do not receive the county child welfare worker reports in a timely manner prior to court hearings. The lack of time to review, scrutinize, and discuss the report's contents with tribal council often requires that the tribe request a continuance in court. Tribal parties describe how these continuances force all parties to incur avoidable costs. As mentioned above, continuances create financial burdens for tribes, the court, the parties, and other participants. It also negatively impacts the children and their families, who experience additional delays before potential reunification. When requesting continuances, some tribal representatives describe that it appears to the other parties—the child and the family—that the tribe is responsible for delaying the court process.

Best practice/opportunity:

One judicial officer has implemented a practice requiring the local county counsel's office to email a copy of detention reports to the tribe prior to the first detention hearing. At the first detention hearing, the judicial officer makes a point to identify the tribal representative's preferred email address and instructs county counsel to email the tribe while in court to ensure that there are no email delivery issues. In addition to other proper service requirements, she also instructs county counsel to email other reports to the tribe in a timely manner.

In another county, the judge mandates that tribes be added to the e-service system used by county counsel and the local child welfare agency to serve reports on minors and parents' attorneys as well as other participants in the case. The judge also mandates that there be a meeting or discussion (an informal meet and confer) that includes the tribal representative prior to each hearing to review the proposed report and recommendations. This minimizes surprises and conflicts that may cause a hearing to be continued.

To address issues like tribal access to child welfare reports, courts can use their authority to enact local rules and standing orders to create policies that address local needs and circumstances. Examples of local rules and standing orders that California courts have enacted are included in Appendix A, and cover topics including tribal access to information, permissive tribal and service provider participation in cases involving tribal children where ICWA does not apply, requirements for agency proof of notice of hearings to tribal participants, tribal participation in juvenile mediation, and organization of ICWA court files. A judicial officer interviewed for this report similarly suggests that courts make a standing order that tribes are entitled to child welfare reports, making the agency in contempt of court for failing to send reports to the tribe.

Alternatively, courts can develop local forms for tribes to request that reports be sent to a specified address. Once the tribe submits the form to the court, the court can make it an order of the court, forwarding it to all parties.

Another bench officer states that in her county, the child welfare agency has generally become good about serving reports to ICWA advocates. However, if the report is not served to the tribe in a timely manner, she will give the ICWA advocate an option to either call the case again later that day, giving the advocate a few hours to review the report, or grant a continuance so that the advocate can review the report thoroughly. She does this because she expects the tribe to be treated like any other party, which includes receiving reports in a timely manner.

Further, this bench officer describes how consideration of tribal resources is a matter of setting the expectation that all parties be courteous to one another. In her courtroom, the judge sets the expectation that ICWA advocates are treated the same as lawyers in the case. Specifically, she expects everyone to be kept in the loop about continuances, reports, and child-family team meetings. If her standards and expectations for communication are not extended to tribal representatives, she says the other parties "pay a severe price from me. They get scolded publicly [in court]. They do not want that to happen too often."

4. ***Tribes should be provided timely access to discovery on par with other parties.***

In our interviews, some ICWA advocates and tribal attorneys reported a lack of access to discovery. Advocates and attorneys request that, as equal parties to a case, the courts must mandate that the tribes have access to discovery. This finding is also reflected in the *ICWA Compliance Task Force Report*, which similarly found that tribal representatives often lack access to discovery or gain access in an untimely manner.[xvii]

Best practice/opportunity:

One judicial officer recognizes that some courts more heavily scrutinize tribal advocates' authority to represent the tribe in proceedings. For example, if the tribe does not formally intervene, tribal representatives do not get access to all of the discovery. In this judge's courtroom, she does not require formal intervention by a tribal party in order to grant or authorize discovery. She considers, on a case by case basis, whether discovery, such as psychological reports, should be available to all parties. However, generally speaking, tribal parties should receive equal access to discovery because they are "held and live up to the same rules of confidentiality" as other parties such as the attorneys.

To address this issue, some judicial officers direct county counsel to include the tribal representative (at their preferred email address) on all communications that it has with other counsel in the case unless, of course, the issue is solely of concern to county and child's counsel.

As in issue area #3 above regarding access to county child welfare reports, another judicial officer suggests issuing standing court orders and local forms as potential solutions. She opines that these would be useful tools for judicial officers to ensure compliance with ICWA and equal access to discovery for tribes. For example, courts could develop local forms for tribes to formally request access to discovery. Once the form is submitted, the court could make tribal access to discovery an order of the court. Once an order of the court, a judicial officer can hold any department or agency failing to comply with the order in contempt of court and, thus, compel compliance.

5. ***Receipt of court orders, reports, notices of court hearings, and notices of appeal among tribal representatives must be timely and consistent.***

Notice of court hearings. Tribal representatives' ability to appear before the court and exercise their rights as parties to cases involving Indian children hinges on receiving notice of court hearings in a timely manner. ICWA advocates and tribal attorneys frequently report receiving notices of court hearings in an untimely manner. In some cases, they do not receive notices of court hearings until well after their hearing dates have passed.

Court orders, court reports, and minute orders. Tribal advocates and attorneys experience difficulty obtaining court orders, minute orders, and court reports after hearings. In some counties, despite being parties to the case, they reported having to ask several times to receive such documents. Some tribal parties describe, after having asked the court numerous times, turning to the county child welfare workers to get copies of the court orders and reports. One tribal attorney reports receiving court reports months late from the same county consistently. Another tribal advocate describes how, unless she takes the time to go to court and retrieve the report or order, she has to get a copy of these documents from a parent in the case.

Notices of appeal. In the words of one tribal attorney, appellate issues begin at the trial court level. He describes how notice of appeal forms do not include space for the tribe to be included as a party. As a result of not being listed on the notice of appeal, the tribe does not get notices from the Court of Appeal. Attempting to become a party once the case is at the appellate level is, likewise, problematic because the process is very challenging. It is important to note that tribal attorneys described being treated like "second-class parties" at the appellate level. Further, some tribes do not receive the entire record for appeal.

Best practice/opportunity:

With regard to the timely receipt of court reports, minute orders, notices, and notices of appeal, judges have emphasized the importance of training court staff. One judicial officer describes how her court staff has been made aware of the importance of ensuring proper delivery of court reports to tribes, especially in a timely manner. She discusses how staff training has assisted in ensuring that the timely delivery of court orders and reports to all parties, including tribes, is a priority. In past years, some tribes would not formally intervene in a case, and, as a result, court

clerks would not send the tribes court orders. After clarifying with clerk staff that—whether a formal intervention occurs or not—the tribe should receive court orders if it has indicated a desire to participate, the problem was alleviated. Tribal parties began receiving orders with greater consistency and in a timely manner.

Another judicial officer holds regular child welfare meetings with her court staff to work out these kinds of issues. Through these meetings, the judge clarifies with her staff that tribal representatives need to be receiving certain documents that may have been overlooked. Among other issues, "we discuss how to improve the minutes and how to improve notices of court hearings." If someone, such as a tribal representative, brings an issue to her attention, the judge puts it on her agenda and discusses it with her staff at these regular meetings. The judge will even share her email with tribal parties to ensure smooth communication, and limit the delay in tribal receipt of documentation. Her philosophy on these issues is that, "if there is a problem, they can reach out to me and I will address it. If you want quality tribal engagement, you must make yourself available for input. You cannot make changes without knowing what the problems are."

The programming of court case management systems may address why some tribes do not receive court orders, reports, and notices in a timely or consistent manner. In order to ensure that ICWA cases are properly identified and tracked, and to help ensure that proper ICWA requirements and orders are met at all stages of the case, courts should incorporate ICWA flags into their court case management systems. That said, it may be that some case management systems do not have the capacity to add the tribe as a party.

By way of example, the state of North Dakota uses a case management system known as Odyssey (Tyler Technologies)[xviii] that is also employed in some California courts. They too experience challenges because the system does not appear to have a way to specifically name tribes as parties. The recently published *State of North Dakota Juvenile Court Best Practice Manual* (2020)[xix] outlines how North Dakota's juvenile courts include ICWA information, including tribal identity, in their Odyssey case management system, through the use of flags:

> Odyssey Case Flag: Upon determination that ICWA may apply, assigned staff document the information in Odyssey by applying the ICWA case flag and entering the tribe(s) name in the comment field. If the tribe is not known, a comment of "further inquiry needed" can be entered.[xx]

Uniform inclusion of ICWA and tribal information in court case managements systems would alleviate a number of the problems identified by tribal representatives related to failure to receive service of notices and documents, particularly notices of appeal, from the juvenile courts. According to one judicial officer, if a tribe is not identified as a party or does not formally intervene, it is unlikely that the tribe will get notices of appeal. She notes how, in her experience, some tribes do not want to formally intervene because they do not want to formally engage with

a state court system that they view negatively. She echoes the suggestion that courts ensure their case management systems properly identify tribes or that workarounds be developed.

6. *Quality of remote appearance must improve due to essential role of tribal representatives in child welfare cases.*

The ability to appear remotely and to effectively present one's position before the court is essential regardless of case type. However, remote appearances are especially consequential for ICWA advocates and tribal attorneys because of the nature of their caseload. First, these are incredibly sensitive cases, dealing with the health, safety, and future welfare of children. Second, many advocates and attorneys have cases spread throughout the state. One ICWA advocate—the only one for her tribe—reported having between 32 and 38 active child welfare cases at any given time in several counties. The same advocate reported participating in court hearings by utilizing remote appearance at least 60 percent of the time. Because it is not cost-effective or feasible for a tribe to have a physical presence in every case throughout the state, remote appearances are essential to tribal representatives.

Tribal representatives frequently report that the quality of remote appearance technology is poor. Advocates and attorneys face numerous challenges when representing the tribe's position through the phone. They must often wait for hours on the phone before their case is called, if it is called at all. They describe remote appearances as significantly less effective than in-person appearances but, due to logistics and resource scarcity, in-person appearances are not possible much of the time. Some tribal representatives find it challenging to hear the proceedings when participating remotely and feel like a "nuisance" throughout the case. Tribal parties appreciate when judges give the tribe an opportunity to speak, as opposed to putting the advocates or the attorneys in the position of having to interrupt if they want to share the tribe's views over the phone. Tribes also suggest that the court make better use of microphones in the courtroom when a party is appearing by phone.

One tribal attorney specifically prefers when courts do not use CourtCall,[9] for she finds the service to be particularly difficult to use. While outside services may simplify things for the courts, companies like CourtCall are not familiar with tribes and often do not know that tribes are not required to pay the CourtCall participation fee.[xxi] Notably, the passage of AB 686 (Stats. 2019, ch. 434)[xxii] established that, in any proceeding governed by the Indian Child Welfare Act, the child's tribe may appear by telephonic or remote appearance and is not subject to paying fees for such an appearance. Before the passage of AB 686, tribal parties reported that the requirement to pay for remote appearances had been a deterrent to court participation due to

[9] CourtCall is a private platform that facilitates remote participation in court proceedings. Attorneys, self-represented litigants, and other court participants use CourtCall by calling into court and participating remotely in the proceeding. Some California courts do not contract with CourtCall, or any other service provider, and have developed their own technological remote participation systems.

limited resources. Typically, nontribal court participants are required to pay a $94 fee, per call, to participate remotely.[10]

Notably, one tribal attorney states that the telephonic fee had not been the deterrent to remote participation. Instead, the deterrent was the process of establishing remote participation and getting access to the court. Without a relationship with county counsel or a child welfare worker, tribal attorneys and advocates have difficulty getting access to the court clerk to establish a phone line in the first place. Because courts vary in their practices, tribes face challenges when attempting to contact court clerks.

Best practice/opportunity:

To limit this problem, one court ensures that court clerk staff and tribes with pending cases exchange contact information including phone numbers and email addresses. The judge also prioritizes ICWA cases on the calendar and ensures that tribal representatives have a fixed time to be contacted rather than having to wait on the line for hours while the calendar proceeds. Even before the COVID-19 pandemic, in the early months of 2020, she had considered using alternate remote technology in lieu of CourtCall, such as Skype, so tribes and other parties could more effectively participate in hearings. Since the emergence of the pandemic, the judicial officer and her court staff have become well-versed in Zoom to facilitate virtual hearings. With the widespread implementation of Zoom in courts, she describes how there is no "good reason why courts could not accommodate tribes via Zoom proceedings."

Another judicial officer prefers the use of her courtroom's conference call system to facilitate remote participation. Her courtroom has limited capacity to use video remote technology. This judge finds that she "get[s] more out of listening to someone's argument" over the phone. Regardless of the means, she ensures that "tribal representatives can participate at the level they are entitled to."

Courts must also be mindful of tribal capacity when considering the appropriate technology for remote appearance. Tribes may have limited access to high speed internet, which places video appearances out of reach.

Due to frequent conversations with local tribes, one judge describes how the cost of CourtCall was brought to her attention early on. Before the enactment of AB 686, she had a standing order in her court that remote participation would be of no cost to tribes. She set up a process so that a tribe could file a standing fee waiver. Like other judges, however, she has recently shifted to Zoom, which has eliminated the issue of fees altogether.

[10] Seventy-eight percent of the funds from fees goes directly to CourtCall. The remaining funds go to the Trial Court Trust Fund.

Earlier this year, advisory committees to the Judicial Council proposed that the council amend rules 5.9, 5.482, and 5.531 of the California Rules of Court, effective January 1, 2021, to allow an Indian child's tribe to participate in any hearing in a proceeding governed by ICWA using telephone or other computerized remote means. This proposal was approved by the Judicial Council at their meeting on September 25, 2020 and become effective January 1, 2021[11]. These changes implement the requirements of AB 686 and bring California Rules of Court into compliance with state law.

7. *Qualified Expert Witness (QEW).*

Depending on the county, some tribal attorneys and ICWA advocates have reported challenges with obtaining qualified expert witnesses that are truly knowledgeable about the prevailing social and cultural standards of the tribe, as required by law. In our conversations, tribal representatives expressed frustration regarding county agencies identifying a tribal person from an entirely different tribe to serve as a QEW in their case. As discussed above in *Tribal Values and Traditions*, each tribe has its own customs and traditions, and tribes often differ significantly in family and child-rearing practices. One tribal advocate describes how "not any tribal person can speak to any [other] tribe's practices." Complicating matters, many tribes do not have the resources to obtain qualified expert witnesses to speak to their tribes' cultures or family and child-rearing practices.

