



# JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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## TRIBAL COURT-STATE COURT FORUM

### NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

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**Date:** April 11, 2019  
**Time:** 12:15-1:15 p.m.  
**Public Call-in Number:** 877-820-7831; Passcode; passcode 4133250 (Listen Only)

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Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to [forum@jud.ca.gov](mailto:forum@jud.ca.gov).

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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#### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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##### **Call to Order and Roll Call**

##### **Approval of Minutes**

Approve minutes of the Feb 28, 2019, Tribal Court-State Court Forum in person meeting.

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#### II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

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This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [forum@jud.ca.gov](mailto:forum@jud.ca.gov) or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on April 10, 2019 will be provided to advisory body members prior to the start of the meeting.

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**III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**

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**Info 1**

**Cochairs Report**

- Update on Forum appointments

**Info 2**

**State Bar – Justice Gap Study**

*Presenter: Donna S. Hershkowitz, Chief of Programs, The State Bar of California*

**Info 3**

**Tribal Court Judges – immunity legislation proposal**

*Presenter: Hon. Lester Marston – Chief Judge, Blue Lake Tribal Court*

**Info 4**

**Recent and Upcoming Conference & Trainings**

*Presenter: Vida Castaneda, Senior Analyst, Judicial Council Center for Families, Children & the Courts*

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**IV. ACTION ITEMS (ACTION REQUIRED)**

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**Action 1**

**Legislation**

*Presenter: Delia Sharpe, Executive Director, California Tribal Families Coalition*

Discussion of AB 685 and AB 686

**Action 2**

**RUPRO**

*Presenter: Ann Gilmour, Attorney, Judicial Council Center for Families, Children & the Courts*

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**V. ADJOURNMENT**

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**Adjourn**



JUDICIAL COUNCIL  
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TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

February 28, 2019 (In Person)

9:30 a.m. – 4:30 p.m.

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**Advisory Body Members Present:** Hon. Abby Abinanti, Cochair, Hon. Suzanne Kingsbury, Cochair, Hon. Erin Alexander, Hon. April Attebury, Hon. Hillary Chittick (by phone), Hon. Leonard Edwards, Hon. Patricia Guerrero, Ms. Heather Hostler, Hon. Mark Juhas, Hon. Kristina Kalka (by phone), Hon. Lawrence King, Hon. Patricia Lenzi, Hon. Devon Lomayesva (by phone), Hon. Lester Marston, Hon. Gilbert Ochoa (by phone), Hon. Mark Vezzola, Hon. David Riemenschneider, Hon. Michael Sachs (by phone), Hon. Cindy Smith, Ms. Christina Snider, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Robert Trentacosta, Hon. Juan Ulloa, Hon. Claudette White, Hon. Christine Williams, Hon. Joseph Wiseman (by phone)

**Advisory Body Members Absent:** Hon. Richard Blake, Hon. Gail Dekreon, Hon. William Kockenmeister,

**Others Present:** Hon. Stacy Boulware Eurie, Ms. Vida Castaneda, Ms. Charlene Depner, Ms. Audrey Fancy, Ms. Sheri Freemont, Ms. Ann Gilmour, Ms. Suzanne Garcia (by phone), Ms. Annita Lucchesi, Mr. Sheldon Spotted Elk, Ms. Joy Ricardo, Ms. Kate Walker Brown, Ms. Kelly Winston, Ms. Sandy White Hawk, and Ms. Carol Wishcamper

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OPEN MEETING

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**Call to Order and Roll Call**

The co-chairs called the meeting to order at 9:45 a.m.

**Approval of Minutes**

The Forum approved the October 11, 2018 meeting minutes.

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DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

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**Info 1**

**CoChairs Report**

*Review and approve draft minutes of December 13, 2019 meeting*

The minutes were approved without comment or revisions.

*Welcome new members*

Welcome and introduction of new members attending their first in person meeting.

