

**ADVANCED INDIAN CHILD WELFARE CURRICULUM**  
**- TRAINEE'S GUIDE -**

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**BACK GROUND AND ACKNOWLEDGEMENTS**

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The Administrative Office of the Courts, Center for Families, Children & the Courts is developing curriculum on a number of topics, one of which is the Indian Child Welfare Act. This curriculum regarding “active efforts” is the first module of the advanced curriculum on the Indian Child Welfare Act. While the intended audience for this curriculum is juvenile court judicial officers and attorneys, our hope is that it will also be used by tribal advocates, social workers, and probation officers.

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Judicial Council of California

Administrative Office of the Courts

Center for Families, Children & the Courts

Attn: Indian Child Welfare Project

455 Golden Gate Avenue

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**AGENDA**

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- I. Welcome and Introductions  
Initialing competencies and learning objectives
- II. Self Assessment
- III. 30 years later...
- IV. “Continuing the Dialogue” Video
- V. What attorneys and judges should expect regarding the active efforts requirements of ICWA, how would active efforts differ between an ICWA and non-ICWA case?
- VI. Break
- VII. The law
- VIII. Requirements revisited
- IX. Case Plans
- X. Role of each stakeholder in providing active efforts
- XI. Examples of active efforts
- XII. Highlighting practices in other jurisdictions
- XIII. Wrap up and next steps

**COMPETENCIES AND LEARNING OBJECTIVES**

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✘ Please read the competencies and learning objectives for this module.

1. Identify by initialing which competency and/or learning objectives are most important for you to learn today.
2. Is there anything else that you would like to be covered that isn't listed?

**Competencies**

\_\_\_C.1: The participant develops an understanding of active efforts as defined by ICWA, tribal tradition and California law across the continuum of culturally appropriate service provision including prevention, concurrent planning and permanency options, participatory case planning, placement and permanence.

\_\_\_C.2: The participant develops an understanding of the role of participants in the probate, family and juvenile court processes, such as judicial officers, attorneys and tribal and agency social workers in providing active efforts to tribal families on a case by case basis.

**Learning Objectives:**

*Knowledge*

\_\_\_K.1: The participant understands the ICWA, and the relevant sections of the California Family, Probate, and Welfare and Institutions Codes, and the Rules of Court.

\_\_\_K.2: The participant understands what it means for active efforts to be made across the continuum of service provision “in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe” (W&I 361.7).

\_\_\_K.3: The participant understands the identification and delivery of appropriate services comprising active efforts for each Indian child and family coming before the juvenile, probate and family court.

\_\_\_K.4: The participant understands the unique components of concurrent planning, placement and case planning for an Indian child and family.

\_\_\_K.5: The participant understands the role of participants in the probate, family and juvenile court processes, such as judicial officers, attorneys, tribal representatives, social workers and court appointed special advocates in all aspects of providing services to Indian children and their families.

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\_\_\_\_K.6: The participant will understand the make-up of the Indian family, including the extended family, as defined by tribes, as well as the potential for identification of those who may play a significant role in the planning for the child and the achievement of permanence.

### *Skill*

\_\_\_\_S.1: When given a case scenario the participant will be able to make appropriate inquiries as to active efforts that have been made or should have been made, and make recommendations for additional active efforts.

\_\_\_\_S.2: When given a case scenario the participant will be able to responsibly consider if the letter and intent of the ICWA have been followed.

\_\_\_\_S.3: The judicial participant will demonstrate an ability to make appropriate and thorough findings regarding active efforts consistent with the evidence presented.

\_\_\_\_S.4: The non-judicial participants will demonstrate an ability to responsibly advocate for adherence to the active efforts requirement.

### *Value*

\_\_\_\_V.1: The participant will appreciate the long-lasting connection between Indian people and their tribes, culture and communities, and the historical, statutory and case law framework enforcing the rights of the child and the tribe to identifying and appropriately maintaining that inherent connection.

\_\_\_\_V.2: The participant will value the role of the court process in respecting the intent of the ICWA and adhering to the letter of the Law “in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe”.

## CONTINUING THE DIALOGUE: ICWA Self Assessment Quiz

1. How many tribal courts are there in U.S? Over
  - a. 10
  - b. 50
  - c. 300
  - d. 500
  
2. In 1977 the American Indian Policy Review conducted research regarding the number of Indian children more likely to be in foster care or adopted by non-tribal families than their Caucasian counter parts.
  - a. 120% more likely to be adopted and 50% more likely to be in foster care
  - b. 240% more likely to be adopted and 100% more likely to be in foster care
  - c. 500% more likely to be adopted and 150% more likely to be in foster care
  - d. 840% more likely to be adopted and 270% more likely to be in foster care
  
3. In 1840 there were 200,000 Indians in California in 1870 there were
  - a. 12,000
  - b. 24,000
  - c. 85,000
  - d. 100,000
  
4. Membership in a tribe is determined by
  - a. The Federal Government
  - b. The tribe
  - c. The individual person
  - d. The State Court
  
5. How many years after 1851, when 18 treaties were signed by the Indians of California and Federal Government reserving 7.5 million acres for the Indians, were the tribes notified that the treaties had not been ratified?
  - a. Never
  - b. 10 years
  - c. 50 years
  - d. 100 years

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6. Instead of receiving the 7.5 million acres reserved for the Indians in the 1851 treaties, how many acres did they receive?
  - a. .5 million
  - b. 1.5 million
  - c. 4.5 million
  - d. 7.5 million
  
7. Which statement below does not describe the philosophy of the Bureau of Indian Affairs (when it was part of the war department)?
  - a. Strip the Indian away and save the child
  - b. Tradition is the enemy of progress
  - c. You can be educated or Indian but you can't be both
  - d. Indian tradition should be preserved
  
8. The BIA relocated 60-70,000 Indians to San Francisco and Los Angeles, now over what % of California's Indian population traces their native ancestry to tribes outside of California?
  - a. 10%
  - b. 30%
  - c. 50%
  - d. 70%
  
9. In 1870 the 15<sup>th</sup> amendment to the U.S. Constitution affirmed voting rights for emancipated slaves. In what year was the passage of the Federal Citizenship Act that granted Indians the right to vote most for the first time?
  - a. 1870
  - b. 1900
  - c. 1924
  - d. 1963
  
10. There are over how many federally recognized tribes in California?
  - a. 60
  - b. 80
  - c. 100
  - d. 130

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**HOW WOULD DOES AN ICWA CASE DIFFER FROM A NON-ICWA CASE?**

**What should attorneys and judges expect regarding the “active efforts” requirements of ICWA?**

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+ Prior to the matter coming to court?

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+ Prior to Disposition?

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+ Post Disposition?

