



Tribal Preconference Discussion, Issues Raised, and Recommendations

Beyond the Bench 2025
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PREPARED FOR

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PREPARED BY

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Introduction

The theme of Beyond the Bench 2025 was “Coming Together Again to Support Children, Families & Communities.” Beyond the Bench is a multidisciplinary statewide conference devoted to children, youth, and families in the California court system. Sessions addressed core legal issues in juvenile dependency and delinquency cases and crossover legal issues between juvenile and other legal areas, including domestic violence, Tribal court–state court jurisdiction, mental health, and trauma-informed practice. Beyond the Bench 2025 was held in Los Angeles on November 18–19, 2025, with preconference activities held on November 17.

Tamara Honrado, directing attorney at California Indian Legal Services, was contracted to facilitate the Tribal Track preconference for Beyond the Bench on November 17, 2025. Her session facilitation included a live PowerPoint on two topics that were presented in three-hour blocks: “Solving the Puzzle of Effective ICWA Inquiry & Notice” and “Representing Tribes in State Court ICWA Cases: What Parties Need to Know.” This presentation was supported by discussion questions and narrative prompts. A follow-up survey was also distributed after the session to capture participant perspectives, particularly in the Indian Child Welfare Act (ICWA) inquiry and notice discussion. This report outlines the discussion with participants—with some questions and responses omitted for brevity—including county counsel, county child welfare workers, probation department staff, Tribal representatives, advocates, and others. It develops recommendations and solutions for the identified issues raised during these discussions.

Morning Session: “Solving the Puzzle of Effective ICWA Inquiry & Notice”

The three-hour morning session focused on three main topics: (1) the legal requirements of ICWA inquiry in juvenile matters, (2) the inquiry issues most frequently generating appeals and practical strategies for improving inquiry, and (3) reducing burdens on courts and agencies and decreasing appeal risk. The session was copresented with representatives of California Department of Social Services (CDSS), including Dianna Wagner, deputy director of the Child and Family Services Division, and Kelly Mieske, attorney III; and Judge Shawna Schwarz of the Superior Court of Santa Clara County.

Key learning objectives included (1) understanding the historical foundations of ICWA inquiry requirements, (2) reviewing a road map to effective inquiry and notice, (3) examining recent ICWA inquiry–related appellate decisions, and (4) identifying practical strategies for effective inquiry and notice practice.

Legal Requirements of ICWA Inquiry and Notice in Juvenile Matters

ICWA was enacted in response to the disproportionate removal of Indian children from their families and communities, and it situates today's inquiry and notice obligations within a broader history of federal and state policies of erasure, including allotment, termination, boarding schools, adoption practices, and California's own history of violence and dispossession. Participants discussed how this history underscores why inquiry is not a mere procedural formality but a core safeguard intended to preserve Tribal identity and sovereignty and family integrity.

The presentation also reviewed the legal framework for inquiry and notice under 25 U.S.C. § 1912, the 2016 Bureau of Indian Affairs (BIA) federal regulations, and California's expanded statutory scheme. California's codification through Senate Bill 678 (Stats. 2006, ch. 838) and Assembly Bill 3176 (Stats. 2018, ch. 833) was discussed as creating a broader affirmative and continuing duty of inquiry, beginning at first contact and extending through ongoing hearings, further inquiry and due diligence when there is reason to believe, and notice when there is reason to know.

Participant Discussion

- Participants emphasized that inquiry and notice requirements must be understood in light of the historical removal of Indian children from their families and communities and as part of preserving Tribes, culture, and family connections.
- Participants recognized that inquiry is also a clear legal obligation under ICWA and related California law, requiring consistent application and compliance.
- Participants noted that incomplete inquiry can have significant case consequences, including delay, disruption, and problems that may surface later.

Inquiry Issues and Practical Recommendations

California's duty of inquiry under Welfare and Institutions Code section 224.2 is an affirmative and continuing obligation that begins at the county's initial contact regarding a child who may be the subject of a petition under section 300, 601, or 602. That duty applies from the first contact with the child and family, including in removals under sections 306 (child welfare removals), 307 (probation removals), and 340 (warrant removals). The court and the agency bear the responsibility to ask parents, custodians, and reasonably available extended family members whether the child is or may be an Indian child. Ongoing inquiry and due diligence place requirements on the court and agency to continue to inquire at each hearing and update the court if new information arises. The differences between reason to believe (which triggers further inquiry and due diligence) and reason to know (which triggers the application of ICWA substantive

protections) were discussed, as well as practical application of these standards to court proceedings.