**Info 2**

**Highlights of Forum Projects**

Hon. Abby Abinanti discussed the developments in the joint jurisdiction courts in Humboldt and Del Norte counties. The project has expanded from just Humboldt County and the Yurok tribe to

Del Norte County and to other tribes. Developing materials and templates that can be used for others who are interested in starting similar joint jurisdiction courts.

Hon. Abby Abinanti discussed the work with [Root and Rebound](#) – Reentry Advocates – on their collaboration and development of the Best Practices Guide for collaborations with Tribal Communities.

Hon. Christine Williams discussed the work of the new [Tribal Justice Project](#) at the U.C. Davis School of Law Aoki Center for Critical Race and Nation Studies and possible ways that the Forum/JCC and the center can collaborate and share resources.

Hon. Cindy Smith discussed the Morongo Court’s experience trying to establish a youth healing to wellness court. Challenges to that and ways that the Forum activities might help.

Ms. Christina Snider gave an update on the Tribal Nations Grant Fund and restructuring of the work of the Office of the Governor’s Tribal Advisor.

### **Info 3**

#### **Missing and Murdered Indigenous Women & Girls – Report from the Urban Indian Health Institute**

*Ms. Annita Lucchesi (Southern Cheyenne), Ph.D.- Candidate & Program Researcher, Urban Indian Health Institute, Executive Director, [Sovereign Bodies Institute](#)*

A presentation from Ms. Annita Lucchesi of the Sovereign Bodies Institute on her work on the data gathering and information about the [Missing and Murdered Indigenous Women & Girls](#) report. Ms. Lucchesi gave an in-depth review of her work tracing, investigating, documenting and mapping cases of missing and murdered indigenous women and girls. Ms. Lucchesi described the issues related to the collection of information by local, state and federal law enforcement. How indigenous identities are often missing or misidentified. Ms Lucchesi discussed her relationship with local, state and federal law enforcement agencies, how she maintains the confidentiality and integrity of her data base, her policies regarding sharing of information. Ms. Lucchesi also discussed responses to the report and further action steps she believed would be useful.

### **Info 4**

#### **Addressing Tribal Communities in Responses to Sex Trafficking**

*Hon. Stacy Boulware Eurie, Judge Superior Court of California, County of Sacramento, Kate Walker Brown, Attorney, Director, Child Trafficking, National Center for Youth Law and Suzanne M. Garcia, Tribal Child Welfare Specialist, Child Welfare Capacity Building Center for Tribes*

The presenters gave an overview of the problem of commercially sexually exploited children (CSEC) and other forms of human trafficking, including the scope of the problem and risk factors for children to become CSEC and judicial demeanor and responses in dealing with victims. Presenters also discussed state and federal laws and other responses intended to address CSEC. Presenters then discussed how these risk factors and dynamics relate to tribal communities and tribal children and how tribal communities should be integrated in county and law enforcement efforts to address trafficking.

### **Info 5**

#### **Maine Truth and Reconciliation Commission**

*Sandy White Hawk, Founder and Director, First Nations Repatriation Institute; Commissioner, Maine Wabanaki-State Child Welfare, Truth and Reconciliation Commission  
Carol Wishcamper, Commissioner, Maine Wabanaki-State Child Welfare, Truth and Reconciliation Commission*

Following a lunchtime screening of the documentary [Dawnland](#) about the work of the [Maine Truth and Reconciliation Commission](#) presenters discussed the formation and work of the commission and the outcomes from the work of the commission. The presenters gave their views of how the work of the commission could be adapted for a state such as California, what kind of training and preparation would be necessary to undertake such a project, and what the budget was for their work.

**Info 6**

**Dedicated ICWA Courts**

*Mr. Sheldon Spotted Elk Indian Unit, Casey Family Programs*

The presenter defined what is considered an ICWA court and what key features the six existing ICWA courts share. The presenter discussed how these ICWA courts came about, where they are located, and what was the motivation behind their establishment. He discussed the Casey Family Programs work in supporting these courts and evaluating the benefits and outcomes of dedicated ICWA courts.