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THE LAW REGARDING ACTIVE EFFORTS AND COURT ENFORCEMENT

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ICWA 25 USC § 1912 (d)

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

In order to prevail on petition for termination of parental rights in case involving Indian children, Department of Human Services must affirmatively establish by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and that such efforts proved unsuccessful. [In re Annette P., Me.1991, 589 A.2d 924. Indians ↪134\(4\)](#)

Trial court properly applied beyond reasonable doubt standard in determining whether State had made active efforts through remedial services and rehabilitative programs to prevent breakup of Indian family, as required by Indian Child Welfare Act, in action to terminate mother's parental rights; although trial court failed to refer to beyond reasonable doubt standard in its finding concerning remedial services, it used that standard in other findings. [People in Interest of E.M., S.D.1991, 466 N.W.2d 168. Indians ↪134\(4\)](#)

Evidence consisting of testimony of social worker who was in contact with American Indian mother on a monthly basis that mother had no interest in pursuing goal of reuniting with her children supported finding that county's social welfare efforts to avoid a family breakup were "active" as required by the Indian Child Welfare Act. [Matter of Welfare of T.J.J., Minn.App.1985, 366 N.W.2d 651. Indians ↪134\(4\)](#)

Evidence supported finding, in Child in Need of Aid (CINA) proceeding for termination of father's parental rights respecting his Indian children, that reasonable efforts had been made to reunite family and that those efforts had proven unsuccessful; father refused to follow examining psychiatrist's recommendations as outlined in treatment plan or cooperate in setting up alternative plan and father repeatedly denied having mental problems and resisted intervention of Department of Family and Youth Services (DFYS). [K.N. v. State, Alaska 1993, 856 P.2d 468. Indians ↪134\(4\)](#)

Foster care placement of half-Indian children was not subject to invalidation for failure to comply with provision of Indian Child Welfare Act requiring that state provide rehabilitative programs or remedial services to prevent breakup of Indian family where, after non-Indian mother's parental rights in children were terminated, two different home studies were conducted, neither of which recommended that children be placed with Indian father, state suggested service plan in which father was required to pay minimal amount of child support and to visit children to become



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acquainted with them, and father visited children only once during pendency proceedings. [Matter of S.C., Okla.1992, 833 P.2d 1249. Indians ☞134\(2\)](#)

Drug and alcohol treatment program services, anger management and sex offender treatment services provided to Indian father, whose parental rights were being terminated, were appropriate and there was thus no violation by administrative agency of Indian Child Welfare Act section requiring offering of remedial services and rehabilitation programs designed to prevent breakup of Indian family. [State ex rel. Juvenile Dept. of Multnomah County v. Woodruff, Or.App.1991, 816 P.2d 623, 108 Or.App. 352. Indians ☞134\(2\)](#)

Even if Indian Child Welfare Act applied to children who were subject of proceeding to terminate parental rights, record and trial court's findings were sufficient to satisfy requirement of Act that state prove beyond a reasonable doubt that continued custody of children by natural mother was likely to result in serious emotional or physical damage to children and that efforts had been made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and that those efforts proved unsuccessful. [In re Smith, Wash.App. Div. 1 1987, 731 P.2d 1149, 46 Wash.App. 647, review denied. Indians ☞134\(4\)](#)

Within purview of subsec. (d) of this section governing preventive measures in awarding custody of Indian child, "to effect" language refers to legal proceedings required to accomplish foster care placement of, or termination of parental rights to Indian child, not to act of taking physical custody of child. [State ex rel. Juvenile Dept. of Multnomah County v. Charles, Or.App.1984, 688 P.2d 1354, 70 Or.App. 10, review allowed 693 P.2d 48, 298 Or. 427, review dismissed 701 P.2d 1052, 299 Or. 341.](#)

In proceeding to determine child custody, where State pointed to testimony peppered throughout hearing that indicated that some remedial efforts had been made to prevent breakup of Indian family which were arguably unsuccessful, diffuse evidence to which State pointed did not amount to affirmative showing that active efforts had been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that those efforts had been unsuccessful as required by this section. [State ex rel. Juvenile Dept. of Multnomah County v. Charles, Or.App.1984, 688 P.2d 1354, 70 Or.App. 10, review allowed 693 P.2d 48, 298 Or. 427, review dismissed 701 P.2d 1052, 299 Or. 341. Indians ☞134\(4\)](#)

Finding in state adoption proceeding, that active efforts were made to provide remedial services and rehabilitative programs as required under Indian Child Welfare Act, was supported by evidence that natural parents failed to show any interest whatsoever in child and natural mother removed child from state making remedial or rehabilitative programs futile. [C.E.H. v. L.M.W., Mo.App. W.D.1992, 837 S.W.2d 947, rehearing and/or transfer denied. Indians ☞134\(2\)](#)

**Bureau of Indian Affairs: Guidelines for State Courts; Indian Child Custody Proceedings Federal Register Vol. 44, No. 228 Monday, November 26, 1979 pg. 67584 et seq.**

(Adapted from "Bench Handbook. The Indian Child Welfare Act, Administrative Office of the courts 2008)

### D.2. Efforts To Alleviate Need To Remove Child From Parents or Indian Custodians

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement

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of the proceeding active efforts have been made to alleviate the need to remove the Indian child from his or her parents or Indian custodians. These efforts shall take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. They shall also involve and use the available resources of the extended family, the tribe, Indian social service agencies and individual Indian care givers.

### D.2. Commentary

This section elaborates on the meaning of "breakup of the Indian family" as used in the Act. "Family breakup" is sometimes used as a synonym for divorce. In the context of the statute, however, it is clear that Congress meant a situation in which the family is not willing or able to care for the child in a manner that is unlikely to endanger the child's emotional or physical health. It envisions that efforts will be made to assist that family to be able to provide the child with a safe environment prior to, and instead of, the need for removal.

This section also recommends that the petitioner take into account the culture of the Indian child's tribe and use the resources of the child's extended family and tribe in attempting to help the family function successfully as a home for the child. The term "individual Indian care givers" refers to medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

Section 1912 (d) requires active efforts to **prevent** the breakup of the Indian family, in addition to active efforts to reunify once the family has been broken up. Although the Guidelines are not binding upon state courts, the California Courts have held that they are entitled to considerable weight as they represent the interpretation of the law by the relevant agency. The Guidelines are the clearest place that says that the petitioner must demonstrate to the court that "**prior to the commencement of the proceeding** active efforts have been made to alleviate the need to remove the Indian child"....

### **§ 361. Limitations on parental or guardian control; right to make educational decisions; appointment of responsible adult; relinquishment of child; grounds for removal of child; placement; findings**

(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, **in the case of an Indian child custody proceeding, whether active efforts as required in Section 361.7 were made and that these efforts have proved unsuccessful.** The court shall state the facts on which the decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

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(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

### **§ 361.7. Termination of parental rights or involuntary placement of a child with Indian ancestry; standards**

(a) Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that **active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.**

(b) What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made **in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.**

(c) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### **2009 California Rules of Court**

**Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

**(c) Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.7)**

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful.

- (1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.
- (2) Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

COMPILATION OF CALIFORNIA 2009 AND 2010 ICWA CASES

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**In re E.G.** 170 CA 4<sup>th</sup> 1530 [3<sup>rd</sup> Dist. – Scotland] Sacramento 2/10/09 Mother appealed TPR based on failure of ICWA notice concerning alleged father's ancestry. Mother claimed possible heritage and notice was given as required. Alleged father appeared at next hearing and claimed possible heritage in Cherokee and Pomo tribes. Court ordered notice and both alleged fathers to participate in paternity testing. Agency failed to notice those tribes, but notices re mother resulted in negative responses. Test excluded the alleged father claiming heritage. Court found child was not an Indian child under the Act and after mother failed reunification, court terminated services and ordered TPR at the .26. HELD: AFFIRMED. An alleged father may or may not be the bio father; until bio paternity is established, his claims of Indian heritage do not trigger ICWA notice requirements since *absent a biological connection*, child cannot claim heritage through him.