An ICWA advocate elaborated on an instance when the county and court settled on a qualified expert witness when her tribe was not present in court. The tribe did not believe that this QEW had the knowledge and understanding of the tribe's specific practices. In response to the ICWA advocate's opposition, county counsel notified her that she would have to file an objection with the court. However, the tribe could not afford to retain an attorney and the ICWA advocate, a social worker, did not have the legal training to successfully challenge the selected QEW. In this case, lacking an attorney was a disadvantage for the tribe seeking to assert a challenge to the county's selection of a QEW. In such cases, the ICWA advocate suggests that courts should not allow for the county's chosen QEW without the tribe's input.

As with the other issues presented in this guide, there is great variation in tribal representatives' experiences. Many representatives did not experience difficulty obtaining a suitable QEW. Similarly, some judges ask the tribe if they have a qualified expert witness while others do not.

Best practice/opportunity:

Whenever a case needs a QEW, one judicial officer describes how she will first ask the tribe if they have anyone in mind. If the tribe does have a QEW, the court will utilize the expert identified by the tribe. If the tribe does not have an expert, she will turn to the child welfare

[11] Available at https://jcc.legistar.com/View.ashx?M=F&ID=8772000&GUID=CD8CA00F-A49D-4699-B462-923655020E3F

agency to find a QEW. Any QEW offered by the department must be approved by the tribe. This judge has found this practice to be effective in alleviating concerns about identifying inappropriate experts.

Another judicial officer states that she will not have a QEW testify if the tribe does not approve. In her county, local tribes have prepared lists of Indian QEWs. These lists are shared with the local child welfare agencies, so, ideally, agencies should propose and the court should hear from a QEW that the tribe acknowledges as having the necessary knowledge of its practices and traditions.

Well-Received Practices

This section presents existing court practices and policies that tribal representatives appreciate. During our conversations, tribal representatives reported that these practices enhance their ability to represent their tribes as equal parties in a case. As described above, tribal representatives experience challenges due to variation in court practices from county to county, court to court, and even judge to judge. However, the following practices are generally well received by tribal parties and are currently implemented in some courts.

1. *Continuances granted by the courts.*

ICWA advocates and tribal attorneys report that their requests for continuances are usually granted and well-received by the court. For example, when a hearing is continued because the tribal attorney did not receive a child welfare worker's report in a timely manner, as mentioned above, the tribal representatives must frequently request continuances, which are typically approved by the judge. However, as discussed, these continuances can also create resource, financial, and logistical issues for tribes.

2. *Treating tribal representatives like legal counsel.*

ICWA advocates described that they are often treated differently from attorneys in court whereas tribal attorneys were more likely to report feeling like equal parties in ICWA cases. ICWA states that Indian tribes have an absolute right to intervene in these court proceedings at any point in time.[xxiii] Whether an ICWA advocate or tribal attorney, tribal representatives are entitled to engage in court proceedings and assert what they believe to be in the best interest of their tribes and children.

As discussed in the *ICWA Compliance Task Force Report*, individual judges decide how their courtrooms will operate and what practices are tolerated. It falls on judicial officers to address the differential treatment of attorneys and ICWA advocates by implementing equitable policies and practices. In many ways, judicial discretion can impact tribes' ability to "meaningfully participate"[xxiv] in court proceedings. Interviews with tribal representatives shed light on the following practices: entrance into the courtroom, seating in the courtroom, and morning calendar

call. While these issues may appear mundane, they significantly impact tribes' ability to participate in court. Addressing these issues may enhance tribes' participation and begin to alleviate the underlying disparate treatment between ICWA advocates and attorneys.

Allowing ICWA advocates and tribal attorneys to wait for cases to be called in courtroom. While most advocates and attorneys reported sitting in the hallway for their cases to be heard, some reported being allowed to wait in the courtroom. They stated that they appreciated this practice and felt respected when invited to do so. However, there are instances in which the tribe's attorney or ICWA advocate may prefer to sit in the hallway with the parents or child involved in the case. A standing invitation for ICWA advocates to wait in the courtroom, if they so choose, may appeal to tribal representatives, even if they do not exercise this opportunity in every case.

Inviting ICWA advocates to sit at counsel's table when their cases are being heard. ICWA advocates describe feeling like equal parties when invited to sit at counsel's table while their cases are being heard. According to advocates, this practice varies depending on the court and the judge. If not allowed or invited to sit at counsel's table, advocates will be asked to sit in the jury box or in the audience when their case is being heard. Getting a literal "seat at the table" allows the tribal parties to feel welcome and be better heard. While some advocates do not view seat placement to be intentionally hostile, some describe it as a signal to the tribe as to whether they are respected. However, advocates acknowledge that some courts and courtrooms do not have the capacity or are not designed in a manner to accommodate more parties at counsel's table. While advocates are not typically invited to sit at counsel's table in some counties, tribal attorneys describe how, in almost all cases, they are invited or presumed to sit at counsel's table. In other words, courtroom size and orientation may explain why some advocates, like other participants, are not at the table. But, when it is possible to include them, all tribal representatives should be sitting with other parties and attorneys.

Including ICWA advocates in morning calendar call. Many ICWA advocates describe the great value that they place on being granted access to the courtroom during calendar call. Many ICWA advocates are typically not included in calendar call, but they describe how there is information provided during calendar call that tribal parties find useful. They also view this time as an opportunity to engage in prehearing conversations with county counsel, social workers, and others and would like to be involved to express their tribes' positions.

Advocates who are invited to be in the courtroom state that it is helpful to hear what other cases are on the calendar and to hear attorney input before the cases begin. Many courts do not include ICWA advocates for morning calendar call, requiring that they wait in the hall with other parties. It may be the case that, for early court sessions, tribal representatives are not able to reach the court in time for morning calendar call. However, if representatives are present in court, they should be included for morning calendar call.

Judicial input:

A judge in one county ensures ICWA advocates are treated like attorneys in that they are welcome to enter the courtroom at any time, invited to participate in calendar call, and expected to sit at counsel table. During calendar call, which is a time for informal discussion about cases between the attorneys and the judge before the cases of the day are formally called, the judge will seek input from the tribal parties. She describes how the tribe can "set the stage and the tone for the comments from other attorneys who follow the tribe's input on the sufficiency of [certain] matters, or lack thereof."

Another judicial officer describes how everyone is allowed in the courtroom during calendar call because "frankly [it is] the most important." She describes how ICWA advocates, like social workers, are professionals and are welcome to engage in calendar call. Further, she finds the disallowance of ICWA advocates from being seated at counsel's table to be "disrespectful."

3. *Including ICWA advocates in regular meetings with judicial officers, county counsel, and dependency counsel.*

ICWA advocates report that inclusion in regular court meetings with system partners—such as county counsel and local child welfare agencies—has strengthened their ability to represent their tribes. The advocates describe these meetings as productive ways for all parties to address systemic problems, beyond a single ICWA case.

Judicial input:

Several judicial officers from different counties recommend convening "listening sessions or round tables" through which court personnel can learn more about the perspectives and experiences of county service providers and tribal representatives within the court system. This would not be a time to discuss individual cases, but to identify how different parties are generally experiencing the court system and to highlight what is and is not working. These meetings have been particularly useful for the judges to become aware of the challenges that tribal representatives experience in court. For example, judges may become aware, for the first time, that tribal representatives do not routinely receive notices of hearings or copies of court reports.

One judge highly recommends that fellow judges convene meetings focused on court improvement and ICWA implementation. She explains how judges and court staff should be "prepared to listen." She has found that the court can be an effective facilitator of meetings and constructive dialogue between tribes and local agencies. She understands why tribal representatives may not initially trust the court, due to California's deeply troubling history with indigenous people, stating "it is fair for them to be wary of you." Through these meetings, she has learned about local tribes in her county and has come to better understand each tribe's individualized needs. She emphasizes that one tribe may want a practice or a policy entirely

different from another. The judge adds, "tribes have an absolute right to want different things because we are dealing with a sovereign-to-sovereign relationship."

4. ***Consideration of tribe's schedule for next hearing.***

Many ICWA advocates and tribal attorneys reported that their tribes' schedule is typically considered when scheduling the next court hearing. The judge will typically ask the tribal party if they are able to appear in court on the next potential court date.

5. ***Approval of remote appearance request.***

The courts usually approve remote appearance requests.

6. ***Constant and open communication with county counsel.***

In some counties, county counsel has been active in reaching out to and accommodating tribal representatives. Tribal representatives appreciate when county counsel communicates with them in advance of hearings. This correspondence often concerns whether the tribe may need accommodations for a remote appearance, or confirming that the tribe plans to appear for the next hearing.

Suggestions from Tribal Representatives

This section contains suggestions, recommended by tribal representatives, for the court system's improved collaboration with tribes. From their perspective, the courts' adoption of some or all of these recommendations would improve the implementation of ICWA and meet many tribes' unique needs in court. As appropriate and relevant, judicial input regarding these suggestions is provided.

1. ***Implement greater uniformity in practice across courtrooms and courts.***

From court to court, there is great variation in the implementation of ICWA practices and policies. ICWA advocates and tribal attorneys suggest that some uniform practices should be adopted across all courts. Tribal representatives have cases throughout the state, and it can be difficult to navigate the various court policies. From courtroom to courtroom within the same jurisdiction, a similar lack of uniformity has been an issue.

2. ***ICWA checklist for judges to utilize during court.***

Tribal advocates suggest the use of a "checklist" for judges to refer to during ICWA cases. They suggest that such a checklist could be useful for judges to go through each element of ICWA before proceeding in the case. Judges could check timely notice, culturally appropriate case plans, active efforts, and other ICWA requirements before proceeding through each stage of the

case. The Judicial Council could develop such a checklist for bench officers to use that would ensure that each issue area has been sufficiently addressed and adequately scrutinized.

However, some ICWA advocates and attorneys warn against current practices in which the court goes through each ICWA requirement superficially without legitimate deliberation. The checklist should serve as a reminder of ICWA requirements, but it should not create a system by which the judicial officer proceeds through each item without consideration of the intent behind ICWA, tribal expectations, or consultations.

Judicial input:

One judge believes an ICWA checklist can make "judges box-checkers without truly effectuating the purposes behind ICWA." She believes that a judicial officer must learn to be culturally sensitive for ICWA to be implemented effectively. She suggests that a judge in each court—a volunteer who is concerned with cultural sensitivity—should be identified. The presiding judge of that court could assign all ICWA cases to this individual to ensure ICWA is rigorously implemented. This suggestion to create ICWA courts is addressed in greater depth below.

Another judge notes how she has considered this ICWA checklist suggestion in the past. She believes this may be helpful for some judicial officers, especially those who are new to the bench or infrequently handle ICWA cases.

3. ***Training as to the historical significance and importance of ICWA.***

Tribal representatives have reported that some child welfare workers, county counsel, and judicial officers do not understand why the tribe has a voice in child welfare proceedings or why that voice is important. ICWA advocates and tribal attorneys find themselves having to educate these parties as to why they are equal participants in these cases, and what the significance of ICWA is. Similarly, tribal representatives stated that, in some cases, there is a perception that ICWA is a constant and unnecessary impediment to court processes. One tribal attorney reports that they are made to feel like a "nuisance," especially if the tribe enters a case in a later stage.

Improved education as to the history of the Indian Child Welfare Act and why ICWA is important would be beneficial. Some tribal representatives suggest that an awareness of past practices in California and the high rates of Native American youth in the foster care system may be instructive for system partners. This education may result in greater compliance and reduce the tendency for ICWA to be perceived as a burden that slows down the court process. Beyond education and training, one tribal representative states that there "needs to be a culture shift, an understanding that tribes are sovereign, and tribal youth are citizens of those tribes."

Judicial input:

One judge describes how she and her staff are "on board" with her courtroom being "an ICWA dedicated courtroom." She has spent time explaining the importance of ICWA to her court staff and "its historical underpinnings, and the 'why' of what we do, so they will be happy to do their part." In terms of education and training, she notes that all judges assigned to dependency receive training on ICWA, including its purpose. A disconnect may arise in practice when judges begin overseeing dependency cases. This disconnect may result from a judicial officer's lack of cultural competency or inadequate commitment to honoring the underlying intent of ICWA. In some instances, it may manifest as an unintended consequence of packed court calendars where judicial officers are trying to move through their cases in a timely manner and avoid all delays, including those that arise in ICWA cases. Such actions, perhaps well-intentioned, are disrespectful.

Another judge describes how she has seen a few misconceptions among judges and stakeholders during proceedings regarding tribes and ICWA. Some may believe that tribes do not want intervention for the Indian child at all, and are only interested in slowing down the court process. She has found that tribes want what is in the best interest of the child and will ensure the child's safety, even if that means state intervention, as long as ICWA procedures are followed. Further, some assume that tribes are biased such that they will only speak positively of the tribal parent. To the contrary, this judge has found that tribal representatives in her court are appropriately critical of their members, and are invested in solutions that provide the greatest safety and security for the Indian child. She describes how the tribes often "want to hold their members accountable and change negative behaviors."

With regard to the historical significance of ICWA, one judge discusses how her county "has a terrible history of white violence against Indians." She explains how the court and local government must "appreciate the pain this has caused." She has personally taken part in local events where non-Indian members of the community listen to the stories and experiences of local tribes. She has found this to be greatly impactful, especially on her role as a judge overseeing ICWA cases. She states that "we cannot just sit in our ignorance." Courts and stakeholders must recognize why ICWA "was put into existence," including that "children were taken away from their tribes and cultures" and "tribes have a right to self-determination."

4. ***Court staff and court clerk training.***

Court staff may benefit from training on ICWA and the important role of tribes in court proceedings. It has been reported that court staff will, at times, not share information with tribal attorneys, or require that all filing, for example, be done in person, which can be impossible or prohibitively expensive for out-of-state, out-of-county tribes, and even in-county tribes.

Further, court clerks may benefit from training on the specifics of tribal documentation. Tribal attorneys have reported being rejected when trying to file a tribe's resolution—a document

representing a tribe's position on a policy or issue pertaining to its government or community—for an upcoming court hearing. Tribal representatives suggest that courts assign a single court clerk with expertise in filing ICWA-related documents. Alternatively, before rejecting tribal documentation, require that the clerk check with a juvenile dependency judge who has expertise in ICWA. This would be especially helpful in counties that have a greater tribal presence: having a designated court clerk responsible for ICWA cases may improve the process for everyone.