**Info 7**

**Forum Priorities 2019-2020 and Annual Agenda Work Plan**

Staff gave an update on the status of the 2019 annual agenda. The draft agenda will be considered by the Executive and Planning Committee at their upcoming meeting on March 13, 2019. Now is the time for the forum members to give input on work they would like to see the Forum prioritize for the 2020 Annual Agenda. Forum members suggested continuing work on expanding the recognition and enforcement of tribal court judgments beyond the scope of the existing Tribal Court Civil Money Judgments Act. Forum members also discussed the feasibility of a legislative proposal to extend to tribal court judges the immunities from suit enjoyed by state court judges.

Next Forum call is April 11, 2019.

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 4:30 p.m.

Pending approval by the advisory body on April 11, 2019.



# The State Bar of California

## California Justice Gap Study

*The first comprehensive statewide study on the need for civil legal assistance in California*

### Mission Critical

- The State Bar has provided leadership in advancing access to justice for decades. The State Bar's new mission statement, adopted by the Board of Trustees in 2017, specifies that access and inclusion are core to the Bar's public protection mission.
- California-specific data on the size and impact of the justice gap is needed to set a baseline and focus future efforts to advance access to justice. Recognizing this, the Board of Trustees made the first California Justice Gap Study a strategic plan objective for 2019.

### How Big is California's Justice Gap?

- The California justice gap is defined as the gap between the need for civil legal assistance among Californians and the resources to meet that need.
- California's unique size, diversity, and growing inequality, with the nation's highest poverty rate, point to the enormity and complexity of the gap.
- For many, cost is the main barrier. Nearly 8 million Californians, 1 in 5, are eligible for free legal aid, according to the Legal Services Corporation (LSC), the largest federal legal aid funder.
- Many people with serious legal problems never seek legal aid. Millions of Californians who seek legal aid must be turned away because providers lack the needed resources. With just over 1,000 attorneys in California providing legal help to indigent people, there are more than 7,500 potential clients for each legal aid attorney.
- Millions more Californians are ineligible for legal aid yet cannot afford a lawyer when needed.
- Other barriers to access include geography—including the urban/rural divide—language, and unfamiliarity with the legal system.
- National studies and related statistics, such as the soaring number of self-represented litigants in California courts, point to the gap, but a comprehensive state study has never been done.

### National Study a Model

- In 2017, LSC published a significant national study measuring unmet civil legal needs.
- The study paired a national survey panel of 2,000 low-income Americans with an intake census through LSC-funded legal aid organizations.
- The LSC methodology, while groundbreaking, was not conducive to state breakouts.

### California Justice Gap Study Scope

The California Justice Gap Study will:

- Follow the methodology of the 2017 LSC national study, including a household panel survey and an intake census of field programs.

- Gather data on the legal services needs of both low-income Californians and those from the general population.
- Include an evaluation of the costs of legal education in California and the impact of those costs on access to justice.
- Suggest possible approaches to addressing the costs of legal education, including loan forgiveness programs and other means.

### **Components and Timeline**

- **Survey:** The survey of 3,000 Californians will be conducted by NORC at the University of Chicago. NORC, an objective and independent research organization, conducted the LSC survey using its proprietary AmeriSpeak survey household panel. The AmeriSpeak survey for the California study will include a panel of adults residing in households at or below 125% of the Federal Poverty Level and an additional household panel of California adults in the general population.
- **Intake census:** A six-week intake census will be done by several dozen California legal aid organizations who receive federal and state grants. Grantees will track the number of individuals approaching them for help with a civil legal problem whom they are unable to serve, able to serve to some extent, and able to serve fully.
- **Costs of legal education:** The State Bar is partnering with the Legal Aid Association of California (LAAC), to help identify barriers faced by law students and new lawyers that divert them from a career in legal aid. LAAC is seeking these answers through surveys and focus groups of law school students and recent graduates.
- **Timeline:** The study launched in early 2019 and is scheduled for completion by December 2019.