**In re K.B.** 173 CA 4<sup>th</sup> 1275 [4<sup>th</sup> Dist. –McKinster] Riverside 5/13/09 In an unpublished opinion, the appellate court reversed the Termination of Parental Rights (TPR) and remanded the case for the limited purpose of compliance with ICWA notice requirements. The children were found to be within the Act; the tribe intervened, but did not assert jurisdiction, and ultimately supported the TPR and the plan for adoption by the children's current foster parents (father was a member of a different tribe.) At the new TPR, the parents requested the court to vacate all prior orders because the court had failed to find previously that “active efforts” had been made to prevent the breakup of the Indian family prior to removal at dispo. The juvenile court found there was no reasonable possibility that had those provisions been applied the results would have been different. (Harmless error analysis under *In re S.B.* (2005) 130 CA 4<sup>th</sup> 1148.) ICWA procedure followed and TPR ordered. Parents appealed. HELD: AFFIRMED. (1) Failure to comply with ICWA does not deprive the court of jurisdiction to enter dispo orders. (2) The court's finding that the Active Efforts requirements had been satisfied was correct. (3) Active efforts were made to find appropriate family members with whom to place the children; but the parents did not challenge the current placement.

**In re N.M.** 174 CA 4<sup>th</sup> 328 [3<sup>rd</sup> Dist. – Raye] Sacramento 5/27/09 Through her father, the child was determined to be eligible for membership in the Round Valley Indian Tribes which participated. The ICWA expert concluded there was clear and convincing evidence that placement was warranted, but urged the social worker to try to find a relative, extended family or an Indian home. The paternal grandmother (P.M.) indicated an interest in placement. The half sibling was also in care and both children were being considered for placement with a foster family in Arkansas in which the sibling had been previously placed. P.M. was rejected for placement due to her husband's criminal record and the denial of the request for an exemption. Both the social worker and the ICWA

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expert agreed that the sibling relationship should be maintained, and reported the Tribes would not intervene and would not object to adoption by the Arkansas family. P.M. then said she had divorced her husband and purchased a home and sought placement of both children with her. The father of the half sibling then appeared and sought placement of his child, which was ultimately granted. . At the .26 hearing for N.M. the agency recommended termination of parental rights and placement with P.M. who resided in Oregon. Her home was approved by Oregon ICPC. The child was still placed with Y.C. who wanted to adopt. The ICWA expert and the tribe agreed on a guardianship with P.M. and there was a problem with Y.C. adopting at that time. At the .26, the court heard testimony, and concluded that both the ICWA exception and sibling exceptions applied, and appointed Y.C. as guardian. The court found there was good cause to deviate from the tribal placement preference, the ICWA expert and the agency. The father appealed, arguing that the evidence did not support the finding of good cause HELD: AFFIRMED. (1) The issues of fact and credibility are for the juvenile court alone, and it found Y.C. to be credible, and P.M. much less so. (2) The statute requires that if the tribe recommends guardianship as the “preferred permanency plan,” the court is bound by that decision. (3) If the tribe recommends a placement, the court must find good cause in order to deviate from that preference. Substantial evidence supported the finding.

**In re S.B.** 174 CA 4<sup>th</sup> 808 [2<sup>nd</sup> Dist. – Epstein] L.A. 6/3/09 Third appeal in this case—all based on ICWA notice requirements. In the second .26 hearing the court asked the attorneys for the parents to review the notices and voice in any objections. There was a two month continuance to permit the mother's attorney to conduct the review. At the continued hearing in the attorney for the father stated he had no legal objections to the notices. The attorney for the mother stated she was not an expert on ICWA and could not make the assessment. The court stated it wasn't seeking her opinion, mere whether or not she had an objection. She said “Not that I know of, no.” TPR and appeal arguing failure of the file to contain all required documents. HELD: AFFIRMED. (1) Notwithstanding missing documents, there was sufficient evidence that notices were mailed and most received. (2) ***An attorney practicing dependency law.... should be sufficiently familiar with ICWA notice requirements to point out a flaw in notice if there is one—especially when specifically asked to do so.*** (3) *In re Justin S.* (2007) 150 CA 4<sup>th</sup> 1426 observed that trial counsel rarely bring ICWA notice deficiencies to the attention of the juvenile court. The job is routinely left to appellate counsel for the parent. (4) The practice ignores the importance to the child for permanence as soon as possible.

**In re T.S.** 175 CA 4<sup>th</sup> 1031 [3<sup>rd</sup> Dist. – Sims] Sacramento 7/14/09 After a long dependency and many services, the court set the .26 hearing. The child was an Indian child through the Pit River tribe which intervened and had appeared at all hearings. The tribe passed a resolution for placement in the home of maternal cousins, who were willing to adopt, but the tribe recommended guardianship. The ICWA expert reported and testified that active efforts had been made to provide appropriate services and that

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the child would suffer serious emotional or physical damage if returned to the parents, but recommended g-ship to allow future opportunities to reunify as an Indian family. The cousins had assumed guardianship of three other cousins, but both cousins had criminal records. The wife's record was not serious, but the husband had multiple (and fairly recent) convictions for drugs, weapons, theft, violence and D.V. The agency referred the issue to waiver to the Kinship Unit, which ultimately declined to approve the placement. The Tribe continued to recommend g-ship with the cousins as they had demonstrated their ability to provide a safe, nurturing home and had been approved for placement in the past. The ICWA expert also supported the g-ship, urging the importance of the ongoing connections with the Indian child's family and tribe. A potential adoptive placement had been identified, in which one of the parents was a member of the tribe, and other Indian families had also been identified, although not necessarily affiliated with the Pit River Tribe. At the hearing, the mother urged the §366.26(c)(1)(B)(vi)(II) exception [Indian child; detriment to TPR due to ID of g-ship by the child's tribe.] The court ordered TPR and the father appealed, arguing that the tribal recommendation exception required the court to order guardianship. Also claimed ineffective assistance of counsel for failure to argue the exception based on substantial interference with the child's tribal connection (§366.26(c)(1)(B)(vi)(I),) and failure to alert the court of the Department's duty to seek an exemption. HELD: AFFIRMED. (1) The juvenile court is not obligated to adopt the permanent plan designated by the child's tribe without conducting an independent assessment of detriment. (2) However, the legislature did not intend to preclude the court from ordering a plan of adoption when a tribe has identified another plan—if it had intended that result, it would have added that provision to §366.26 (c)(2) which sets forth circumstances in which the court shall not order TPR. (3) The Court acknowledges the ICWA expert's explanation of the preferred plan of g-ship in the tribal interest in preserving the child's connection to his or her family and Tribe. However, the parents in this case had stopped visiting the child and as there were not family or tribal members found appropriate for placement, there was not basis to believe that g-ship would be more likely to achieve those goals that adoption by an Indian family. **Note: In the unpublished portion of the opinion, the court rejected the claim of ineffective assistance of counsel since a more favorable result would not have been reasonably probable.**

***In re Melissa R.*** 177 CA 4<sup>th</sup> 24 [1<sup>st</sup> Dist. – Siggins] Alameda 8/27/09 After a long history, several returns of custody and subsequent petitions, the now 20 year old dependent with severe developmental disabilities was residing in a group home, doing well, and under the care of the Regional Center. The court dismissed dependency and ordered continued residence in the group home under the Lanterman Act. The mother, who sought return of her daughter, appealed and sought reversal based on lack of compliance of ICWA. The mother had informed the agency in 2006 of Cherokee ancestry, but all reports stated that ICWA did not apply and there were no notices. HELD: AFFIRMED. Although error, the issue is moot. (1) Reversal to direct compliance is not an option. (2) ICWA applies when an "Indian child" is the subject of a child

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custody proceeding. (3) Melissa is 20 year old and can no longer be an Indian child under the Act.