Judicial input:

While this is not an issue that this judicial officer has encountered in her courtroom, she agrees that court staff training should resolve these issues. She describes how court staff training is consequential for justice outcomes. She states that "the judge is always going to set the tone. If the judge does not perceive something as important, the clerk will not perceive it as important." The judge explains how, once in a while, she may forget to check in with the tribal representative on the phone line; her court clerk, as a result of good staff training, will remind her. The clerk knows and shares the judge's belief that ICWA is important. This judge agrees that understanding and implementing the requirements of ICWA and instilling such values in staff are important. She notes that her emphasis on training court staff on ICWA does not stem from a desire to avoid being reversed on appeal. Instead, the judge believes that upholding ICWA is important because the law itself has value and that treating Indian families right should be the motivating force behind doing this work. Highlighting the importance of ICWA to staff and actively addressing procedural errors is an important part of ensuring that the courts treat Indian tribes fairly and correcting our historic treatment of Indian families.

5. ***Develop an ICWA calendar.***

Tribal advocates and attorneys find ICWA calendars to be helpful in improving ICWA compliance, and maximizing tribal resources and time. Even without a formal ICWA calendar, some judges will organize the court calendar in such a way that ICWA cases are heard concurrently. In calling these cases together, the court can prepare to have a seat available at counsel table for the ICWA advocate and/or tribal attorney, and may be more likely to implement ICWA practices appropriately.

Judicial input:

One judge points out that, in her court, there are not enough ICWA cases to create an ICWA calendar. And, even if they did, an ICWA calendar may not be feasible because all ICWA cases are on different timelines, so it may be challenging to coordinate the cases on one day. For this reason, in her small court, she prefers the approach of specifically training one judge in all aspects of ICWA. This one judge, then, handles all cases where an Indian party is involved in a child welfare proceeding. Once a case has been identified as one in which there is "reason to know" that an Indian youth is involved, the case should be set to appear before that specially trained judge.

Similarly, another judge notes that while ICWA calendars are a great idea, some courts (like her own) have so many ICWA cases every day that training a single judicial specialist would not be feasible. To accommodate tribal representatives, she generally calls ICWA cases first unless there is an evidentiary hearing that takes priority. She suggests that, if appropriate, other judicial officers could call ICWA cases first to respect tribal representatives' time. By having their cases called first and consecutively, tribal representatives do not need to spend their whole day in court. They can complete their cases for the day and return to their offices for a remote case or travel to another court for an in-person hearing. However, this solution requires open communication between tribal representatives and the court. Through communication and coordination, the court can determine whether tribal representatives are able to appear in court and present at the outset of the calendar.

6. ***If continuances are issued in court, notify tribes.***

In cases where they are not able to appear in court for a particular hearing, tribal parties appreciate when they receive notice that there has been a continuance.

7. ***Utilize electronic means to notice tribes.***

Using regular postal service to mail notices of court hearings has been described as ineffective. Numerous tribal representatives have reported that they often do not receive notice of a court hearing until after the court date. Many suggest utilizing electronic means in addition to postal notices to ensure that the tribe receives timely notice of court hearings. Those who receive electronic notice find it to be timely and effective. Further, considering that tribal representatives are frequently traveling, they would benefit from receiving notices electronically because they may not be in their office in time to receive mailed notice of the next court hearing. However, all tribes do not have the same degree of technological or internet access. Thus, depending on these factors, electronic notice may not enhance all tribes' likelihood of receiving notice of court hearings. Ultimately, court staff should check with tribal representatives to ensure that they are receiving notices in a timely manner.

8. ***Utilize electronic means to send tribes court reports.***

Some counties are able to deliver court reports by electronic means, which representatives find to be very helpful.

9. ***Facilitate relationships and increase exposure between judges and local tribes in the region.***

ICWA advocates suggest that judges should educate themselves on the tribes in their local areas. Judicial officers and court staff should visit their local tribes, so they can get a sense of the services that the tribe can provide. Some advocates feel there is a misunderstanding of the quality and type of services that tribes provide families. Improved training may prevent culturally

appropriate services provided by the tribe from being underestimated or overlooked. One advocate states that after judicial officers visit the tribe, "we become real to them."

Judicial input:

Several judges highlight the importance of getting to know the Native American community in their respective communities. They suggest that judges utilize the Bureau of Indian Affairs website[xxv] to identify local tribes. Upon identifying local tribes, the court can facilitate communication by identifying the tribal leadership's contact information through the Tribal Leaders Directory[xxvi] or simply searching the tribal websites online, which typically detail each tribe's governance structure and points of contact.

Judges also recommend that courts identify which tribes are receiving court notices and appearing in court hearings, both in person and by phone, to get a better sense of which tribes most frequently appear before them.

A judicial officer adds that "judges who handle ICWA cases should get to know the tribes who appear before them." She recognizes that this can be challenging when ICWA cases are spread across judges in a court. This is why she sees value in the practice of consolidating ICWA cases before one judge, so that the "judge is much more willing to take the time to educate herself on the tribes in her area and form relationships."

Another judge adds that it is essential for *all* courts to know if they have any local tribes in their jurisdiction. In getting to know local tribes and their leaders, it is "important to recognize that when you are working with the indigenous people of California and the United States, they have been systematically traumatized [by us] for generations." This judge has personally engaged with tribal communities in her county for years. Regardless of her efforts, she knows that as a member of the "dominant white culture," she will always be viewed by some tribal members as a representative of the state that oppressed them. She accepts and understands this perception, describing how "for those of us in the court system and in society more broadly, it is easy to relay blame on someone else, but you need recognize what you represent" to tribes in this state.

10. ***In some instances, judges should regard ICWA advocates as pro per litigants.***

In the same way that judges will provide very basic assistance to pro per litigants who do not have legal training, some tribal representatives would appreciate basic guidance from judges when it is clear that ICWA advocates are not familiar with submitting evidence, and calling or cross-examining witnesses. Along these lines, some non-attorney ICWA advocates stated that they would benefit from basic courtroom training.

Greater guidance as to their rights and roles in a courtroom, and the rules and procedures of the courts would be very helpful for some advocates. One tribal advocate states that a training or "crash course" on court forms would also be useful for advocates without legal training.

Due to their legal training, lawyers for tribes do not describe such issues when trying to engage in the court process. Tribal representatives suggest that judges, who may not be doing so now, should take a moment to ask the ICWA advocate what the tribe's position may be on any particular issue throughout the course of the trial. Some advocates do not know when or how to interject to explain the tribe's position.

Judicial input:

Says one judicial officer in response to this suggestion, it is "incumbent upon a judge to make sure parties understand what is going on. The judge should, when necessary explain [matters] as they would to any party." For example, whenever this judge has parents in her cases that do not understand what is going on, she takes a moment to explain what is happening. She states, "the last thing you want is for people to leave the room having no idea what just happened." While she runs a formal courtroom, she wants the experience to be welcoming and does not want to intimidate parties, especially those for whom the experience might be especially traumatic.

11. ***Development of ICWA courts.***

Generally speaking, tribal representatives have found that the regularly appearing, nontribal attorneys and child welfare workers in ICWA courts tend to have a strong understanding of ICWA. Although there is no formal definition of an ICWA court, here we will use it to describe a court that has particular expertise and focus on ICWA cases and where those cases are concentrated. This is important because, in many courts that do not specialize in ICWA, tribal representatives are frequently in a position in which they have to educate county partners as to how ICWA operates and the law's basic expectations, as described above in ***3. Training as to the historical significance and importance of ICWA***.

While the state's ICWA courts have their strengths, some tribal representatives explain how ICWA implementation challenges still remain. They suggest for those developing an ICWA court to look at the nature of the appeals that arise from whichever ICWA court is chosen as a model. The representatives explain how it is not safe to assume that any particular court is better at addressing or resolving ICWA concerns simply because it is an ICWA court.

With this in mind, some tribal attorneys recommend that, if a court plans to develop an ICWA court, it should look at various specialty court models across the country.[12] In addition to California's courts, tribal representatives suggest looking at models in states such as Montana, Minnesota, Arizona, and Colorado. One tribal attorney notes that the hiring and inclusion of Indian staff, court clerks, and social workers made a substantial positive difference in the implementation of ICWA in Montana.

12. ***Same access to the court and court-related systems as other participants.***

Some tribal representatives would like greater access to court information and systems. For example, some courts may utilize online portals to hold reports and documents. If that is the case and child welfare agencies can access them, tribal representatives should be given access to information pertaining to their ICWA cases. This would enhance communication with the tribe, which, as stated above, is a critical component of effective ICWA implementation in courts.

[12] Other states have implemented innovative ICWA practices that California courts may benefit from. Tribal representatives identified Oregon and Washington as states that have particularly innovative ICWA implementation practices. An ICWA advocate describes how Oregon courts across the board do a good job of getting tribal input and evaluating active efforts. She describes how the court will devote a portion of its proceedings to active efforts, such that "instead of a check box on an order, they have a conversation [about active efforts]."

From the advocate's personal experience in California, she describes how unless the tribal party interjects, the courts often do not pay great attention to active efforts. Some tribal representatives also reported that Washington's courts exhibit great deference to the tribe. These and other states' ICWA implementation practices should be further explored to gauge where California's court system can improve and what innovative strategies it can learn from, as it pertains to ICWA.

Spotlight: Mendocino County Presiding Judge Ann Moorman

Tribal representatives consistently described Presiding Judge Ann Moorman of the Superior Court of Mendocino County as a judicial officer who upholds the integrity and spirit of the Indian Child Welfare Act and shows deference to tribal parties. Her court practices, policies, and outlook are presented here to better highlight how an individual judicial officer can ensure tribes are treated like equal parties.

Mendocino County is home to many federally recognized tribes that have a significant presence in the local community. The tribes include Cahto Indian Tribe of the Laytonville Rancheria, Coyote Valley Reservation, Guidiville Rancheria, Hopland Band of Pomo Indians of the Hopland Rancheria, Manchester Band of Pomo Indians of the Manchester Rancheria, Pinoleville Pomo Nation, Pit River Tribe, Potter Valley Tribe, Round Valley Indian Tribes of the Round Valley Reservation, Redwood Valley Rancheria, and Sherwood Valley Rancheria of Pomo Indians.

In reflecting on her work overseeing child welfare cases, Judge Moorman describes how she is cognizant of the trauma that tribal communities, both in her county and throughout the state, have suffered, and how the courts were historically complicit in causing this harm. Courts upheld state laws that oppressed Indian tribes and diminished their sovereignty—including the legalization of Indian slavery. [xxvii] Indians were also denied basic legal rights and banned from testifying in court.[xxviii] She acknowledges how, even today, the court "is not always a comfortable place for Indian families."

When Judge Moorman began overseeing the dependency calendar in Mendocino County, she implemented a series of changes to create a court environment that best serves all parties—especially tribal parties. For example, she installed a large horseshoe table in the center of the courtroom that all parties sit at, facing her, to promote a collaborative environment. Judge Moorman invites ICWA advocates to this table, where they join attorneys and other experts who are involved in the child welfare case. Additionally, she includes tribal parties in morning calendar call because, like social workers, attorneys, and other service providers, Judge Moorman believes tribal representatives are critical for ICWA cases.

Judge Moorman also took the bold step of removing the portraits of the court's past (largely older, white, and male) judges and replacing them with large photos of oak trees in grasslands to create a calming feeling in the courtroom. She wanted to create a space that emphasized nature, as opposed to the traditional, formal, and intimidating "energy" that is typically characteristic of courtrooms and that was promoted by the portraits.

During ICWA court proceedings in her court, tribal representatives describe how Judge Moorman, as a matter of routine, seeks the tribe's position on each matter at hand. She intentionally seeks the tribe's position on active efforts, case planning, placement, qualified expert witnesses, permanency planning, and other essential elements of child welfare cases involving Indian children. One ICWA advocate describes how it can be "intimidating to be

in a room full of attorneys, but [Judge Moorman] always makes sure that I sit up front and always makes a point to ask me about my opinion." Judge Moorman explains how tribal representatives often have a unique perspective on the case at hand and can share insight into a family's situation that other stakeholders may not have.

Judge Moorman has been described as open-minded and supportive of the tribes, evidenced by her strong understanding of ICWA and active implementation of ICWA laws and procedures in her courtroom. Another ICWA advocate describes feeling "empowered" by Judge Moorman.

Judge Moorman is cognizant of the fact that some tribes have limited resources or are traveling long distances to get to court. Tribal representatives describe how she is accommodating, when possible, by ensuring tribes can appear remotely. When appropriate, Judge Moorman may also arrange for the court calendar to have all of a particular tribe's cases appear on the same day, so that tribal representatives do not have to travel multiple times in the same week for their cases. As a further courtesy to the tribe and the tribal representatives, Judge Moorman has been known to call all ICWA cases in a row in recognition of the value of the representative's time and resources. She is cognizant that tribal representatives may have additional court hearings in other jurisdictions.

Another court practice that Judge Moorman employs is the requirement that tribes, county counsel, social services agency staff, minors and/or their counsel, and parents' counsel engage in "pre-court meetings"; similar to traditional "meet and confers." Through these meetings, parties exchange information and discuss issues prior to the start of the court hearing. Here, parties can effectively address issues such as services, case planning, and placement. In addressing these issues before proceedings begin, the parties are able to preserve valuable court time and focus their attention on pressing issues related to an Indian child's wellbeing.

Judge Moorman also engages in and leads stakeholder meetings about the Indian Child Welfare Act. Mendocino County holds quarterly ICWA roundtables with child welfare agencies and ICWA representatives from local tribes. Judge Moorman has attended these meetings since she first came to the dependency court. She finds the meetings to be enlightening, for they help her better understand areas for improvement in ICWA implementation beyond the courtroom. In having a space to discuss these issues, the court and county agencies have effectively incorporated ICWA representatives and tribes into their numerous systems. For example, as a result of these meetings, tribes achieved improved access to document delivery systems within the county. In addition to engaging in the quarterly ICWA roundtables, Judge Moorman also maintains a series of monthly dependency calendar meetings she inherited from her predecessor. She leads these meetings and has found them to be a useful forum for the court, child welfare agencies, and tribes to come together and identify areas for improving the court process.