Participant Discussion

- Participants asked whether a child is automatically eligible for Tribal membership if a parent is already a member. The response noted that Tribal membership and eligibility are determined by each Tribe and a parent's membership does not necessarily mean the child is eligible. At the same time, such information may trigger heightened duties of inquiry, including reason-to-believe or reason-to-know analysis.
- Participants also clarified that the term "first report" refers to the initial suspected child abuse or neglect hotline call, at which point the hotline worker should ask whether the child is or may be an Indian child.
- Another discussion point addressed whether the department must still ask other relatives when there is no reason to believe the child is an Indian child. Judge Schwarz's response, as reflected in the discussion, was yes, the department's duty of inquiry still includes asking other readily available relatives as part of its affirmative and continuing obligation.

Reducing Burdens on Courts and Agencies and Reducing Appeal Risk

This section focused on the question of who bears responsibility for inquiry and reducing appeal risk. Participants emphasized that parents should not be the sole source of inquiry. Extended family members are statutorily required persons who should be asked if they are readily available and may hold information that parents do not know; they may be more available than parents or more willing to discuss family history. Participants also stressed that courts must continue making inquiry of new participants at each hearing, even when social workers have already asked similar questions.

Participants shared several county practices intended to improve compliance, including separate ICWA reports, calendared ICWA review hearings, tracking tools for which family members have been asked, and prompts by county counsel to assist judicial officers. Participants also raised implementation questions involving forms, Zoom appearances, late-arriving information, the role of BIA and CDSS, eligibility for multiple Tribes, and the timing of findings that ICWA does or does not apply.

Participant discussion

- Participants discussed practical barriers to completing ICWA-020 forms in remote proceedings, particularly where parents appear by Zoom or are unavailable because they are missing or hospitalized. One participant specifically supported creating a version of the ICWA-020 for extended family members or relatives.

- For ICWA-030 notice, participants asked whether continued hearings require a new ICWA-030 notice.
- Participants noted a practical need for judges and court partners to track when new participants appear in hearings so that additional inquiry can be made as required.
- On contact with CDSS and BIA, participants noted that those entities may assist with identifying or confirming Tribal contact information, but the county remains responsible for completing inquiry and notice. Some larger counties maintain local Tribal contact information and can directly contact local Tribes instead of needing to reach out to the BIA.
- Another issue involved children who may be eligible for membership in more than one Tribe. The response discussed was that notice should be sent to all potentially relevant Tribes until the Tribes clarify whether the child is eligible, because Tribes—not courts—determine membership and eligibility.
- Participants noted that while parents' counsel and minors' counsel may share information if they have it, the statutory duty to inquire into the child's ICWA status with the Tribe is placed on the county. Ethical duties of candor may require attorneys to alert the court when they possess material information concerning a child's potential Indian status, but at the same time, they are balancing that duty with client confidentiality.

Overall Issues Raised	Recommendations
How to satisfy due diligence where a parent is missing and family information is limited.	Develop practical guidance for remote hearings, missing-parent situations, and cases involving partial or uncertain ancestry information.
How to support courts and counties to better coordinate completion of ICWA-010, ICWA-020, and ICWA-030 forms, especially for remote proceedings.	Encourage use of standardized tracking practices, including separate ICWA reports or compliance tools, to reduce omissions and improve consistency.
How to reduce appeal risk caused by incomplete documentation, delayed inquiry, or late disclosure of reason-to-believe information.	Provide statewide guidance to county courts on best practices for making and documenting ICWA inquiries at every hearing, including inquiry of extended family members and new participants. One suggestion was that county counsel, and others present in the courtroom, help remind the court when new participants are present. Provide targeted training for county counsel on statutory requirements, recent case law, and practical strategies for supporting courts and agencies in maintaining complete ICWA records.

Afternoon Session: “Representing Tribes in State Court ICWA Cases: What Parties Need to Know”

The three-hour afternoon session focused on attorney representation and ethical obligations of representing Tribal governments in state court ICWA cases. The session addressed available funding streams, the unique legal interests of Tribal governments as sovereigns, and the ethical and practical responsibilities of attorneys representing Tribes in state court child welfare proceedings.

The session was copresented with Kimberly Cluff, legal director of the California Tribal Families Coalition. It covered the historical and legal background of ICWA, reviewed both procedural and substantive protections, and emphasized that attorneys representing Tribes must understand not only ICWA doctrine but also the distinct sovereign, cultural, and governmental interests Tribes bring into state court proceedings.

Participants reviewed key ICWA provisions involving inquiry, notice, intervention, active efforts, placement preferences, qualified expert witnesses, guardianships, Tribal Customary Adoption, transfer, full faith and credit, and invalidation. The discussion also highlighted California-specific protections, including Tribal Customary Adoption, Tribally Approved Homes, prevailing social and cultural standards in placements, emergency placements, and the Tribal Dependency Representation Program established through the 2022 budget process in California, as well as other funding opportunities.