**In re G.L.** 177 CA 4<sup>th</sup> 683 [4<sup>th</sup> Dist. – Irion] San Diego 9/9/09 Father was an enrolled member of the Viejas Band of Mission Indians, so child came within the Act. DV and an injury to the child on May 6, 2008 led to petition and at detention hearing whereabouts of child and parents were unknown, although it was later learned the child was with Mary, the paternal grandmother. On May 22, 2008 the parents officially transferred temporary custody of the child to Mary, and to Amber, the paternal aunt as the Indian custodians. Designation of Indian Custodian forms were signed. At juris., the child and Mary were present; petition sustained and child taken into protective custody. Dispo report on July 10 had the forms and a letter from the tribe stating its preference for placing the child with Amber on the reservation. The agency recommended placement in an Indian-approved foster home, but not w/Mary or Amber because Mary's background check revealed a conviction and Amber did not want to care for the child. Continued hearing—tribal counsel argued that since Mary was the Indian Custodian at the time of the petition, any removal would have to be from her. Court appointed counsel for Mary and continued the matter. At next hearing the mother filed “Revocation of Designation of Indian Custodian.” Child placed in an Indian foster home; not approved by the tribe. ICWA followed; expert testified re active efforts and recommended removal based on great risk of serious harm. Testimony given by Mary and the mother and court then declared dependency, removed from parents and declined to place with Mary based on her lack of insight re the father's role in DV etc. Found present placement qualified as an Indian foster home. Father appealed arguing error in failure to notice Mary as Indian Custodian and in declining to place w/her under ICWA's placement preferences. HELD: AFFIRMED. (1) ICWA defines Indian Custodian as any Indian person w/legal custody of the child under tribal law or custom or state law, or to whom temporary care, custody and control has been transferred by the parent. (2) Such persons have rights under Indian custom that ICWA protects, including the right to protect the parental interests of the parents. (3) An Indian custodian stands in the shoes of the parents and enjoys favored status under ICWA and is entitled to the protections of the Act, including notice. (4) Rejection of Agency contention that the status should require consideration of nature, frequency and duration of contacts; would perpetuate one of the problems Congress sought to remedy. (5) Because neither the court nor the agency knew of the custodian status and only Mary could have communicate that info, no error in failure to notice at that time. (6) Once informed, agency needed to notice Mary so she could intervene and request appointment of counsel; no reason provided for that failure. (6) However, between the time the agency learned of that, and the revocation, there was no hearing that had an adverse impact on Mary's rights. (7) The revocation by the mother was effective to terminate the status even absent revocation by the father. (8) BUT—even if error—it was harmless. (9) ICWA 25 U.S.C. §1915 provides that absent good cause, preference must be given to a placement with (i) a member of the extended family of the child; (ii) a foster home approved or specified by the tribe; (iii) an Indian

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foster home licensed or approved by a non-Indian authority; or (iv) an institution approved by a tribe or operated by an Indian organization suitable to meet the needs of the child. (10) Good cause finding requires consideration of factors in the Guidelines: (a) request of parents; (b) request of child; (c) extraordinary needs of child as established by a qualified expert; and (d) the unavailability of suitable families after a diligent search to meet the preference criteria. (11) There was substantial evidence to support court finding of good cause: Mary unable to protect; little or no insight into effects of DV and her denial that father was violent toward mother and blamed mother.

**In re Damian C.** 178 CA 4<sup>th</sup> 192 [4<sup>th</sup> Dist. – McConnell] San Diego 10/8/09 Father did not provide any suggestion of Indian ancestry, but mother stated on “Parental Notification of Indian Status”(ICWA-020 form) that she might have Indian ancestry through the Pasqua Yaqui tribe and that maternal grandfather descended from the tribe. S.W. reported agency’s ICWA noticing specialist interviewed the maternal GF who answered NO to 5 questions: Any family member (1) lived on reservation; (2) ever received aid from tribe; (3) speak Native American language; (4) active in tribal activities such as tribal council, etc. (5) member of a tribe or enrolled member in a tribe. Also said he had heard his father was either Yaqui or Navajo and understood family was researching possible heritage. Did not know his father’s address or phone number. Court found ICWA did not apply and proceeded to juris. and dispo. Mother appealed. HELD: REMANDED for compliance with ICWA notice requirements. (1) Agency argued that Jan. 1, 2007 amendments to W&IC revealed a purpose to change California law to conform to less stringent federal notice standards. Court rejects this argument. (2) Neither text of legislation nor legislative history indicates intention to undermine Calif. courts’ past interpretations of ICWA notice requirements. (3) W&IC § 224.2(b) restates requirement for notice whenever known or reason to know an Indian child is involved. (4) §224.3 imposes affirmative and continuing duty to inquire. §224.3(b)(1) states circumstances that may provide reason to know and includes when a family member provides information suggesting membership or eligibility. (5) Agency had reason to know child is an Indian child. *Yaqui and Navajo tribes to be notified; if determined that act applies, tribe, parent or child may petition the court to invalidate dispo placement; otherwise juris. and dispo findings and orders stand.*

**In re J.O.** [2<sup>nd</sup> Dist. – Manella] 178 CA 4<sup>th</sup> 139 L.A. 10/7/09 Appellate Court remanded with order to recognize appellant as presumed father, who claimed Indian ancestry. “Because the court did not consider appellant ... presumed father, it did not inquire about possible Indian ancestry on [his] side.” **Note: ICWA requires consideration of ICWA application if a bio father claims ancestry.**



## V. WHAT IS THE ACTIVE REMEDIAL EFFORTS REQUIREMENT?

### A. [§3.7] IN GENERAL

Any party seeking an involuntary foster care placement or termination of parental rights involving an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 USC §1912(d); Welf & I C §§361(d), 361.7, 727.4(d)(5)(D); Cal Rules of Ct 5.484(c). This requirement applies regardless of whether the child's tribe has intervened in the proceeding. *In re Jonathon S.* (2005) 129 CA4th 334, 339, 28 CR3d 495. The standard of proof on this issue is clear and convincing evidence, not proof beyond a reasonable doubt even for the termination of parental rights. *In re Michael G.* (1998) 63 CA4th 700, 710–712, 74 CR2d 642. The standard is higher than the finding of “reasonable efforts” needed for a non-Indian child.