In upholding ICWA in her courtroom, Judge Moorman views the cultural component of Indian heritage, like the law itself, to be deeply important to the process. However,

her cultural competency does not stop with ICWA procedures and rules. She goes beyond the basics of ICWA. For example, she allows tribal ceremonies in her courtroom when tribal families request them. She views these ceremonies as a significant way to integrate culturally sensitive and trauma-informed practices to better serve tribal youth, families, and elders in the court. While the ceremonies may take up court time, she finds such steps meaningful to tribal participants and an important element of ICWA implementation.

Beyond practices in her own courtroom, Judge Moorman strongly encourages her judicial colleagues to engage with their local tribes, learn more about local tribal culture, practices, and traditions, and ensure that ICWA cases are treated with a great deal of awareness and sensitivity for the benefit of all. Recently, Judge Moorman sought input from the tribal leaders in her community by asking an Indian elder what he felt judges should know when overseeing ICWA cases, working with Indian people, and sovereign Indian nations. His response included the following suggestions, some of which have been addressed in this guide.

LESSONS FROM A TRIBAL ELDER TO THE COURT

- Understand the meaning of tribal and Indian.
- Know how many tribes there are in the county.
- Know the name of each tribe in the county.
- Know what "federally recognized tribal member" means.
- Know what "disenrolled member" means.
- Know what "tribally recognized" means.
- Know what a "tribal roll number" means.
- Have a basic understanding of a Tribal Council and its role.
- Understand what "tribal sovereignty" is and how it works.
- Understand the meaning of ceremony and the different types of tribal ceremonies in use in the county.
- Be able to name some of the ceremonies used in tribal communities.
- Understand what traditional medicines are used and the names for some of the traditional medicines.
- Learn what tribal services and support each tribe offers regarding social services, substance abuse prevention, education, ceremonies, and more.
- Understand how to approach a tribal community during an ICWA transaction and how to appropriately transport an Indian child to and from services.
- Know who to contact and where to check in before and during a tribal community visit.
- Understand historical trauma as it pertains to an ICWA case.
- Permit ICWA advocates from tribes to speak in court hearings.
- Understand that not all tribes have an ICWA advocate.
- Know that some children do not have tribes that they are enrolled with but are still eligible for ICWA services.
- Know what the Bureau of Indian Affairs is and how they assist tribes in ICWA cases.

Issues Outside of the Judicial Branch's Purview

The following issues also emerged during our conversations with tribal representatives. While they are outside of the court's sphere of influence in implementing ICWA, we offer them here for other agencies and institutions to review, consider, and verify.

For legislative consideration

1. ***Lack of legal counsel has access-to-justice consequences for tribes.***

Existing law requires the appointment of legal counsel for specified parties within child welfare proceedings, including the parents, guardians, and the children. However, the tribes, while parties to these cases under ICWA, are not appointed legal counsel. Without legal counsel, tribes are at a significant disadvantage in the courtroom. Due to the lack of legal training, some ICWA advocates experience difficulty submitting evidence to the court, calling witnesses, and cross-examining witnesses. In contested cases, some tribes will obtain an attorney for specific proceedings, but many tribes are not able to afford the cost and do not obtain one.

To resolve this need, the *ICWA Compliance Report* recommended the development of a pilot project that would use state funding to provide free legal counsel to tribes in dependency cases.[xxix] AB 685, introduced by Assembly Member Eloise Reyes in 2020, sought to address this recommendation. [xxx] However, due to the emergence of the COVID-19 pandemic, the legislation will not move forward this session. AB 685 would have required the California State Bar to administer grants to qualified legal services in order to provide legal counsel to tribes in child welfare cases governed by ICWA.

Relating to county child welfare agencies

1. ***Interpersonal relationships improve ICWA compliance with county child welfare workers.***

ICWA advocates describe how interpersonal relationships play an important role in improving ICWA implementation. For example, when they have spent time, in some cases years, developing personal relationships with county child welfare workers, they have experienced greater ICWA understanding and compliance on the part of welfare workers. As a result of these interpersonal relationships, ICWA advocates have experienced improvements with receiving notice, initial contact, and other communications with county agencies.

Some tribal attorneys and advocates caution that ICWA should not be complied with solely on the basis of interpersonal relationships. It should not fall upon the tribal advocates and attorneys to develop strong relationships for ICWA to be implemented or complied with fully. Those tribes that reside outside of California, for example, or who are traveling from a different county within California, lack the ability to develop interpersonal relationships with county child welfare

workers. Nevertheless, their representatives are entitled to the rights and access granted to them by ICWA.

2. *Room for improvement in initial contact, active efforts, and case planning, etc.*

Across counties, there is minimal uniformity in the quality of child welfare workers' active efforts and case planning consultation with tribes. An ICWA advocate in one county described how the establishment of a memorandum of understanding (MOU) between the local tribe and the county child welfare department resulted in improved practices. The MOU, still in place, sets out agreed upon expectations as to how initial contact, active efforts, case planning, and more should be carried out. In this way, the tribe and the local child welfare agency came to an understanding as to what ICWA practices should look like in the county and what they can expect from one another.

3. *Other states have implemented effective ICWA strategies.*

Other state practices, as they relate to ICWA, may offer useful guidance for California's child welfare agencies to consider. Some tribal attorneys and advocates reported that Oregon and Washington, in particular, have effective ICWA strategies. They described Oregon as being generally more consistent in its child welfare practices with a strong record on active efforts and culturally relevant case plans for referring tribal families to local Indian services and resources. Further, there appears to be less county-by-county variation in Oregon, especially when compared to California. In terms of Washington, some tribal representatives reported that the state's child welfare agencies do a good job of recognizing, from the outset, that there is an Indian child in any given case.

Conclusion

This *Indian Child Welfare Act* (*ICWA): Best Practices Guide for California Courts and Judicial Officers* responds to the findings of the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice* (2017), and aims to supplement existing resources to assist courts' implementation of AB 3176, and the Indian Child Welfare Act more broadly. It is through this work that we hope to further facilitate conversations between local courts, child welfare stakeholders, and tribes regarding court policies and practices. Tribal representatives took the time to share with us the ways in which existing court practices inhibit their ability to exercise their rights in ICWA cases. Further, judges who are committed to the robust implementation of ICWA in their courtrooms shared practices and insights for their judicial and court colleagues to apply when appropriate.

As has been reiterated throughout this guide, there is no one size fits all solution to the issues presented here. Both California's greatest strength and challenge is its vast and varied demographic and geographic makeup. Finding a way to equitably meet the needs of a large state with a diverse population and varied local contexts remains one of the Judicial Council's

priorities. It is only through listening to tribal representatives, acknowledging the problems that they face in courts, and encouraging a dialogue among tribes, courts, and other stakeholders, that the judicial branch will adequately address and remove these barriers to equal access to justice.

This guide is just one step of many to continue to strengthen and improve the implementation of ICWA in state courts. It is our hope that it becomes a tool for judges and courts to improve their practices and for tribal representatives to improve outcomes for Indian children and families involved in the California court system.

Courts Represented in this Guide

The tribal representatives interviewed for this guide reported that they represent their tribes in at least 36 of California's 58 counties. Some representatives did not feel comfortable reporting the exact counties within which they have worked on the tribe's behalf. The tribal representatives reported that they represented their tribes in, at least, the following California superior courts (in alphabetical order):

Alameda	Los Angeles	San Joaquin
Butte	Madera	Shasta
Calaveras	Marin	Siskiyou
Colusa	Mendocino	Solano
Contra Costa	Napa	Sonoma
Del Norte	Orange	Stanislaus
El Dorado	Placer	Sutter
Fresno	Plumas	Tehama
Glenn	Riverside	Tulare
Humboldt	Sacramento	Tuolumne
Kern	San Bernardino	Yolo
Lake	San Diego	Yuba

See Appendix A for samples of local rules and standing orders across California.

Endnotes

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APPENDIX A:

SAMPLES: LOCAL RULES AND STANDING ORDERS ACROSS CALIFORNIA

SUPERIOR COURT
of
CALIFORNIA
COUNTY OF SAN DIEGO

LOCAL RULES

Effective January 1, 2020

or (2) by order of the juvenile court upon the filing of a Request for Disclosure of Juvenile Case File on Judicial Council form JV-570.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.2

Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in Welfare and Institutions Code Section 362.5, 827, 827.10, or 827.12 – Request for Disclosure (JV-570) Required

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.1.7.)

Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in Welfare and Institutions Code section 362.5, 827, 827.10, or 827.12 seeks access to juvenile court records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency must file a Request for Disclosure of Juvenile Case File (hereinafter, petition) on Judicial Council form JV-570. The petition must be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must comply with California Rules of Court, rule 5.552 and with these rules. If disclosure is requested regarding a person who has both a dependency and a juvenile justice record, two separate requests must be filed and served.

At least 10 calendar days before the petition is submitted to the court, the petitioner must give notice as described in California Rules of Court, rule 5.552(c). Notice must be served either personally or by first-class mail of a copy of the completed Request for Disclosure of Juvenile Case File (Judicial Council form JV-570), a Notice of Request for Disclosure of Juvenile Case File (Judicial Council form JV-571), and a blank copy of Objection to Release of Juvenile Case File (Judicial Council form JV-572).

For juvenile justice cases, service must be to the person who is the subject of the record; the attorney of record for the person who is the subject of the record if that person is still a ward of the court; the parent(s) or guardian(s) of the person who is the subject of the record if that person is under 18 years of age; the Indian tribe, if any; the District Attorney, Juvenile Division; and the Juvenile Probation Department, Attn: Probation Support Manager.

For dependency cases, service must be to the person who is the subject of the record, if that person is 10 years of age or older; the attorneys of record for the person who is the subject of the record and for his or her parents if that person is still a dependent of the court; the parent(s) or guardian(s) of the person who is the subject of the record; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; and the Health and Human Services Agency/CWS, Attn: Legal Unit.

For nonminor dependency cases, service must be to the nonminor dependent; the attorney for the nonminor dependent; the District Attorney, if the nonminor dependent is also a delinquent ward; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; the Health and Human Services Agency/CWS, Attn: Legal Unit; the District Attorney, Juvenile Division, if the nonminor dependent is also a ward; and, if the parents are still receiving reunification services, the parents of the nonminor dependent and their attorneys. (See Welf. & Inst. Code, § 362.5; Cal. Rules of Court, rule 5.552(c).)

Notice to the person who is the subject of the record is not required if a written waiver of such notice is obtained from the person (if now an adult) or a person authorized to act on the person's behalf if the person is a child. For good cause shown, the court may waive such notice.

A completed Proof of Service–Request for Disclosure (Judicial Council form JV-569), Notice of Request for Disclosure of Juvenile Case File (Judicial Council form JV-570), and Disclosure of Juvenile Court Records – Protective Order (SDSC form JUV-263) must be filed with the court. If the petitioner does not know the identity or address of any of the parties, the person should check the appropriate boxes in item 2 on the Proof of Service – Request for Disclosure (Judicial Council form JV-569), and the clerk will complete the service.

If the records are sought for use in a legal action which is not a juvenile court proceeding, the petitioner must also give notice by personal service or first-class mail to all parties in that action. The petitioner must attach to the JV-570 a copy of the complaint or petition from the separate action.

The petition may be supported by a declaration of counsel and/or a memorandum of points and authorities.

If the petition is granted, the court will issue a protective order (SDSC form JUV-263) specifying the records to be disclosed and the procedure for providing access and/or photocopying. (Cal. Rules of Court, rule 5.552(d).) Persons or agencies obtaining records under such authorization must abide by the terms of the protective order. Any unauthorized disclosure or failure to comply with the terms of the order may result in vacation of the order and/or may be punishable as contempt of court. (See Welf. & Inst. Code, § 213.)

This rule is not intended to replace, nullify, or conflict with existing laws (including Pen. Code, § 11167, subd. (d)) or the policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.3

Health Care for Children in HHSA Custody; Disclosure of Health Care Information

A. When a child is in the custody of the HHSA prior to the detention hearing, the HHSA may obtain a comprehensive health assessment of the child as recommended by the American Academy of Pediatrics to ensure the health, safety, and well-being of the child. No consent or court order is required in a medical emergency. (Welf. & Inst. Code, § 369, subd. (d).) In the absence of an emergency, the social worker will obtain the parent/guardian's consent prior to the assessment and will inform the parent/guardian of the right to be present for the assessment. If the social worker cannot obtain the consent of the parent/guardian, the social worker will seek a court order authorizing the assessment, using forms SDSC JUV-255, Petition for Medical, Mental Health, Dental, and/or Other Remedial Care, and SDSC JUV-256, Order on Petition for Medical, Mental Health, Dental, and/or Other Remedial Care. The assessment may include one or more of the following, as is necessary and appropriate to meet the child's needs:

1. A medical history which is as complete as possible;
2. A physical examination by a licensed medical practitioner;
3. A developmental evaluation;
4. A mental health status evaluation by a licensed mental health clinician;
5. Emergency dental care by a licensed dentist; and/or
6. Clinical laboratory tests or x-rays as deemed necessary by the examining physician or dentist for evaluation of the child's health status.

B. Before dependency proceedings have been initiated and during the course of those proceedings, the HHSA may obtain ongoing routine health care, including immunizations and routine dental care, as recommended by the American Academy of Pediatrics, and mental health evaluations, counseling, and treatment for a child in the custody of the HHSA, as is necessary to protect and promote the child's physical and emotional well-being.

C. Information concerning any health care provided pursuant to this rule may be released to the HHSA, the child's attorney, the child's CASA, if any, other health care providers, Regional Centers, or schools, if needed for treatment, treatment planning, counseling, and/or educational purposes consistent with promoting the child's physical and emotional well-being, before or after the detention hearing, and throughout the course of the dependency proceedings.