A central theme was that Tribal attorneys represent sovereign governments, not simply another party in the courtroom. Their role may involve broader Tribal interests beyond narrow ICWA compliance, and their methods of consultation and decision-making may differ from county or court expectations. Participants also emphasized that meaningful representation requires respect for Tribal governance structures, timing, and internal decision-making processes.

Participant discussion

Participants reported that there is never enough ICWA training and competence in these cases requires both knowledge of the law and openness to Tribal differences in culture, practice, and expectations. Counties shared examples of promising practices, including recurring ICWA roundtables, Seventh Generation meetings, Tribal Successful Transition for Adult Readiness (STAR) trainings, site visits to local Tribes, and monthly learning circles involving county partners and Tribes.

Participants identified a need for additional practical resources, including frequently asked questions (FAQs), recorded webinars, podcasts, in-person training, hotline support, and opportunities for regular consultation with Tribal attorneys or ICWA specialists. Participants also highlighted gaps in juvenile practice involving probation, prevailing social and cultural case plan activities that target a specific family's needs, transportation barriers, and coordination with Tribes that may require additional layers of decision-making within the Tribe before decisions may be finalized. County responses highlighted local best practices and are worth noting here:

- San Diego County—Hosting Seventh Generation meetings, highlighting the importance of staff receiving the Tribal STAR training; promoting monthly learning circles with Tribes, Tribal social workers, and county social workers in the Indian unit.
- Los Angeles County—Hosting quarterly L.A. ICWA Roundtable meetings.

The conversation further emphasized the structural reasons some Tribes do not intervene in every case, including limited staffing, lack of funding, out-of-state geography, and the burdens of responding to thousands of cases with very small ICWA teams. Participants also noted that if courts and county agencies center Tribal participation early and share information promptly, outcomes improve and unnecessary conflict can often be avoided.

Overall Issues Raised	Recommendations
Insufficient access to specialized ICWA and Tribal representation training across systems.	Expand accessible ICWA and Tribal representation training through multiple formats, including written FAQs, recorded webinars, podcasts, hotlines, and in-person sessions.
Need for more practical collaboration structures between counties, courts, Tribal attorneys, and Tribal social service partners.	Support recurring local and regional forums where county staff, courts, Tribal attorneys, and Tribal social workers can discuss issues before they become litigation problems.
Uncertainty regarding probation practice and Tribal involvement in delinquency or other matters.	Develop clearer practice guidance for probation and crossover systems so that inquiry, outreach, and collaboration are not overlooked.
Tension between court timelines and Tribal governance processes that require consultation with Tribal councils or other leadership bodies.	Provide specific training for county counsel and other system partners on working effectively with Tribal governments, including timelines, decision-making structures, and the importance of early information sharing.
Persistent underfunding and staffing shortages that limit consistent Tribal intervention and representation.	Strengthen and provide easier access to funding streams for Tribal Dependency Representation, Tribally Approved Homes, and culturally responsive family support services to Tribes.

Conclusion

The November 2025 Tribal Preconference at Beyond the Bench highlighted both the continuing importance of strong ICWA inquiry and notice practices and the urgent need to deepen system understanding of Tribal sovereignty and Tribal representation in state court proceedings. Across both sessions, participants emphasized that compliance alone is not enough; effective practice requires historical understanding, coordination, respect for Tribal authority, and practical infrastructure that supports early engagement and accurate documentation.

The discussion points and recommendations collected here suggest several priorities for future action: (1) improving statewide guidance, (2) expanding targeted training, (3) strengthening court-agency-Tribal coordination, and (4) maintaining investment in Tribal capacity to participate meaningfully in child welfare proceedings. Centering Tribes in these cases is not only legally required but essential to better outcomes for tribal children, families, and communities.

About California Indian Legal Services

California Indian Legal Services (CILS) is one of the oldest nonprofit law firms in the country dedicated to matters of federal Indian law and protecting the rights of Tribes and Tribal peoples. CILS has served California Tribes, Tribal organizations and consortia, and Native American individuals since 1967 through free or low-cost legal services.

- CILS Mission: To protect and advance Indian rights, Indian self-determination, and Tribal nation-building.
- CILS Vision: To ensure all Native Americans have access to services and resources to thrive where their civil rights are protected, free from discrimination in all areas of their lives. All Tribal Nations are strong, independent governments that provide for their members, determine their own laws, and are governed by them without interference from local, state, or federal governments.