### B. [§3.8] WHAT EFFORTS MUST BE MADE?

The BIA guidelines specify that the active remedial efforts must take into account the prevailing social and cultural conditions and way of life of the child's tribe and must also involve and use the available resources of the child's extended family, the tribe, Indian social service agencies, and individual Indian caregivers. Welf & I C §361.7(b); see Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed Reg 67584 (Nov. 26, 1979), §D.2. The active remedial and rehabilitative efforts must be directed at remedying the basis for the parental removal proceedings; therefore, the type of services required depends on the facts of each case. Welf & I C §361.7(b); *In re Michael G.* (1998) 63 CA4th 700, 713, 74 CR2d 642. Active efforts to provide services must include attempts to use the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers. Welf & I C §361.7(b); Cal Rules of Ct 5.484(c).

There is no bright-line test for determining active efforts. The California appellate courts have compared the active-efforts requirement with the dependency determination of reasonable efforts under Welf & Inst C §361(d). “It has been said that ‘the standards in assessing whether “active efforts” were made to prevent the breakup of the Indian family, and whether reasonable services under state law were provided, are essentially undifferentiable.’” *In re S.B.* (2005) 130 CA4th 1148, 1165, 30 CR3d 726, quoting *In re Michael G., supra*, 63 CA4th at 714; see also *Letitia V. v Superior Court* (2000) 81 CA4th 1009, 1016, 97 CR2d 303. But the efforts must be clearly documented, and failure to provide full services to which a family may be entitled can result in a reversal. *In re Michael G., supra*, 63 CA4th at 715 (parents received 10 months of services rather than the 12 months to which they were entitled; case reversed even though there was little hope of reunification).

Active efforts include attempts to preserve the parent-child relationship regardless of the strength of the parent-child relationship or interaction. *In re Crystal K.* (1990) 226 CA3d 655, 667, 276 CR 619 (parents never had physical custody). Active efforts, however, need not relate directly to parental rehabilitation. Attempts to find the parent to provide rehabilitation services may be sufficient. *In re William G.* (2001) 89 CA4th 423, 428, 107 CR2d 436. But active efforts must be aimed at remedying the basis for removal of the child or termination of parental rights. *In re Crystal K., supra*, 226 CA3d at 667.

TIP: Active efforts should begin before the social worker or probation officer (in delinquency cases where the child is at risk of entering foster care) has filed a petition or removed the child. When you make the finding that active efforts were made and were unsuccessful, you are concluding that efforts were made to prevent the breakup of the Indian family and that attempts were made to preserve the parent-child relationship.

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The active-efforts requirement does not mean that reunification services must be provided for a child when it would be futile to do so. For example, a court may properly deny reunification services to a parent, or guardian or Indian custodian, based on one or more of the grounds set forth in Welf & I C §361.5(b), without violating 25 USC §1912(d). *Letitia V. v Superior Court*, *supra*, 81 CA4th at 1015–1016 (court need not undertake idle acts to prevent breakup of family). See *In re William G.*, *supra*, 89 CA4th at 428 (parent who repeatedly refused reunification services and failed to appear in proceedings was not entitled to reunification services once he appeared).

### C. [§3.9] ACTIVE EFFORTS AND REASONABLE EFFORTS FINDINGS

The “active efforts” finding can be distinguished from the reasonable efforts finding in that the remedial and rehabilitative programs must consider the prevailing social and cultural conditions and way of life of the child’s tribe. Welf & I C §361.7(b); BIA Guidelines, D.2; Cal Rules of Ct 5.484(c). All available resources should be used, including the extended family, the child’s tribe, and Indian social services. See §3.13. Although the ICWA does not provide a standard of proof, case law as noted above provides that you must make the “active efforts” finding by clear and convincing evidence. *In re Michael G.* (1998) 63 CA4th 700, 712, 74 CR2d 642.

The finding in California law at a detention hearing when a child has been removed is “Upon review of the detention report, reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home and these efforts have proved unsuccessful.” This finding can be adapted in ICWA cases to, “Upon review of the case plan and court report, the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful.” See Welf & I C §§361(d), 361.7(a). You must make both findings.

At subsequent review hearings up through the permanency hearing (the hearing where the court terminates reunification services and sets the .26 hearing) for as long as the child is in reunification, the “reasonable efforts” finding is, “Upon review of the case plan and court report, the agency has complied with the case plan by making reasonable efforts to make it possible for the child to safely return home and to complete whatever steps are necessary to finalize the permanent placement of the child.” This finding can be adapted in ICWA cases as, “Upon review of the case plan and court report, the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful.” Again both findings must be made.

## D. REVIEWING CASE PLANS

### 1. [§3.10] Importance of Monitoring Case Plans Involving Indian Children

Part of the court’s duty in periodically reviewing the status of every dependent and delinquent child in foster care is to monitor and review the case plan. This is so the court can determine the continuing need for and appropriateness of the placement and the agency’s compliance with the case plan in making active and reasonable efforts to return the child home (see discussion at §§3.7, 3.8) and concurrent planning for permanent placement. Welf & I C §§366(a)(1)(B), 706.5, 706.6. This duty takes on added importance when the ICWA applies to the child because cultural considerations and the interests of the child’s tribe must be accounted for in the case planning.

## **Advanced Indian Child Welfare Act (ICWA) – Active Efforts**

The key elements of the case plan for a child to which the ICWA applies and what you should be looking for are discussed below. A checklist of these elements that you can copy is provided in Appendix A.

### **2. [§3.11] Deadlines**

The deadlines for preparation and updating of case plans do not change for a child subject to the ICWA. In general a case plan must be prepared within 30 days for dependency cases and within 60 days for delinquency cases from removal from the home or by the date of the dispositional hearing, whichever occurs first. Welf & I C §§636.1, 16501.1(d). Although there is no legal consequence of failing to meet this deadline, it does delay the process of reunification and permanency planning.

The case plan prepared and submitted at disposition and review hearings must be updated in conjunction with every court review hearing, permanency hearing, and termination of parental rights hearing, but no less frequently than every six months.

One additional element to look for in reviewing updates to the plan is that it has been revised to account for the changing needs for services of the child and the family. The developing relationship between the child, parent, and tribe may be one cause of changing needs. Welf & I C §§366(a)(1), 16501(d).

### **3. [§3.12] Process**

It is important for the court to know the process or method by which a case plan was created in a case to which the ICWA applies. Who participated in developing the plan and if the child's tribe, family, and Indian custodian, if there is one, were included should be ascertained and communicated to the court even if it is not evident from the report or recommendation.

Such participation helps to ensure that the case plan is culturally appropriate. ICWA workers, tribal representatives, and Indian health workers can help shape the case plan and ensure that it is culturally appropriate.

In California, the method used by most jurisdictions is some form of family group decision making. This method is particularly useful in ICWA cases, because it can foster relationships between the child, the family members, the social worker, the probation officer, and the child's tribe. It is through these relationships that communication, cooperation, and collaboration can lead to the formation of a successful case plan.

Although family decision making may look different from county to county, common elements may be:

- All family and tribal members who wish to be present are invited;

- The family can invite nonfamily who are part of their support network;

- A professional convenes the meeting and encourages the family and tribe to meet as a team; the professional may leave the room at some point to give the family and tribe privacy to discuss the case;

- The job of the family and tribe is to make decisions to stabilize the family crisis and create a plan to ensure the child is safe and cared for;

- The family presents and explains their plan to the professionals, who have veto power—consensus can usually be reached; and the court must ultimately decide whether to approve the plan.