D. This rule does not apply to confidential privileged information for dependent children, but it does authorize the release of court-ordered psychological evaluations, initial treatment plans (ITPs) and treatment plan updates (TPUs) requested by the HHSA.
(Adopted 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.4

Disclosure of Juvenile Court Records - Petition to View Records (SDSC JUV-004) and Stipulation (SDSC JUV-237) Required

A. The persons and agencies designated in Welfare and Institutions Code sections 362.5, 827, 827.10, and 827.12 will be given access to juvenile court records upon filing a Petition to View Records (SDSC JUV-004) and a Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC JUV-237). In addition, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order upon filing a JUV-004 and a JUV-237, subject to the conditions specified, on the basis that 1) disclosure will be in the best interest of the child whose records are sought and 2) the information contained in those records is necessary and relevant to a juvenile dependency or juvenile justice proceeding; a civil or criminal investigation or proceeding; a proceeding involving child custody or visitation; a proceeding involving adoption, guardianship, or emancipation of a minor; an action to establish parentage; an administrative proceeding regarding foster home licensure; a proceeding involving probate or conservatorship; or a proceeding involving domestic violence:

1. Judicial officers of the San Diego Superior Court, Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code section 3000 et seq. (see Fam. Code, §§ 3011, subd. (b), 3020; Welf. & Inst. Code, § 827.10).
2. County Counsel, for the purpose of representing HHSA in a civil action.

3. San Diego County Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under Welfare and Institutions Code section 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Crossover Youth Matters, the following persons may have access to the child's juvenile justice records, including minute orders, and/or may obtain photocopies of the juvenile justice records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to Welfare and Institutions Code section 241.1 and filed with the court, must be provided to the D.A., the child's defense attorney and dependency attorney, County Counsel, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

4. CASAs (Voices for Children, Inc.), as provided under Welfare and Institutions Code sections 105, 107. A CASA may have access to the records of a nonminor dependent only with the explicit written and informed consent of the nonminor dependent.

5. An Indian child's tribe and the Bureau of Indian Affairs, as provided under title 25 United States Code chapter 21 [Indian Child Welfare Act] and Welfare and Institutions Code section 827, subdivision (f).

6. Family Law Facilitators and employees or agents of San Diego Superior Court Family Court Services.

7. Employees or agents of San Diego County Behavioral Health Services (Health & Human Services Agency).

8. Any licensed psychiatrist, psychologist, or other mental health professional ordered by the San Diego County Superior Court, Family Division, to examine or treat the child or the child's family.

9. Any hospital providing inpatient psychiatric treatment to the child, for purposes of treatment or discharge planning.

10. Any government agency engaged in child protection.

11. The San Diego County Victim Assistance Program and the State Victim Compensation Program, for the purpose of providing services to a victim of or a witness to a crime.

12. The Juvenile Parole Board of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.

13. The California Board of Parole Hearings, as provided under Penal Code section 11167.5, subdivision (b)(9).

14. Members of the San Diego County Juvenile Justice Commission.

15. The San Diego County Board of Supervisors or their agent(s), for the purpose of investigating a complaint from a party to a dependency proceeding.

16. Public and private schools, for the sole purpose of obtaining the appropriate school placement for a child with special education needs pursuant to Education Code section 56000 et seq.

17. Investigators and investigative specialists employed by the San Diego County District Attorney and assigned to the Child Abduction Unit, when seeking the records of a child who has been reported as detained or concealed in violation of Penal Code sections 278 and 278.5, for the sole purpose of investigating and prosecuting persons suspected of violating Penal Code sections 278, 278.5, and related crimes.

18. Investigators employed by attorneys who represent parties in dependency proceedings, when seeking records that may be released to the attorney without a court order under Welfare and Institutions Code section 827.

19. The Mexican Consulate, when seeking the records of a child who is in protective custody and/or is before the court for a dependency action, and either: [a] is a Mexican national, or [b] has relatives (as defined in Welf. & Inst. Code, § 319) who are Mexican nationals.

20. The San Diego County Regional Center.

21. The San Diego County Probation Department, when performing its duty under Penal Code section 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department must not disclose any child's name.

22. Judicial officers outside of the County of San Diego, for the purpose of communicating about a case pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (See Fam. Code, § 3410.)

Persons seeking access to and/or photocopies of dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a Petition to View Records and/or Request for Copies (SDSC form JUV-004) and Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC form JUV-237). The completed forms will be kept in the file that is the subject of the Petition and/or Request.

"access" may refer to permission to enter certain facilities which are not open to the public and/or permission to observe, interview, film, photograph, videotape, or record the voices of children in such facilities.

Notice to counsel for the child is required to request permission to photograph, record, broadcast, publish, or allow media contact with a dependent child or his or her personal information, including publication of the child's name, outside of the juvenile court setting. Absent extenuating circumstances, notice must be received by counsel for the child at least five court days before the request is filed with the juvenile court. Notice must be in writing and include: the child's name; the name of all individuals requesting access to the dependent child (e.g., interviewer(s), reporter(s), photographer(s), technical crew) and their professional affiliation(s); the intended or anticipated audience for the published material; the date and length of time the contact is expected to last; the length of time the permission to publish is requested to remain valid; and all types of media outlets and publications, including any websites, other internet locations, and social media sites, that will receive, publish, or broadcast the contact with, or personal information about, the child. Permission that is intended to include coverage of activities or events must also include the event name, sponsoring organization(s), event date and length, and the purpose of the event (including any intended use in fundraising, donor or volunteer recruitment activities).

Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse.

(Adopted 1/1/2013; Rev. 1/1/2016; Rev. 1/1/2017)

CHAPTER 7
PROCEDURES FOR APPOINTING COUNSEL

Rule 6.7.1

Attorneys for Children

At the earliest possible stage of proceedings, the court must appoint counsel for the child as provided in Welfare and Institutions Code section 317 and California Rules of Court, rule 5.660. Appointed counsel and/or the court-appointed special advocate (CASA) must continue to represent the child at all subsequent proceedings unless properly relieved by the court.

The Child Abuse Prevention and Treatment Act (Pub.L. No. 93-247) provides that in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child will be the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court determines it is best for the child to appoint a separate guardian ad litem, the court will appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be any attorney or a CASA.

Notwithstanding Welfare and Institutions Code section 317, subdivision (g), the San Diego County juvenile dependency court appoints counsel from Children's Legal Services of San Diego (CLS) to represent children pursuant to the contract entered into between CLS and the Judicial Council of California. The public defender is not available for juvenile dependency court appointments.

(Adopted 1/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2017)

Rule 6.7.2

Attorneys for Parents or Guardians

At the detention or initial hearing, the court must appoint counsel for the mother, and counsel for the presumed father, guardian, or Indian custodian as provided in Welfare and Institutions Code section 317, subdivisions (a) and (b). Appointed counsel will continue to represent the client at all subsequent proceedings unless properly relieved by the court.

Notwithstanding Welfare and Institutions Code section 317, subdivision (h), the San Diego County juvenile dependency court appoints counsel from Dependency Legal Services San Diego (DLS) to represent parents pursuant to the contract entered into between DLS and the Judicial Council of California. The alternate public defender is not available for juvenile dependency court appointments.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2016; Rev. 1/1/2017)

HUMBOLDT COUNTY SUPERIOR COURT

LOCAL COURT RULES

Effective January 1, 2019

LOCAL RULES FOR
THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

determine if release to counsel's client is appropriate or, in the alternative, whether a discussion summarizing the evaluation would be in the party's best interest.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.20 Requirements and Procedures for Motions other than Motions to Continue

(a) Moving party must serve the notice of motion and motion, points and authorities, and all supporting documents upon all other counsel in the case at least ten (10) calendar days before the date of the hearing if personally served, or fifteen (15) calendar days before the hearing if served by mail. Service in court boxes by noon shall be considered personal service.

(b) If opposing counsel plans to file points and authorities or any other documents in opposition to the motion, the documents must be filed with the Clerk's Office and served no later than five (5) court days before the date set for hearing. Failure to file an objection shall result in the motion being determined without a hearing.

(c) All reply papers must be filed and personally served no later than two court days before the hearing.

(d) The notice of motion must include, under the title of the motion, the date and time of hearing, and the courtroom in which the motion shall be heard.

(e) The motion shall be submitted on the pleadings unless the Court, for good cause shown, or on its own motion, grants an argument or an evidentiary hearing.

(f) No noticed motion shall be accepted by the Clerk's Office unless it is accompanied by a proof of service.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 07/01/2017; as amended eff. 01/01/2018)

7.21 Ex Parte Applications and Orders

(a) Ex parte orders are rendered without giving the opposing party an opportunity to be heard. Before submitting ex parte orders to a judge or commissioner for approval, the applicant must give notice to all counsel, social workers, and parents who are not represented by counsel or explain the reason notice has not been given.

(b) The party requesting ex parte orders must inform the judge or commissioner that notice has been given by completing a declaration of that fact. The original Declaration and accompanying Application for Order must be submitted to the courtroom clerk in the juvenile department where the pending action would normally be heard.

(c) Upon receipt of the application and declaration of notice, the courtroom clerk will note the date and time received in the upper right corner of the declaration. In order to give opposing

parties ample time to respond to the ex parte application, the courtroom clerk will hold the application for twenty-four (24) hours prior to submission to the judicial officer for their decision.

(d) An opposing party must present any written opposition to a request for ex parte orders to the courtroom clerk within twenty-four (24) hours of receipt of notice. The Court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the Court's decision or notice that the Court has calendared the matter, and the applicant shall notify all parties of any hearing date and time set by the Court.

(e) Whenever possible, courtesy copies of the moving and responding papers and declarations re notice shall be served on the attorney for each parent, attorney for the child, county counsel, supervising social worker, de-facto parent, tribe, and parents who are not represented by counsel.

(f) Notice may be excused if the giving of such notice would frustrate the purpose of the order or cause the child to suffer immediate and irreparable injury.

(g) Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the opposing parties do not object to the requested ex parte orders.

(Eff. 07/01/2002; as amended 07/01/2004; as amended eff. 01/01/2018)

7.22 Petitions for Modification of Orders: More Restrictive Placement (Dependency)

Any motion by petitioner to modify an existing order to a more restrictive placement shall be implemented pursuant to Welfare and Institutions §387 and California Rules of Court, Rules 5.560(c) and 5.565.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.23 Petitions for Modification of Orders: Less Restrictive Placement (Dependency)

Any motion by an interested party to modify the Court's orders to a less restrictive placement shall follow the procedures outlined in Welfare and Institutions Code §388 and California Rules of Court, Rules 5.560 and 5.570.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.24 Petitions for Modification of Orders: Decrease in Visitation by Parent/Party (Dependency)

Any significant decrease from the Court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the Court. The

FILED

JAN 31 2013

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

In the Matter of:

ACCESS TO JUVENILE CASE FILES BY INDIAN TRIBES IN HUMBOLDT COUNTY

STANDING PROTECTIVE ORDER

This Standing Protective Order is to facilitate the exchange of information between federally-recognized Indian tribes in Humboldt County and the Humboldt County Department of Health and Human Services-Child Welfare Services in potential and active dependency matters involving an "Indian child" as defined by the Indian Child Welfare Act (ICWA) at 25 U.S.C. § 1904. Collaboration between local tribes and Child Welfare Services will be in the best interest of Indian children, families, and tribes as set forth in the ICWA and Welfare and Institutions Code (WIC) §§ 202 and 224. The Court also recognizes that such collaboration will facilitate "active efforts" to provide remedial/rehabilitative services as required by 25 U.S.C. §1912(d) and WIC § 361.7(a), and further that WIC § 361.7(b) requires, *inter alia*, that "active efforts" include making use of all available resources of an Indian child's tribe and tribal agencies.

The Humboldt County Department of Human Services/Tribal Protocol for Collaboration is attached to this Standing Protective Order as Exhibit A and is hereby incorporated into this Order by reference.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED PURSUANT TO WIC § 827:

In potential and active dependency cases, the Humboldt County Department of Health and Human Services-Child Welfare Services may exchange information with the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) regarding Indian children associated with their tribe.

IT IS FURTHER ORDERED THAT:

In potential and active dependency cases, the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) may inspect and make copies of the juvenile case files of the Humboldt County Department of Health and Human Services-Child Welfare Services involving Indian Children associated with their tribe.

A copy of this Standing Protective Order has the same force and effect in all respects as the original Standing Protective Order.

This order shall be in effect until January 31, 2014, and shall be subject to renewal on an annual basis.

01/31/2013
Date

John D. Feeney
Presiding Judge of the Juvenile Court

Exhibit A

Purpose

WHEREAS, the Indian Child Welfare Act (ICWA) was passed by the United States Congress in recognition of the fact that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children" (25 U.S.C. §1901(3)); and

WHEREAS, the main purposes of the ICWA are "to protect the best interests of Indian children" and "to promote the stability and security of Indian tribes and families" (25 U.S.C. §1902); and

WHEREAS, the Humboldt County Department of Health and Human Services fully endorses the spirit and implementation of the ICWA; and

WHEREAS, Congress enacted the ICWA because it determined that "the States . . . have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families" (25 U.S.C. §1901(5)); and

WHEREAS, California Senate Bill 678, effective January 1, 2007, codified many requirements of the ICWA into the Welfare and Institutions Code, the Family Code, and the Probate Code that govern Indian Child Custody Proceedings in California (Stats 2006 ch. 838, §§1-55); and

THEREFORE, in recognition and support of the purposes of ICWA, the Humboldt County Department of Health and Human Services (DHHS) is committed to partnering with Tribes to prevent the breakup of Indian families. DHHS and Tribes will work together in a coordinated and collaborative manner to better serve Indian children and families in our community by enhancing families' capacities to provide for their children's needs and improve their overall well-being.

To better meet the needs of Indian children, this protocol provides for information sharing regarding reports of suspected child abuse and/or neglect. DHHS, Child Welfare Services (CWS) collaborates with local tribes by providing case/referral file information in the manner prescribed by law and by the terms of the Standing Protective Order first signed by the Presiding Judge of the Juvenile Court of Humboldt County on June 7, 2012.

Recognizing: (1) that Tribes and CWS are concurrently investigating suspected child abuse, and (2) that collaboration between local tribes and CWS is in the best interest of Indian children, families, and Tribes as set forth in sections 202 and 224 of the California Welfare and Institutions Code, and SB 678, CWS will follow a standardized procedure for sharing information and collaborating with tribal representatives.

Definitions

- **Case/Referral File Information** – Any public agency document pertaining to a child who is or was the subject of an investigation, or any information, records, reports by social workers, CASA or probation, documents filed in a juvenile court, case photographs, transcripts tapes or electronic data obtained during the course of any investigation.

- **Confidentiality Contact Person (CCP)** - CWS staff person (or designee) who receives and responds to records requests. The CWS staff person will review the request and applicable law, prepare the records for review, and arrange for the review of records and/or preparation of copies.

