



Tribal Dependency Representation Program: Information Sheet for California Courts

Background

The federal Indian Child Welfare Act (ICWA) and corresponding state law protect certain rights of a federally recognized Indian tribe in state court proceedings involving a child who is a member or eligible for membership in the tribe, including a right to intervene in the proceedings.¹ Prior to 2023, however, neither federal nor state law provided a source of funding for tribes to hire attorneys if they wished to participate in ICWA cases. In juvenile dependency cases (where the vast majority of ICWA cases arise) tribes were the only party to a case who were not entitled to appointed counsel.

In 2022, the California Legislature enacted SB 179 which added section [10553.14](#) to the Welfare and Institutions Code and appropriated funding for the Tribal Dependency Representation Program. The program provides funding for federally recognized tribes in California or whose lands extend into California to hire legal counsel to represent the tribe in juvenile dependency cases in California courts. As a result, California tribes may be hiring attorneys more regularly to represent them in juvenile dependency cases governed by ICWA.

Program Details and Eligibility

This funding program will be administered by the California Department of Social Services (CDSS), Office of Tribal Affairs (OTA). The courts will not have a role in appointing attorneys for tribes under this program. The funding for this program is very limited. Each California tribe (which includes border tribes with lands that extend into California) is entitled to an initial \$15,000.00 allotment of funding. If additional funds are appropriated by the Legislature or if some tribes do not want their allocation of funding, OTA, in consultation with tribes, will develop a formula for distributing remaining funds to participating tribes.

Importantly, this funding is NOT available to out-of-state tribes. OTA estimates that roughly half the ICWA cases in California involve Indian children who are members or eligible for membership in out-of-state tribes. Funding is NOT available to unrecognized tribes although they have rights to participate under section 306.6 of the Welfare and Institutions Code and often do not have resources to assert their rights.

Tribal Rights of Participation not Affected

No tribe is required to participate in this program. Tribes retain all their existing rights to participate in ICWA cases through an authorized representative who is not an attorney.² For more information on

¹ 25 U.S.C. § 1911(c); Welf. & Inst. Code, § 224.4.

² See California Rules of Court, rule 5.534(e).

tribal rights of participation, see “ICWA Information Sheet: Tribal participation in State court proceedings governed by ICWA.”³

Other Considerations

Pro Hac Vice Rules for Attorneys Representing Tribes in ICWA cases

If a tribe elects to be represented by an attorney who is admitted to practice in another state but not in California, special rules apply to those attorneys applying to appear as counsel *pro hac vice*. Section 70617(e)(3) of the Government Code⁴ exempts an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act from the fees imposed for an application to appear *pro hac vice*. California Rules of Court, rule 9.40(g)⁵ similarly exempts an attorney applying to appear *pro hac vice* to represent a tribe in an ICWA case from the normal requirement to associate with an active licensee of the State Bar of California and the restrictions on repeated appearances.

Remote appearances

Section 224.2(k) of the Welfare and Institutions Code,⁶ effective January 1, 2023, provides tribes in ICWA cases with a right to remote participation at no charge:

Notwithstanding any other provision, an Indian child’s tribe may participate by telephone, or other remote appearance options, in proceedings in which the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) may apply. The method of appearance may be determined by the court consistent with court capacity and contractual obligations, and taking into account the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided. Fees shall not be charged for court appearances established under this subdivision conducted in whole or in part by remote means.

This means tribes and their attorneys should be allowed to appear remotely at no charge.

Facilitating Tribal Participation

Tribes have often experienced challenges in exercising their right to participate in ICWA cases, including access to resources for counsel. Courts considering best practices to facilitate tribal participation including prioritizing ICWA cases on the calendar, facilitating remote appearances, and other strategies may consult the Judicial Council’s ICWA best practices publication.⁷

³ Available at: <https://www.courts.ca.gov/documents/icwa-Tribal-Participation-factsheet.pdf>

⁴ Available at:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=70617.&nodeTreePath=33.16.1&lawCode=GOV

⁵ Available at: https://www.courts.ca.gov/cms/rules/index.cfm?title=nine&linkid=rule9_40

⁶ Available at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=224.2.&lawCode=WIC

⁷ Available at: <https://www.courts.ca.gov/documents/ICWABestPracticesGuide-October2020.pdf>