### **4. [§3.13] Services**

In ICWA cases, the court should review the services that are and have been offered as documented in the case plan to assure that the services offered are culturally appropriate and

## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

that the level of services offered meets the ICWA active-efforts requirement. See discussion at §§3.7, 3.8.

Some examples of general services that may be offered include transportation vouchers, visitation, medical and dental services (CHDP), and educational services for the child (nonpublic school or general curriculum). Examples of culturally appropriate services that may be offered include (1) tribal enrollment inquiries and following enrollment procedures for the child and family; (2) referrals to Indian Health Services for general medical and dental care, parenting classes and counseling or other mental health services; (3) referrals to Native American based substance abuse programs; (4) referrals to Native American placement agencies if the child has been removed from the home and cannot reside with family or be returned to the tribe; (5) referrals to a medicine person or traditional healer from the child's tribe or another tribe who is in the local area and can work with the family; (6) referral to and providing access to culturally appropriate events, for example, pow wows, exhibits, lectures, classes, and other groups; and (7) referral to the local tribal CASA program.

### 5. [§3.14] Placement

An important part of judicial review of the case plan when the ICWA applies is to be sure that any recommendation of foster care or preadoptive placement follows the statutory placement preference order (see discussion at §5.2) of the ICWA. The placement preference provision applies to all placements, including those made by the agency before the initial hearing, those made by the court at detention, disposition and permanent placement, and any removal from a placement to another placement.

The standard for evaluating whether a placement conforms to the placement preferences is the “prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties” 25 USC §1915(d); Welf & I C §361.31(f). It is not easy to follow this standard. The standard may require that the child's attorney and the judicial officer set aside their own values and judgments and view the case through the lens of the child's Indian community. An Indian home that has only one single working parent should not necessarily be disqualified as a placement and skipped in the preference priority. See Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed Reg 67584 (Nov. 26, 1979), §F.1, Commentary.

Three practical problems can arise in the placement review. First is the licensing issue—is the home approved or licensed by the tribe? Second, what if the tribe has approved the home, but a criminal records check for all household members over the age of 18 reveals that the state would not have licensed the home without obtaining a criminal records exemption. Third, is the Indian foster family receiving the title IV-E money to which it is entitled?

The ICWA authorizes Indian tribes to establish a system for licensing or otherwise regulating Indian foster and adoptive homes on or near tribal land. The ICWA states that tribal licensing or approval is equivalent to licensing or approval by a state. The authority to license or approve includes the authority to set standards. Therefore, tribes are not required to comply with state licensing or relative/nonrelative extended family member approval standards. Under ICWA's full faith and credit provision (25 USC §1911(d); Welf & I C §224.5), tribally approved or licensed homes are entitled to treatment similar to foster homes licensed by the state. Without clear communication between the child's tribe and the social services and probation that a given home has been approved or licensed by the tribe and an awareness on the part of social services and probation that they must defer to the child's tribe's home approval or licensure determination, a child can linger unnecessarily in a non-Indian foster or group home.

If the placement in a tribally approved home is to be funded using federal and state foster care funds, then any adult residing in the home is subject to a criminal records check. The tribes

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do not have access to the required information from the Department of Justice so these records checks are completed by the county social services department.

A tribe may request a waiver or exemption from either the county or the State Department of Social Services pursuant to Welf & I C § 361.4(d)(5), (f). The determination of whether to grant the waiver must be made in accordance with the ICWA's mandate to assess placement determinations in accordance with the prevailing social and cultural standards of the Indian community in which the parent or extended family resides. *In re Jullian B.* (2000) 82 CA4th 1337, 1347, 99 CR2d 241.

If the county will not license a tribally approved home because of a criminal conviction for a household member, but the conviction does not pose a safety risk to the child and therefore need not preclude placement, the court may request the county agency to consider exempting the fact that the family member has a criminal conviction. With an exemption, the Indian foster family is entitled to federal foster care maintenance payments for caring for the child.

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### ICWA CASE HYPOTHETICALS FOR ACTIVE EFFORTS DISCUSSION

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1. Maria L. is 6 years old and lives with her mother in a rural area close to a medium sized city. Her mother, Carolyn L. is a member of an out-of-state tribe. A petition is filed alleging that Maria is being neglected, and Maria has been detained. Her kindergarten teacher reported that Maria has been absent more and more frequently and her mother has failed to pick her up regularly when she does attend. The mother, Ms L., has recently been laid off and has received an eviction notice from her landlord due to failure to pay her rent. Ms L. acknowledges that she has been depressed and has not taken Maria to school or picked her up because she cannot afford gas for her car. She has taken Maria with her to some temporary jobs. Maria describes being left alone frequently but has not been frightened because she knows that her aunt lives somewhere in the city and would help her.

At the detention hearing, the agency recommends continued detention based on the risk of serious neglect and the lack of means to protect her if she is returned home. Notice to the tribe has been prepared.

Have active efforts been made? What could have been done? What should have been done?

## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

2. Johnny M., age 11, is taken into care and the petition alleging neglect and physical abuse is sustained. At disposition, the agency urges placement in foster care so that his medical needs will be met and his education advanced. The evidence reveals that he has been living with his parents, his aunt and uncle, his grandparents and 4 cousins in a small 2 bedroom apartment. Both his mother, Margaret M. and his uncle appear to be alcoholics, both of whom have struck Johnny on several occasions, leaving bruises. His grandparents are aged and unable to care for themselves. The family participates regularly in tribal ceremonies and utilizes the services of individual tribal members who are believed to have developed special medical and educational skills. Johnny is very unhappy away from his family, but his health appears to have improved in foster care, and he is now at grade level.

Should the court apply ICWA? What additional evidence or information should have been obtained? Should the court find that active efforts have been made? Have tribal child-rearing practices been considered? Are there means to return him safely home?

3. The case has been set for a .26 hearing. Twins Freddy and Frieda B., aged 2, were removed at birth when they and their mother tested positive for methamphetamines. The whereabouts of their father, Daniel B., is unknown, but he was recently working in the Fresno area. The children are placed in a foster-adopt non-Indian home. Reunification services were ordered and the mother, Donna B., visited often, attended several parenting classes and enrolled in a drug treatment program but did not complete it. She states that she had difficulty arranging for transportation and is trying to find a job. She has been estranged from other family members, but her own mother has recently come forward to request placement of the twins with her. She also reports that her mother (the great grandmother of the twins) was a tribal member. The agency has sent a notice to the tribe, which has responded stating that more information is needed, but there is reason to believe the children are eligible for membership, as is their mother. The agency urges the court to find that ICWA does not apply and proceed with the hearing, or proceed under the Act and free the children for adoption by the current caretakers.

What additional evidence or information should have been or should now be obtained? If the court does apply the Act, can it make an active efforts finding? What steps should be taken to assure that active efforts are made?