- **Eligible Federally Recognized Tribe** -- Federally recognized Indian Tribe that is located within Humboldt County.

Procedure

To determine whether the Standing Order applies:

1. The CWS screener asks the reporting party whether there is reason to believe the child may be Native American and if so, with which Tribe(s) they may be affiliated. CWS screener will ask for parent and grandparent names.

2. If the reporting party believes the child is affiliated with a Tribe, the screener identifies whether the Tribe is one of the Federally Recognized Tribes located in Humboldt County.

    A. If the Tribe is located in Humboldt County, designate the case for Tribal Information Sharing.

    B. Contact the Tribe to verify enrollment/enrollment eligibility prior to referring the family to the Tribe.

3. If the reporting party believes that the child is affiliated with a tribe located within Humboldt County, but cannot name a tribe,

    A. Check Department records for information whether the child is affiliated with a local tribe.

    B. If there are records that establish that the child may be enrolled in/or eligible for enrollment in a local tribe, designate the case for Tribal Information Sharing.

SERVICE PROVISION

Social workers who are interacting with the family should collaborate with the child's Tribe(s). CWS must share information with County Tribes.

1. If the Child has an affiliation with a local tribe(s), share information relevant to the prevention, assessment or treatment of child abuse/neglect with the child's tribe(s).

2. The Tribe will make every effort to determine whether the child is eligible for membership at the earliest possible time, and will destroy CWS records if the child is not eligible.

3. CWS will share information with each tribe with which the child is affiliated until a Tribe makes a determination of membership.

4. The information may be shared telephonically, in writing, or in-person.

5. Once membership is determined, CWS must obtain a Release of Information (ROI) to share information with any Tribe of which the child is not a member or eligible for membership.

6. Information Contents:

   Information shared with tribal social workers may include, if already known:
   - Names of household members
   - Names of child's extended family/ancestry, as known
   - Tribal membership or eligibility for Tribal membership
   - Ages of family members
   - Address and phone number of family
   - Name and location of child(ren)'s/youths' school(s)
   - Name and phone number of the CWS social worker making the report
   - CWS referral number
   - CWS referral/case history
   - Service providers currently working with family
   - Date of referral
   - Redacted Screener Narrative
   - Family's primary language
   - Any known potential safety concerns regarding the home (i.e., unchained dogs)
   - CWS workers will **verbally** share all relevant criminal history
   - CWS workers may **verbally** share summaries of contents of police reports with tribal social workers.

NOTIFICATION EFFORTS

CWS will comply with Division 31 response mandates. Tribal social workers will make every effort to contact CWS social workers within the time mandated by Division 31.

- **Reports that do not meet criteria for in-person CWS response**

1. If the child is affiliated with a Tribe the report will be shared by the screener with the appropriate Tribe(s) within one business day of the report. The notice to the Tribe should include the available information listed above.

2. The Tribe will report back to CWS with additional information, if known, within one business day. Tribal concerns will be included in the screener narrative.

- **Reports that are assigned for an Immediate, 3-Day or 5-Day CWS response:**

1. To initiate collaboration, the CWS assigned social worker or other designated CWS staff will notify the Tribe within one business day of being assigned the referral in the mode specified by each Tribe.

2. If the assigned social worker does not receive a response from the Tribal Social Services representative within one business day, the assigned social worker will continue to make efforts to contact the Tribal Social Services representative throughout the investigation and will document those efforts in CWS/CMS.

- **Reports requiring a 10-day response by a CWS social worker**

1. Within one business day of the assigned social worker receiving the investigation, the assigned Social Worker will make a report to a Tribal Social Services representative in the mode specified by each Tribe.

2. The assigned social worker will collaborate with the Tribal social worker during the investigation process to determine interventions and services available through the Tribe, agency, and community to promote family preservation.

COLLABORATIVE PROCESS

CWS and Tribal Social Services will work with the family within each agency's scope of services and in accordance with any negotiated protocols.

Requests to Inspect/Receive Copies of Confidential Case Information

When the Tribe wishes to have access to information that is not part of an ongoing investigation, the Tribe may request to inspect or obtain copies of information in CWS files.

Upon receipt of a request for inspection or copies of CWS files, CWS shall determine if there are any documents or information contained in the record that the requesting party is not entitled to inspect.

- CWS will remove from the record any documents that the requesting Tribe is not entitled to inspect before the record is presented to the Tribal representative. CWS will redact any information that the Tribe is not entitled to inspect.
- After all documents and information contained in documents that the requesting Tribe is not entitled to inspect have been removed or redacted from the record, the requesting party may inspect the record. CWS may determine time, place and manner of inspection of confidential juvenile records.

If a Tribe requests copies of CWS file information, CWS shall inform the requesting party that he/she cannot disseminate the information being disclosed.

Tracking

- CWS shall maintain a log of information requests.

Superior Court of California
County of Imperial

Local Rules

Adopted, Effective January 1, 2020

The following Rules of Court for the Superior Court, County of Imperial are adopted January 1, 2020, and replace all rules previously adopted by the Superior Court, County of Imperial.

CHILD'S NAME:	CASE NUMBER:

ATTACHMENT 8c(1)-Indian Child Inquiry

1. Name of child:
   a. Person(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

LOCAL RULES OF COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF INYO

Effective: July 1, 2010

Superior Court of California, County of Inyo
Post Office Drawer U
Independence, California 93526
Tel: (760) 872-3038

Rev. 07-01-2010

approved by the Court. Counsel and parties may make a *CourtCall* appearance by serving and filing with *CourtCall*, not less than five (5) court days prior to the hearing date, a Request for Telephonic Appearance Form and paying the requisite fee and/or providing Fee Waiver Orders for each *CourtCall* appearance. Additional information can be obtained by calling the *CourtCall* program Administrator at 888-882-6878. (Adopted, effective July 1, 2010)

RULE 2.14 INDIAN CHILD WELFARE ACT (ICWA) EXPERTS IDENTIFICATION AND ACCESS TO RECORDS

(a) The provisions of this rule shall apply in all cases involving an Indian child, including dependency, delinquency, family law, and guardianship proceedings, wherein the testimony of a qualified expert is required to comply with the provisions of 25 U.S.C. § 1901 et seq.; California Rules of Court, rules 5.480 through 5.487; Welfare and Institutions Code §§ 110, 224-224.6, 290.1, 290.2, 291-295, 297, 305.5, 306.6, 317, 360.6, 361, 361.31, 361.7, 366, 366.26, 727.4, 10553.1, and 16507.4; and/or other applicable provision of law or rule of court.

(b) Subject to the provisions of subdivision (c) of this rule, an "ICWA expert" as defined in subdivision (a), shall have the right to examine and review, in preparation for testifying, the juvenile case file of the Indian child or children about whom the expert will testify. The ICWA Expert shall otherwise strictly maintain the confidentiality of the information contained in the juvenile case file.

(c) Prior to the disclosure, examination, or review of the juvenile case file, any party intending to call an ICWA Expert, shall give notice to the Court and all parties to the action of the identity of the ICWA Expert, and shall provide a resume or other reasonable statement setting forth the ICWA Expert's qualifications. Within ten (10) days of receipt of said notice, the Court on its own motion, or any party may notice a hearing to determine whether the intended ICWA Expert is a "qualified expert," and/or to seek orders limiting the ICWA Expert's access to confidential information. If such a motion is timely filed, no confidential information shall be disclosed to the ICWA Expert, nor shall the ICWA Expert have access to, review, or examine the juvenile case file pending further order of the court. If no such motion is filed within ten (10) days of receipt of the notice and statement of qualification by the court and all parties, the ICWA Expert may review and examine the juvenile case as provided in subdivision (b) of this rule. (Adopted, effective July 1, 2010)

Superior Court of California
County of Mendocino

Local Rules
Effective January 1, 2020

The following rules of court for the Superior Court of California, County of Mendocino, are adopted pursuant to Government Code 68070 and Code of Civil Procedure §§ 128 and 187 effective January 1, 2020, and replace all rules previously adopted by the Superior Court of California, County of Mendocino.

child's family are informal and juvenile court proceedings are not instituted. *(T.N.G. vs. Superior Court* (1971) 4C.3d 767, 780-781*)*

b. Except as provided in subsection (c) all requests for inspection and disclosure of juvenile records will be governed by the procedures set forth in W&I § 827, California Rules of Court rule 5.552, and local rule 5.8.

c. Notwithstanding the policy that juvenile records should remain confidential, the law recognizes that it is in the best interest of children that exceptions to confidentiality be made so that persons investigating or working with children and their families may obtain complete, prompt and accurate information concerning the child and the family *(See, e.g.,* W&I § 827(a)(1)(J), (K)*)*

The court hereby finds that a limited and informal disclosure of juvenile records by Probation and Family & Children's Services to the agencies, individuals and organizations listed below on a "need to know" basis will benefit children and their families by avoiding duplication of investigative efforts, and by allowing the agencies, individuals and organizations who work with, treat, or make recommendations regarding children and their families to promptly access relevant information. This process will benefit the court by ensuring that agencies, individuals, and organizations who work with children and families have prompt access to all information which may be relevant in determining what is in a child's best interest. The public interest in achieving these goals outweighs the confidentiality interests reflected in W&I §§ 827 and 10850, *et. seq.*, and establishes good cause for this rule.

1. Family & Children's Services and Probation may provide verbal information regarding, allow inspection of, or provide copies of, relevant juvenile records to the following agencies, persons and organizations on an "as needed" basis:

    a. Probation;

    b. Family & Children's Services;

    c. Facilitators of Family & Children's Services parenting programs, including but not limited to, the Intake Support Group and the Family Empowerment Group;

    d. Mendocino County Behavioral Health & Recovery Services, or any private psychologist, psychiatrist, or mental health professional ordered by the Juvenile Court to examine or treat any child who falls within the jurisdiction of the juvenile court, and his or her parent or guardian;

    e. Foster Family Agencies;

    f. Any hospital where a child is an inpatient for psychiatric reasons, for the purpose of treatment or discharge planning;

    g. Redwood Coast Regional Center;

h. Any sexual abuse treatment program or victims' group to which a child or his or her parent or guardian is referred for treatment by the Juvenile Court;

i. Any substance abuse treatment provider, including but not limited to the Mendocino County Alcohol and Other Drugs Program (AODP), to which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;

j. Victim/Witness coordinators for the State of California Victims of Crime Programs;

k. Any domestic violence and/or anger management treatment program to which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;

l. The designated trial representative or the Indian Child Welfare Worker for any federally recognized Native American Indian tribes located in Mendocino County;

m. A judge or commissioner assigned to a family law case with issues concerning custody or visitation;

n. The family court mediator or court-appointed evaluator conducting an assessment or evaluation of child custody, visitation or guardianship for the family or Juvenile Court;

o. The Mendocino County Victim Offender Reconciliation Program (VORP).

2. Any disclosure or exchange of information authorized by subsection (c) of this rule will be subject to the following conditions:

a. A request for information exchange of juvenile records must be submitted on Declaration: Information Exchange of Juvenile Records (MJV-102-local) pursuant to (W&I § 827; California Rules of Court rule 5.552).

b. Probation and Family & Children's Services must first establish to the agency's satisfaction that the party requesting the juvenile records is in fact a member of an agency or organization, described in subsection (c) of this rule, or is an individual authorized to receive the information;

c. Information identifying the reporting party or source of referral must be redacted prior to disclosure of juvenile records, and must remain confidential as required by law (Penal Code §§ 11167, 11167.5);

d. If an agency, person or organization which has received juvenile records pursuant to this rule desires to disclose the information to a third party, it must make a written application to the juvenile court for permission to disclose such information pursuant to W&I § 827 and California Rules of Court rule 5.552;

e. Juvenile records obtained pursuant to this rule will be used exclusively in the investigation and/or treatment conducted the agency, organization or person described in subsection (c), and in any juvenile or family court proceedings following the investigation or treatment;

f. Nothing in this rule is intended to limit any disclosure of information by an agency which is otherwise required or permitted by law.

3. If Probation or Family & Children's Services receives a request for disclosure of juvenile records which it deems to fall outside the scope of informal disclosure authorized by this rule, the agency must deny the request and refer the requesting party to the provisions of W&I § 827, California Rules of Court rule 5.552, and local rule 5.8.

(Effective 1/1/99; renamed & amended 7/1/05; amended 1/1/07; renumbered 1/1/10; amended 7/1/18; renumbered & amended 1/1/19)

5.9 Release of Juvenile Records by Family & Children's Services/Mendocino County Health & Human Services Agency

W&I § 827 limits the inspection and copying of any documents or records contained in the child welfare agency case file to certain authorized individuals unless otherwise ordered by the court. W&I § 830 permits members of a multidisciplinary personnel team engaged in the prevention, identification, management, or treatment of child abuse or neglect to disclose and exchange information and writings to an with one another relating to any incidents of child abuse that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonable believes it is generally relevant to the prevention, identification, management, or treatment of child abuse, or the provision of child welfare services.

Family & Children's Services is contracted with providers listed below in subsection (a) who are engaged in the prevention, identification, management, and treatment of child abuse or neglect and who participate in a multidisciplinary teams which discuss and receive referrals. Family & Children's Services has also contracted with a professional agency for the purpose of providing feedback, coaching, education, and further training to Family & Children's Services in order to enhance the quality of social worker child forensic interviews which requires the review of the records listed in subsection (c) to facilitate the coaching and training of social workers in forensic interviewing.

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appointment may be continued in the family law proceedings, in which case the juvenile court orders will set forth the nature, extent and duration of the advocate's duties in the family law proceeding.

(l) Right to Appear: An advocate will have the right to be heard at all court hearings, and will not be subject to exclusion by virtue of the fact that the advocate may be called to testify at some point in the proceedings. The court, in its discretion, has the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel.

(m) Distribution of CASA Reports: The advocate must submit his or her report to the court at least 5 court days prior to the hearing. The advocate must serve a copy of the report on the parties to the case at least 2 court days prior to the hearing. For purposes of this rule, the parties to the case include (as applicable): county counsel; attending case social worker; child's attorney; parents' attorney(s); child (via foster family agency); Indian Child Welfare Act representative; and de facto parents.

(Eff. 7/1/08) (Rev. 7/1/18)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

LOCAL RULES OF COURT
EFFECTIVE JANUARY 1, 2020

Revised 1/1/20

CASA must immediately serve upon that same attorney, by postage-prepaid first-class mail, a document entitled "Notice of Filing CASA Report" which states the caption of the cause and its case number, and further states that the Report has been placed in said pickup box. This Notice will be required only if the Report so delivered is filed with the Court.

(4) Limitations On The Privilege. The service privilege described by Local Rule 16.04.D(2) extends to service of CASA Reports only.

E. Service Of W&IC Section 388 Petitions

If a CASA advocate files a petition pursuant to Welfare & Institutions Code §388, such petition must be served according to the provisions of Code of Civil Procedure §§1011, 1012, or 1013.

F. Proof Of Service Of CASA Documents

A proof of service indicating the method of service must accompany any document filed by a CASA advocate in Juvenile Court proceedings, including CASA Reports.

G. Calendar Priority For CASA Matters

Because CASA advocates are providing volunteer services for the benefit of the Court as well as for the children for whom they advocate, proceedings at which the CASA advocate appears will be granted priority on the Court's calendar whenever it is feasible to do so. *[Rule 16.04 adopted effective July 1, 1996; amended and renumbered effective July 1, 2008; amended effective January 1, 2019.]*

16.05 Dependency Mediation

A. Designation Of Dependency Mediation Program

This Court has established a mediation program for dependency matters. The dependency mediation program operates under the protocol established by the Siskiyou County Unified Courts Dependency Mediation Guidelines. The mediation program is administered by the Director of Siskiyou County Family Court Services, located at 311 Fourth Street, Yreka, CA 96097.

B. Mediation Services Provided

Services provided by the Court's mediation program include mediation, as well as independent meetings when appropriate.

(1) Mediator's Review. The Mediator is authorized to review the documents in the Court's file prior to any mediation session. (The Mediator will not draw conclusions of fact during the review process.)

(2) Pre-Mediation Session. The Mediator may first meet with agency and party representatives, to begin fact-finding and issue development. These representatives might include attorneys for the parents and children; employees of Adult and Children's Services; Court Appointed Special Advocates; and when appropriate, the child welfare representative for a Native American tribe.

(3) Mediation; And Independent Meetings. The Mediator may conduct mediation sessions with the parents and other interested persons who are involved in the case. When appropriate, the Mediator may meet with individual family members, interested persons, and agency representatives; any such independent meetings will be conducted in a manner that promotes neutrality.

(4) Mediation Agreement. When appropriate, the terms and conditions of a mediation agreement may be reflected in a memo from the Mediator, or may be reduced to a writing signed by appropriate parties to the agreement and their respective counsel. Only written and fully approved mediated agreements may be presented to the Court for its approval and issuance of orders in compliance with the terms and conditions of the agreement.

(5) No Agreement. If no agreement is reached in mediation, the Mediator may file a memo with the Court indicating failure of the parties to reach an agreement; the memo will include any additional information that the parties have agreed can be made known to the Court. If no agreement has been reached, the Mediator will not make any recommendations to the Court.

C. Referrals To Mediation

(1) Referrals In General. Referrals to mediation may take place after the filing of a petition pursuant to Welfare & Institutions Code §301, and/or in any other proceeding pursuant to W&IC §301, and/or in any other dependency matter that might benefit from mediation. Referrals to mediation will be made primarily by the Judge of the Juvenile Court.

Cases will be referred to mediation along the continuum of the dependency court process, and will remain subject to mediation throughout that process. Cases generally will not be referred to mediation prior to the jurisdiction hearing.

The determining factor for referral of a dependency matter to mediation is not the current status of the case, but whether or not the unresolved issues of the case would benefit from mediation.

(2) Party-Initiated Referrals**.** Any party to a dependency action may circulate a "Request for Mediation" form to the interested parties, and arrange a mutually agreeable date to mediate any issue in the proceeding. The requesting party must notify the Mediator of the requested date and time.

The party who requests the mediation will be responsible for notifying the participants of the date and time assigned by the Mediator. (The Mediator will not be responsible for providing notice of date and time to any of the anticipated participants.)

If an agreement is reached during a party-initiated mediation process, and the agreement creates a change in the relevant circumstances of the case, then the requesting party may file a W&IC §388 petition for the purpose of reporting the agreement to the Court.

(3) Additional Participants. Any party who intends to invite additional participants to the mediation (e.g., family members or support persons) must so inform the Mediator no less than twenty-four (24) hours prior to the mediation.

D. Confidentiality

All dependency mediations are strictly confidential. Participants are precluded from making reference, outside of a mediation session, to matters discussed during the course of mediation. All participants in mediation will be required to sign a confidentiality agreement prior to participation.

It is the responsibility of agencies, tribes, and attorneys to advise their representatives, clients, and any other participants in mediation of the confidentiality requirement. [Fam.Code §3177; Ev.Code §§ 1115, 1119.]

E. Special Circumstances

(1) Children In Mediation. Children may be involved in the mediation process if the parties to the mediation believe that the children and/or the process would benefit from that participation. Final discretion as to the children's participation lies with the Mediator and the attorney for the children. The children may be involved in the process as part of an independent meeting with the mediator and the children's attorney.

(2) Parents In Custody. Incarcerated parents may attend mediation at the discretion of the Judicial Officer. If the incarcerated parent is not permitted or able to attend the mediation, he/she may contribute his/her comments by submitting an "Issues Form" to the Mediator's office prior to the mediation.

(3) Parties As Victims Of Abuse. When a party to mediation is an alleged victim of abuse or violence perpetrated by any other participant, the alleged perpetrator may be excluded from the mediation process. Any request for exclusion on the basis of abuse or violence must be made to the Court at the time the matter is referred to mediation, by the alleged victim or that party's attorney.

The Mediator may meet independently with an alleged perpetrator, depending on the individual circumstances of the case.

A victim of abuse or violence is entitled to attend the mediation sessions accompanied by a support person. The support person may provide moral support, but must not interfere with the mediation process. *[Rule 16.05 adopted effective July 1, 2000; amended and renumbered effective July 1, 2008.]*

16.06 Reserved

[Rule 16.06, "Authorization for Use of Psychotropic Drugs", was deleted effective 7-1-02.]

16.07 Confidentiality

All persons interested in dependency proceedings are hereby notified of the provisions of Welfare & Institutions Code §827, et seq., and of Rule 5.552 of the California Rules of Court, which restrict access to information relating to dependency proceedings. The Court may, from time to time, enact or issue an order to specify local rules and procedures related to access to, and dissemination of, confidential juvenile information. *[Rule 16.07 adopted effective January 1, 2007.]*

CHAPTER 17: JUVENILE DELINQUENCY RULES

17.01 General Applicability Of The Siskiyou County Local Rules Of Court To Juvenile Delinquency Proceedings

Except to the extent that there may be a conflict with this Chapter 17, the Local Rules pertaining to civil, family law, probate and criminal actions are incorporated herein by this reference as though fully set forth at length, and are hereby made applicable to all juvenile delinquency proceedings. *[Rule 17.01 adopted effective July 1, 2002]*

17.02 Calendar Matters

A. Delinquency Master Calendar

The Court maintains a weekly master calendar for delinquency proceedings; however, cases assigned to that calendar may be subject to calendar changes. Interested persons can confirm the date and time of a calendared delinquency matter by calling the Court's Calendar Coordinator or the Civil/Juvenile Division.

B. Detention Hearings in Delinquency Proceedings

In general, detention matters in delinquency cases will be set for hearing at 1:15 PM daily, except on the master calendar day when they will be set at 2:00 P.M.

If a delinquency detention matter must be heard at any time other than as set forth in this Rule 17.02.B, the detaining agency must give notice to the Court's Calendar Coordinator by no later than 3:00 PM on the court day before the proposed hearing, so that the Coordinator can reserve a bench officer, a reporter, and security personnel.

It is the responsibility of the detaining agency to give timely notice of the date and time of the detention hearing to the Supervising Clerk of the Civil/Juvenile Division, as well as to all parties and all counsel who may have been appointed. *[Rule 17.01 adopted effective July 1, 2002, amended and renumbered effective July 1, 2010; amended effective January 1, 2019.]*

Inyo County Superior Court
168 North Edwards Street
Post Office Drawer U
Independence, California 93526
Tel: (760) 878-0217

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

JUVENILE COURT

In Re the Matter of Toiyabe Family Services' Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth.	STANDING ORDER NO. Order Presuming Toiyabe Family Services' Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth (WIC § 676(a))

This Standing Order is intended to enhance the Court's decision making in juvenile delinquency proceedings, including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve Native American minor children who are eligible to receive services from Toiyabe Family Services in Bishop, Inyo County, California. The Court recognizes that even though the provisions of the Indian Child Welfare Act (ICWA) may not be applicable in any particular case or hearing, the Court, Juvenile Probation, and the Minor can nevertheless benefit from the participation of Toiyabe Family Services in the Minor's delinquency proceedings.

Such benefits may include, but are not necessarily limited to, assessing the Minor's need for and providing substance abuse, mental health, and/or other treatment services to the Minor and/or his/her family; informing the court about placement options for the Minor within the Minor's extended family or the tribal community; assist the Probation Department and Court in identifying strengths and needs of the Minor and his/her family; assist in identifying and accessing tribal and cultural activities and programs for the benefit of the Minor and his/her family; as well as assisting in the development and implementation of a case plan and/or Independent Living Program/Plan for the Minor.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS FOLLOWS:

In the case of any Native American Minor appearing before the above-entitled Court, in connection with juvenile delinquency proceedings under Section 602 of the California Welfare and Institutions Code, and said Minor is eligible to receive services from Toiyabe Family Services of the Bishop Paiute Tribe's Toiyabe Indian Health Project, a duly authorized representative of Toiyabe Family Services shall, within the meaning of Welfare & Institutions Code Section 676(a), be presumed to have a direct and legitimate interest in the case of said Minor.

Said representative of Toiyabe Family Services shall be allowed to attend Juvenile Court proceedings pertaining to such a Minor, subject to the judicial officer presiding over the case or particular hearing determining that Toiyabe Family Services

does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude said representative from a particular hearing(s), or portion thereof.

In addition to being present at the hearing, said representative may do all of the following upon consent of the court:

1. Address the court.
2. Request and receive notice of hearings.
3. Request to examine court documents relating to the proceeding.
4. Present information to the court that is relevant to the proceeding.
5. Submit written reports and recommendations to the court.
6. Perform other duties and responsibilities as requested or approved by the court.

This Standing Order shall also apply to proceedings involving Native American minors, as described above, who have been designated by the Court as a "dual status" minor. (WIC § 241.1)

This Standing Order applies even though the above-described minor has not been determined to be "at risk of removal," and/or the provisions of the Indian Child Welfare Act (ICWA)[1], including the provisions of California Welfare & Institutions Code § 224 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*) do not otherwise apply to the Minor's delinquency hearing or case. Any notice given to Toiyabe Family Services under this

[1] 25 U.S.C. § 1901 *et seq.*

Order shall not constitute any express or implied finding that the minor is "at risk of removal" under the aforementioned ICWA provisions, or otherwise implicating said provisions. Further, should the aforementioned provisions of ICWA apply to a particular minor, any notice provided to Toiyabe Family Services hereunder, does not constitute legal notice to the Tribe as required by the aforementioned provisions of the ICWA.

So Ordered.

Dated:

Dean T. Stout
Presiding Judge/
Presiding Judge of the
Juvenile Court

Inyo County Superior Court
168 North Edwards Street
Post Office Drawer U
Independence, California 93526
Tel: (760) 878-0217

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

JUVENILE COURT

In Re the Matter of The Tribe's Presumed Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth	STANDING ORDER NO. Order Presuming Tribe's Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth (WIC § 676(a))

This Standing Order is intended to enhance the Court's decision making in juvenile delinquency proceedings, including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve a Native American unmarried minor child who is a member of one of the following federally recognized local tribes, or who is the biological child of a member of one of the following federally recognized local tribes, and the child is eligible for membership:

- Big Pine Paiute Tribe Of The Owens Valley
- Bishop Paiute Reservation

- Fort Independence Indian Reservation
- Lone Pine Paiute-Shoshone Reservation
- Timbisha Shoshone Tribe

The Court recognizes that even though the provisions of the Indian Child Welfare Act (ICWA) may not be applicable in any particular case or hearing, the Court, Juvenile Probation, and the Minor can nevertheless benefit from the participation of the Tribe in the Minor's delinquency proceedings. Such benefits may include, but are not necessarily limited to, assessing the Minor's need for and providing substance abuse, mental health, and/or other treatment services to the Minor and/or his/her family; informing the court about placement options for the Minor within the Minor's extended family or the tribal community; assist the Probation Department and Court in identifying strengths and needs of the Minor and his/her family; assist in identifying and accessing tribal and cultural activities and programs for the benefit of the Minor and his/her family; as well as assisting in the development and implementation of a case plan and/or Independent Living Program/Plan for the Minor.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS FOLLOWS:

In the case of any unmarried Native American minor appearing before the above-entitled Court in connection with any juvenile delinquency (WIC § 602) proceeding, and said minor is a member of one of the following federally recognized local tribes, or who is the biological child of a member of one of the following federally recognized local tribes, and the child is

eligible for membership: Big Pine Paiute Tribe Of The Owens Valley; Bishop Paiute Reservation; Fort Independence Indian Reservation; Lone Pine Paiute-Shoshone Reservation; or, the Timbisha Shoshone Tribe, the duly authorized Indian Child Welfare Act (ICWA) Representative for said Tribe shall, within the meaning of Welfare & Institutions Code Section 676(a), be presumed to have a direct and legitimate interest in the case of said Minor.

Said ICWA Representative shall be allowed to attend Juvenile Court proceedings pertaining to such a Minor, subject to the judicial officer presiding over the case or particular hearing determining that said Tribe and ICWA Representative does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude said ICWA Representative from a particular hearing(s), or portion thereof.

In addition to being present at the hearing, said Representative may do all of the following upon consent of the court:

1. Address the court.
2. Request and receive notice of hearings.
3. Request to examine court documents relating to the proceeding.
4. Present information to the court that is relevant to the proceeding.
5. Submit written reports and recommendations to the court.
6. Perform other duties and responsibilities as requested or approved by the court.