**ACTIVE EFFORTS VS REASONABLE EFFORTS**

Any party seeking an involuntary foster care placement or termination of parental rights involving an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. This requirement applies regardless of whether the child’s tribe has intervened in the proceeding. The standard is higher than the finding of “reasonable efforts” needed for a non-Indian child.

The Bureau of Indian Affairs guidelines specify that the active remedial efforts must take into account the prevailing social and cultural conditions and way of life of the child’s tribe and must also involve and use the available resources of the child’s extended family, the tribe, Indian social service agencies, and individual Indian caregivers. The active remedial and rehabilitative efforts must be directed at remedying the basis for the parental removal proceedings; therefore, the type of services required depends on the facts of each case.

Active efforts include attempts to preserve the parent-child relationship regardless of the strength of the parent-child relationship or interaction. Active efforts must be aimed at remedying the basis for removal of the child or termination of parental rights. Following the intent of this law means including the tribe at the earliest contact with the family and including them in all decisions. *(Adapted from “Bench Handbook: The Indian Child Welfare Act” Administrative Office of the courts 2008)*

<b>Examples of Reasonable Efforts:</b>	<b>Examples of Active Efforts:</b>
<b>Giving contact information to a parent for parenting classes they could sign up for.</b>	Signing up a client for parenting classes at a local Native American health center or TANF agency and arranging transportation to/from their classes.
<b>Referring a client to medical, dental and mental health services through county providers.</b>	Referring the family to the local Native American health center for medical, dental and mental health services.
<b>Referring a youth that is acting out violently to an anger management group with county providers.</b>	Speaking with youth violence prevention coordinators or anger management providers at a local Native American health center, Native American agency or youth's Tribe and finding a group time/class that works with the youth's schedule.
<b>Arranging general counseling once a week with county mental health providers.</b>	Finding a therapist at a local Native American agency, arranging a session that meets the

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	needs of the family's schedule and asking the family if they want the Native American agency or their tribe to provide a traditional healer to work with.
<b>Approving to occasionally attend family events, but not if potential for AWOL.</b>	Asking the family if there are any important ceremonies or events in their family and/or tribe the child would like to participate in, arrange transportation and if potential for AWOL, coming up with a plan with the family and tribe for how the child will be supervised and avert potential for AWOL (tip: often it is the Tribe's ceremonies that are the key in healing a child(ren) and their family).
<b>Social worker/probation officer creating a case plan for the family for the next court hearing.</b>	Social worker/probation officer inviting the tribe/tribe's ICWA rep (via phone or in person) and the family to create a culturally appropriate case plan that is based on the family's needs and Tribe's childrearing practices/belief systems.
<b>If a child is in juvenile hall and will not be released soon, but is in need of substance abuse services, referral to participate in the hall's substance abuse services.</b>	If a child is in juvenile hall and will not be released soon, but is in need of substance abuse services, asking the child and family if they would like a traditional healer to work with the child, asking the child's Tribe or local Native American agency to assist in providing a traditional healer to work with the child, asking a substance abuse counselor at a local Native American agency to come into juvenile hall to provide substance abuse services with the child and getting permission from the hall to allow these providers to work with the child, and additional permission for the ability of the providers to utilize ceremonial methods if necessary (ie, burning sage/sweetgrass/cedar to create billows of smoke that can be a process of purifying before a session starts and/or throughout the session).
<b>Providing materials on how the family can contact and sign up for TANF.</b>	Helping a family sign up for California Native or Tribal TANF, finding out what services the TANF office the family will be a part of may have, signing up the family for the services through that office and keeping in regular phone/in-person contact with the Native TANF provider(s).



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## ROLES OF THE PARTICIPANTS

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Using Wakeem's story as a Framework what are the roles of each of these parties to ensure active efforts are made?

Judge

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Tribe

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Child's Attorney

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Parent's Attorney

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Social Worker

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Probation Officer

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**Advanced Indian Child Welfare Act (ICWA) – Active Efforts**

CASA

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Therapist

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Care giver

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## EXAMPLES OF CASE PLANS

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**Below we discuss examples of a Culturally Appropriate Case Plans for Indian Parents and Indian Children that identify appropriate Active Efforts: It is important to note that the case plans will vary depending on the resources in that specific community and need to be individualized for every participant. The following is an example based on the resources in the community of Sonoma County and illustrate how a case plan involving “active efforts” will look different that a case plan with no “active efforts”.**

Examples of Case Plans with NO Active Efforts:

- Case Findings sample language/No ICWA Findings language
- Actual Recommended Case Plan for Indian Mother/Indian Parent
- Actual Recommended Case Plan for Hispanic Father/Indian Parent
- Omitted Case Plan for 4 Indian Children

### **RECOMMENDED CASE FINDINGS:**

It is respectfully recommended that the allegations of the Petition dated September 16, 2009, on behalf of the child(ren), \_\_\_\_\_, be sustained;

That the child(ren) be found to come, by a preponderance of evidence, within the provisions of the Welfare and Institutions Code Section(s) 300 (\_\_\_\_,\_\_\_\_,\_\_\_\_);

That the child(ren) be declared a Dependent Child of the Juvenile Court with their care, custody, control and conduct under the supervision of the Human Service Department, Family Maintenance Program/Family Reunification Program, (identify one) or in the home of the mother/father/relative/appointed caregiver;

That the child(ren) \_\_\_\_ be detained in the \_\_\_\_ Foster Home or \_\_\_\_\_ home pending suitable placement;

That support for said child(ren) while suitably placed shall be paid for from Human Service Funds for Care of Court Dependents unless the minor becomes eligible for public aid;

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That the Human Services Department may authorize such medical, surgical, or dental care for the child(ren) by licensed practitioners as may from time to time appear necessary.

### SUGGESTED SAMPLE CASE FINDINGS: (ICWA language included)

It is respectfully recommended that the allegations of the Petition dated \_\_\_\_\_, on behalf of the child(ren), \_\_\_\_\_, be sustained;

That the child(ren) be found to come, by a preponderance of evidence, within the provisions of the Welfare and Institutions Code Section(s) 300 (\_\_, \_\_, \_\_);

That the child(ren) be declared a Dependent Child of the Juvenile Court with their care, custody, control and conduct under the supervision of the Human Service Department, Family Maintenance Program/Family Reunification Program, (identify one) or in the home of the mother/father/

*Indian Custodian;*

*That the court declare that the Indian Child Welfare Act does apply with respect to \_\_\_\_\_ (Indian child(ren) named) as the paternal/maternal side of the family provided documentation/information of Indian heritage and that the minor(s) is/are enrolled/registered/pending/eligible for membership with the \_\_\_\_\_ and is/are declared (an) Indian child(ren) as defined for purposes of applicability of the Act;*

That the child(ren) \_\_\_\_ be detained in the \_\_\_\_ (licensed FFA) Emergency Foster Home or Tribally-approved Emergency Home of the \_\_\_\_\_ Tribe pending additional or suitable long-term placement as consistent with all applicable laws;

That support for said child(ren) while suitably placed shall be paid for from Human Service Funds for Care of Court Dependents unless the child(ren) become(s) eligible for public aid or other support is made available through the tribe and caregiver(s);

That the Human Services Department may authorize such medical, surgical, or dental care for the child(ren) by licensed practitioners as may from time to time appear necessary and appropriate.