This Standing Order shall also apply to proceedings involving Native American minors, as described above, who have been designated by the Court as a "dual status" minor. (WIC § 241.1)

This Standing Order applies even though the above-described minor has not been determined to be "at risk of removal," and/or the provisions of the Indian Child Welfare Act (ICWA)[1], including the provisions of California Welfare & Institutions Code § 224 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*) do not otherwise apply to the Minor's delinquency hearing or case. Any notice given to the Tribe under this Order shall not constitute any express or implied finding that the minor is "at risk of removal" under the aforementioned ICWA provisions, or otherwise implicating said provisions. Further, should the aforementioned provisions of ICWA apply to a particular minor, any notice provided to the Tribe hereunder, may not necessarily constitute legal notice to the Tribe as required by the aforementioned provisions of the ICWA.

Informal notice provided to the Tribe hereunder may be given by the Inyo County Probation Department to the Tribe's designated ICWA Representative by any reasonable means to insure timely notice of proceedings, which may include telephone, fax, and/or mailing of informal notice by use of Judicial Council form JV-625.

Dated:

_____
Dean T. Stout, Presiding Judge/
Presiding Judge of the Juvenile Court

[1] 25 U.S.C. § 1901 *et seq.*

TULARE COUNTY SUPERIOR COURT
LOCAL RULES

VISALIA
County Civic Center
221 South Mooney Boulevard
Visalia, CA 93291
559-730-5000

DINUBA
640 South Alta Avenue
Dinuba, CA 93618
559-595-6400

SOUTH COUNTY JUSTICE CENTER
300 East Olive Avenue
Porterville, CA 93274
559-782-3700

JUVENILE JUSTICE CENTER
11200 Avenue 368
Visalia, CA 93291
559-738-2300

Rule 1103 - Filing of Documents

No document except original petitions filed pursuant to Welfare and Institutions Code sections 300 and 602 will be accepted by the court clerk for filing unless it sets forth on its face the case caption and is accompanied by a proof of service reflecting service on all counsel of record and parties not represented by counsel. (01/01/07)

Rule 1104 - Motion Requirements

(a) No noticed motion will be accepted by the county clerk unless it is accompanied by a proof of service.

(b) All motions calendared in the juvenile court must comply with the requirements of the Code of Civil Procedure sections 1010 et seq. and California Rules of Court, rules 3.1110, 3.1113, 3.1115, 3.1320, and 5.544, except that written notice to opposing counsel and the court may be reduced to five court days, and any opposition must be filed and served two court days before the scheduled hearing. Prior to giving notice, the moving party must reserve the hearing date with the calendar clerk for the juvenile court.

Ex parte requests for relief from compliance with this rule may be granted only upon written application to the juvenile court judge or bench officer assigned to hear the matter, supported by affidavit showing good cause, and with at least four hours personal or telephonic notice of the time set for such ex parte application to all counsel appearing in the proceeding. Any request for such ex parte relief must also include an affidavit by requesting counsel that notice was given as required.

All documents must be typed or printed and must be punched with two holes at the top of each page.

Notwithstanding the foregoing requirements, motions to continue a hearing, brought under Welfare and Institutions Code section 352, are subject to the time limits set forth therein. Additionally, counsel for all parties to a proceeding may stipulate to a continuance, provided that such stipulations are submitted and approved by the court regularly hearing the matter at least two court days prior to the hearing. Such stipulations must establish the existence of good cause for continuance.

Papers that do not comply with these rules, the Code of Civil Procedure, and the California Rules of Court will not be considered by the court unless good cause is otherwise shown. (07/01/00)

Rule 1105 - Documenting Notice of Hearings

In all juvenile dependency matters, Child Welfare Services (CWS) must file a single “Proof of Service Declaration” to show compliance with the legal notice requirements for each hearing. Judicial Council forms must be used by the agency internally to meet notice and Title IV-E requirements. (Forms are available on the Internet at www.courts.ca.gov.) A “Proof of Service

Declaration" (see Appendix 2) must be signed, under penalty of perjury, indicating the following:

(a) That a notice of hearing (e.g., Judicial Council Form JV-280 or JV-300) has been sent to each of the parties, any court appointed special advocate (CASA), the attorneys, and any Indian tribe, informing them of the nature of the proceeding;

(b) The date, time, place, and manner in which notice was given;

(c) The parties, attorneys, CASAs (if any), and Indian tribes (if any) noticed, including addresses;

(d) Whether reports accompanied the notice;

(e) Names of parties who were not noticed due to unknown addresses.

The "Proof of Service Declaration" must include documentation of CWS's due diligence in attempting to locate missing parents whenever required by law. (07/01/00) (Revised 01/01/2020)

Rule 1106 - Ex Parte Orders in Dependency Cases

(a) Before submitting ex parte orders to a judicial officer for approval, the applicant must give notice to all counsel, social workers, and parents who are not represented by counsel or explain the reason notice has not been given.

(b) The party requesting ex parte orders must inform the judicial officer that notice has been given by completing a "Declaration Re Notice of Ex Parte Application" form (Appendix 11). The original declaration and accompanying "Application for Order" must be submitted to the juvenile court clerk of the juvenile division.

(c) Upon receipt of the application and declaration of notice, the clerk will note the date and time received in the upper right corner of the declaration. In order to give opposing parties ample time to respond to the ex parte application, the clerk will hold the application for four hours prior to submission to the judicial officer for their decision.

(d) An opposing party must present any written opposition to a request for ex parte orders to the court clerk of the juvenile division within four hours of receipt of notice. The court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the court's decision, or notice that the court has calendared the matter, and the applicant must notify all parties of any hearing date and time set by the court.

(e) Whenever possible, the moving and responding papers and declaration regarding notice must be served on the attorney for each parent, attorney for the child, county counsel, CASA, supervising social worker, and parents who are not represented by counsel.

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RULES OF THE SUPERIOR COURT OF CALIFORNIA COUNTY OF VENTURA

Revised Effective January 1, 2020

www.ventura.courts.ca.gov

Michael D. Planet, Executive Officer/Clerk
and Jury Commissioner
VENTURA SUPERIOR COURT
County of Ventura
800 S. Victoria Avenue, Ventura, California 93009
Telephone (805) 289-8900
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At any time prior to dismissal if there are issues of custody and/or visitation and there is no issue of risk of harm to the minor(s), the court may require the parties to schedule and participate in a mediation with Family Court Services. Parents and minor(s) six (6) years or older must, absent a court order to the contrary, attend the mediation. Mediation shall be conducted in accordance with the laws, rules, standards, and procedures specified for Family Law custody and visitation issues, including, but not limited to, the provisions of *Family Code* §3160 et seq. *California Rules of Court*, rules 5.210 et seq. and Ventura County Superior Court Local Rule 5.30 et seq.

3. Discovery Protocol See *California Rules of Court*, rule 5.546.

B. MISCELLANEOUS RULES REGARDING DEPENDENCY CASES

1. COURT FILES

a. Each minor child who is subject to a dependency petition shall be assigned a separate file number and a separate court file shall be maintained for each child.

b. Each new court file created as a result of a petition filed under Welfare and Institutions Code §300, shall consist of two (2) separate physical folders, the main folder and the Confidential and the Indian Child Welfare Act ("ICWA") folder.

c. The confidential and ICWA folder shall be divided into two (2) separate sections, one section where confidential documents are to be filed, and one section where ICWA documents are to be filed.

d. The Confidential section shall contain documents that contain confidential information that should not be given to parents and/or children without a further court order, for example, proofs of service showing confidential foster care information, confidential caregiver information forms, and confidential de facto parent requests. The confidential section shall also contain any privileged information including psychological evaluation reports. The party filing a confidential document shall be responsible to clearly indicate it is a confidential document by stamping or writing in red ink on the front page "Confidential" unless otherwise required by law. No parent or dependent child, absent a court order shall have access to the confidential part of a dependency file.

e. The ICWA section shall contain all documents related to compliance with the Indian Child Welfare Act which shall be clearly identified by the party filing the document.

f. All documents not filed in the confidential and ICWA file shall be filed in the main folder of the file.

2. In order to protect the parties' privacy and to prevent the inadvertent disclosure of confidential psychological information, psychological evaluation reports shall not be attached to a court report but shall be separately filed in the confidential part of the court's file. A copy of the report shall be given to the attorneys for each party before the time of the hearing and the attorneys shall be responsible for the manner of disclosing the information to her or his client.

3. When submitting documents for filing, in cases involving multiple minors, parties shall submit one additional copy of the document for each additional minor named on any document submitted to the court for filing. The clerk will place the additional copies in each minor's file.

4. If any party proposes findings and orders, the proposed findings and orders shall be submitted to the court separate from any attachments or cover memoranda.

5. If the court orders a party to prepare findings and orders, the party shall serve a copy of the proposed findings and orders on all other parties prior to the time they are submitted to the court.

C. GENERAL COMPETENCY REQUIREMENT OF COUNSEL WHO APPEAR IN JUVENILE DEPENDENCY PROCEEDINGS

All public agency and court appointed attorneys who appear in juvenile dependency proceedings, including counsel that represent children, must meet the minimum standards of competence set forth in the California Rules of Court. Attorneys who are privately retained by parents shall provide information to the court as requested regarding her/his competency to represent clients in dependency cases.

D. PROCEDURES TO SCREEN, TRAIN, AND APPOINT ATTORNEYS REPRESENTING PARTIES

1. All public agency and court appointed attorneys who represent parties in juvenile dependency proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Each public agency and court appointed attorney of record for a party to a dependency matter pending before the court shall complete and submit to the court a Certificate of Competency Form (VN012). Any public agency and court appointed attorney who appears in a dependency matter for the first time shall complete and submit a Certificate of Competency to the court within ten (10) days of his or her first appearance in a dependency matter.

2. Public agency and court appointed attorneys who meet the minimum standards of training and/or experience as set forth in these rules, as demonstrated by the information contained in the Certification of Competency submitted to the court, shall be deemed competent to practice before the juvenile court in dependency cases except as provided in subdivision 3 of this rule.

3. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case within the six (6) month period prior to the submission of the certification to the court, that a particular attorney does not meet minimum competency standards. In such cases, the court shall proceed as set forth in Rule D4 wherein an attorney fails to comply.

Local Rules of

Superior Court of California

County of Yolo

Effective January 1, 2007; As amended, eff 01/01/08; As amended, eff 01/01/09; As amended, eff 01/01/10; As amended, eff 07/01/10; As amended, eff 01/01/11; As amended, eff 01/01/12; As amended, eff 01/01/13; As amended, eff 01/01/15; As amended, eff 01/01/19

The following rules of court for the Superior Court of Yolo County are adopted January 1, 2019 and replace the rules previously adopted by the Superior Court of Yolo County.

RULE 26 GUARDIANSHIPS OF THE PERSON OF A MINOR

26.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING

(a) Notice required by Probate Code Section 1511(b) shall be personally served while the notice required by Probate Code Section 1511 (c), (d) and (e) is to be mailed.

(b) Relatives in the second degree include: maternal grandparents, paternal grandparents, parents, brothers and sisters, and any children.

(c) Notice shall be given to persons not otherwise entitled to notice who are parties to any other proceeding to appoint a guardian for the minor if such proceedings are known to the petitioner at the time of filing.

(d) The Clerk's Office will set a hearing date approximately sixty (60) days after filing to allow time for the Court Investigator's report.

(e) In the case of a petition for guardianship of the person by a relative, notice shall be mailed to the Probate Investigator.

(f) In the case of a petition for guardianship of the person by a non-relative, notice under Probate Code Sections 1540 through 1543, inclusive, shall be mailed at least forty-five (45) days prior to the hearing date to:

(1) The State Department of Social Services; and

(2) Yolo County Department of Employment and Social Services.

(g) A declaration of due diligence is required where the petitioner cannot determine the name or address of a relative or party to whom notice is required. The declaration shall specify all efforts undertaken to identify and locate such relative or party. The petitioner should check the following and state the results in the declaration: telephone directory, directory assistance, relatives and friends, former employers, and last known address. *(Effective January 1, 2007)*

26.2 PENDING ADOPTION

Pursuant to Probate Code Section 1543, if it appears that adoption proceedings are pending, letters of guardianship will not be issued nor the hearing permitted until the agency investigating the adoption has filed its report. *(Effective January 1, 2007)*

26.3 INDIAN CHILD WELFARE ACT (ICWA)

Guardianships are subject to the provisions of the federal Indian Child Welfare Act (ICWA). If there is any reason to believe that the child has Native American

heritage, the petitioner shall provide notice to the appropriate tribe(s) and the Secretary of the Department of the Interior as required by ICWA. *(Effective January 1, 2007)*

26.4 GUARDIANSHIP HEARING

The minor and the proposed guardian shall attend the hearing to establish a guardianship of a minor, unless their presence is waived by the court. *(Effective January 1, 2007)*

26.5 PROBATE INVESTIGATOR OR SOCIAL SERVICES

(a) The Probate Investigator conducts an investigation on all petitions to establish a guardianship where the proposed guardian is a relative.

(b) Where the proposed guardian is a non-relative, Child Protective Services conducts the investigation. Any delay may cause a continuance. See Probate Code Section 1513(g) for the definition of relative.

(c) Once the guardianship is established, the Probate Investigator assists the court in reviewing guardianships of the person and the estate. Counsel and guardians shall cooperate fully with the Probate Investigator.

(d) The Probate Investigator shall be provided with a copy of all petitions to terminate a guardianship.

(e) Pursuant to Probate Code section 1513.1 and 1851.5, at the time of filing a petition to establish a guardianship, if the proposed guardian is a relative, a fee shall be assessed and paid for the Probate Investigator's report unless deferred or waived by the court. If the guardian or other person liable for payment of the assessment believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts establishing a hardship. Failure to make timely payment will not delay approval of any petition but will result in the matter being referred to collections. *(Effective January 1, 2007; As amended, eff 01/01/10; As amended, eff 01/01/11)*

26.6 TEMPORARY GUARDIANSHIPS

(a) All petitions for appointment of a temporary guardian should be submitted by ex parte application. Proof of service of the petition, pursuant to Probate Code Section 2250, shall be filed prior to the issuance of an order.

(b) If the court determines that a hearing on the petition for a temporary guardianship is necessary, notice will be sent by the court to the attorney and petitioner. Notice of that hearing shall then be given by the attorney and/or petitioner to those required to receive notice. *(Effective January 1, 2007)*