{Note: this is only a small portion and only one sample of proposed language to be considered. Additional ICWA related finding language should be included, i.e. clear and convincing evidence, active efforts, expert witness, ICWA rights read and understood, etc.}

## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

### **NON ICWA COMPLIANT ACTUAL CASE PLAN FOR MOTHER** (*Enrolled Tribal Member*):

1. That the mother accept and act upon a referral to Mental Health for psychological services;
2. That the mother cooperate with the social worker, accepting and acting on all referrals for further services, meeting regularly and apprising the worker of any change in circumstances, housing, employment, therapy, etc.;
3. That the mother will consistently, appropriately and adequately parent children and know age appropriate expectations;
4. That the mother engage in and complete a psychological evaluation and follow through on any and all recommendations for further treatment;
5. That the mother obtain and maintain a stable and suitable residence for herself and her children;
6. That the mother participate in a parenting classes for age appropriate parenting classes for her children;
7. That the mother stay free from illegal drugs and show her ability to live free from drug dependency by complying with all required drug testing;
8. That the mother participate in a substance abuse assessment and follow through with all recommendations as deemed appropriate;
9. That the mother sign all consents for the release of information from all service providers (see example);

### **NON ICWA COMPLIANT RECOMMENDED CASE PLAN FOR FATHER**

(*Hispanic Nationality*)

1. Same as mother's
2. “ “
3. “ “

**Advanced Indian Child Welfare Act (ICWA) – Active Efforts**

- 4. “ “
- 5. “ “
- 6. “ “
- 7. ‘ “
- 8. “ “
- 9. “ “

10. That the father follow all conditions of probation/parole conditions as evidenced by no further violations of probation.

**NON ICWA COMPLIANT RECOMMENDED CASE PLAN FOR CHILD(REN):**

*(4 Children, No Plan Submitted)*

- Recommended Case Plan for Mother
- Recommended Case Plan for Father
- Recommended Case Plan for Indian Children

**RECOMMENDED CASE PLAN FOR MS. TS:**

*(Enrolled Tribal Member with \_\_\_\_\_ Tribe):*

1. That TS participate in a joint case planning meeting between social worker and Tribal representatives ( date ) in order to solicit and identify culturally-appropriate services available through extended family members, Indian service providers, the \_\_\_\_\_ Tribe, and any other Tribal programs pertinent to her mental, medical, and spiritual health needs;

2. That TS will call (designate by what date) to schedule an appointment for a mental health assessment from United Indian Health Services and follow through with the recommended treatment plan as provided in the assessment/intake evaluation;

3. That TS cooperate with the acting social worker by accepting and acting on all referrals for all services as identified, meeting regularly and apprising the social worker of any change in circumstances related but not limited to housing, employment, therapy, etc.;

## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

4. *That TS will discuss with the social worker what expectations are required of her in order to appropriately and adequately parent her children according to their individual ages and specific needs, if any;*
5. *That TS accept all referrals to seek housing with her Tribe's \_\_\_\_\_ Tribal Housing Program specialist or to Sonoma County Housing Authority in order to obtain a stable and safe residence for herself and her children;*
6. *That TS participate in parenting classes such as New Beginnings Indian Parenting series offered at Sonoma County Indian Health Project, Ribbons Tribal Parenting offered at \_\_\_\_\_ Rancheria, or Traditional Swaddling by \_\_\_\_\_ at Yurok Tribe and as deemed age appropriate for her children;*
7. *That TS agree to visit her children for three hour supervised visits one time a week monitored by social worker or Tribal representative until children are transitioned to unsupervised visits between the children and their mother;*
8. *That TS refrain from using any and all illegal drugs and alcohol and demonstrate her ability to live free from drug dependency by complying with all required and random drug testing as deemed necessary by the social worker or drug and alcohol counselors;*
9. *That TS participate in a culturally-appropriate alcohol and drug assessment offered at Sonoma County Indian Health Project Behavioral Health, \_\_\_\_\_ Tribal TANF Program, or \_\_\_\_\_ Tribe, or DAAC and follow through with all recommendations as referred for residential, drop-in, day-treatment, or aftercare services;*
10. *That TS sign all consents for the release of information in order to exchange and discuss any pertinent information with all service providers as identified in her service plan for herself and her children.*

### **RECOMMENDED CASE PLAN FOR MR. AP**

## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

*(Hispanic Nationality)*

1. *That AP be offered a culturally appropriate case plan as determined between the social worker and his children’s ICWA Advocate/Tribal Representative;*
2. *That AP will follow through with a psychological evaluation at Southwest Clinica and follow through with the recommended treatment plan;*
3. *That AP discuss with the social worker what expectations are required of him in order to appropriately and adequately parent his children according to their individual ages and special needs;*
4. *That AP accept all referrals to seek housing with Sonoma County Housing Authority in order to obtain a stable and safe residence for himself and his children;*
5. *That AP participate in Indian parenting classes offered at Sonoma County Indian Health Project, Southwest Clinica or La Casa and as deemed age appropriate for his children;*
6. *That AP agree to visit his children for supervised visits one time a week monitored by social worker or Tribal representative until children are transitioned to unsupervised visits between the children and their father;*
7. *That AP participate in a culturally-appropriate alcohol and drug assessment offered at Southwest Clinica, Sonoma County Indian Health Project Behavioral Health, or Drug Abuse Alternatives Center (DAAC) and follow through with all recommendations as referred for residential, drop-in, day-treatment, or aftercare services;*
8. *That AP sign all consents for the release of information in order to exchange and discuss any pertinent information with all service providers as identified in his service plan for himself and his children.*
9. *That AP follow all conditions of probation/parole conditions as evidenced by no further violations of probation.*

**RECOMMENDED CASE PLAN FOR CHILD(REN):**



## Advanced Indian Child Welfare Act (ICWA) – Active Efforts

*Names and ages of all Indian children identified tribal affiliation:*

1. *That (Child's name) continue to be current on his/her medical and dental examinations and immunizations as patients at \_\_\_\_\_ Indian Health Services*
2. *That \_\_\_\_\_ continue to participate in mental health counseling with \_\_\_\_\_ Ph.D, a Native American therapist or \_\_\_\_\_ LCSW/MSW or \_\_\_\_\_ title, at \_\_\_\_\_ Indian Health Project, Inc.;*
3. *That \_\_\_\_\_ participate in age appropriate weekly cultural education projects and activities prepared, directed, and documented by her/his family; Tribal representatives and other Indian service providers for the \_\_\_\_\_ tribal children;*
4. *That \_\_\_\_\_ be allowed to continue to visit with their extended families at a minimum of \_\_\_\_\_ hour(s) a week according to the families and the children's respective schedules supervised and monitored by the \_\_\_\_\_ department or their ICWA Advocate and/or Tribal representative;*
5. *That \_\_\_\_\_ be allowed to participate in other identified cultural or religious ceremonies as identified by either family and according to the children's and families respective schedules.*

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## PROMISING PRACTICES IN OTHER JURISDICTIONS

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To learn more about practices in other Jurisdictions, below is a list of the people you can contact.

Sonoma County ICWA protocol

Butte County regarding Emergency Investigations

Lake County

LA County –

Tulare County

Riverside County TDM

Kings County –

Ancestral Chart -