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GUEST COLUMN

## Dissolving legal barriers

By Curtis E.A. Karnow

Trial judges and appellate justices rarely interact across their courts. Judges and lawyers have sporadic, desultory contact at e.g., Inns of Court and bench-bar conferences (17,907 lawyers practice in San Francisco; maybe 80 attend the annual bench-bar conference), and there's little communication between law schools and practitioners.

### Part I of II

Except in the most formal way — through briefs, opinions and orders, and the rare helpful law review article — no one is talking to anyone else. Yet we're all engaged in the same effort: to deliver fair and efficient legal services to the parties in

See Page 6 — LAWYERS

## DAILY APPELLATE REPORT

**Civil Procedure:** U.S. Supreme Court's 'China Agritech' rule precluding tolling of class claims pending class certification applicable to California state courts. *Fierro v. Landry's Restaurant, Inc.*, California Courts of Appeal, DAR p.

**Constitutional Law:** Where state court relies too heavily on mentally impaired defendant's cognitive strengths rather than his weaknesses in determining fitness for execution, analysis fails constitutional muster. *Moore v. Texas*, U.S. Supreme Court, DAR p. 1295

**Criminal Law and Procedure:** Defendant did not waive her rights to have her sentence imposed by the judge that accepted her plea under 'People v. Arbuckle'; therefore the judgment was reversed and remanded for resentencing. *People v. Bueno*, California Courts of Appeal, DAR p. 1316

**Criminal Law and Procedure:** Oral or written voluntary waiver of 'Miranda' rights requires free and deliberate choice made with full awareness of the nature of the rights being abandoned and consequences of the decision. *In re L.R.*, California Courts of Appeal, DAR p. 1311

SAN FRANCISCO

# Daily Journal

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Daily Journal photo  
State Bar Executive Director Leah T. Wilson said the organization is undertaking a "justice gap study," due at the end of the year, to understand unmet needs for civil litigants.

## Not all legal nonprofits have seen a 'Trump bump' in funding

By John Roemer

Special to the Daily Journal

Starting in November 2016, a post-election "Trump bump" amped up revenues for some legal aid nonprofits, most notably the American Civil Liberties Union, as alarmed donors responded generously to perceived threats to constitutional values and vulnerable populations.

But who got left out? Funding streams for groups serving the elderly and the rural poor have flowed unevenly despite increased demand. Some in need get turned away while others receive help, like the 101-year-old woman living on Social Security in South Los Angeles who fell victim to a contractor scam artist who knocked on the door of the home she'd owned for 65 years, her lawyer said.

Rosamond J. told the contractor she wanted a ramp and a walk-in tub. He fast-talked her into signing up for a government PACE loan she did not need and could not afford. The loan, secured by a lien on her home, was to be repaid through property taxes — which in her case skyrocketed from \$800 to \$10,000 a year. Her default would have led to foreclosure and Rosamond's eviction until lawyers at Bet Tzedek Legal Services stepped in to sue the contractor for financial

elder abuse.

Her case, part of a mounting onslaught of fraud against the elderly, spotlights the plight of fixed-income seniors, one of the underserved groups legal aid nonprofits represent in an era of stretched-thin assets and threatened finances.

"Even in a group like ours with some steady funding streams, we are constantly turning away seniors we can't assist due to lack of resources," said Nicholas A. Levenhagen, a Bet Tzedek staff attorney who represents Rosamond. "And that is a problem throughout California."

In the legal aid nonprofit world, funding threats are like land mines that can scare other donors and unsettle budgets. A current U.S. Supreme Court case targets the *cy pres* awards that have aided poverty lawyers in the Central Valley and senior aid groups in the Bay Area and elsewhere.

A State Bar review of funding for seniors alarmed groups dependent that source. And the Trump administration's expressed intent to zero out the Legal Services Corporation's budget added another layer of uncertainty. LSC funnels roughly \$45 million to California legal aid groups annually.

Lopsided funding divides the haves from the have-nots. "The ACLU donations rose to astronomical levels," said

By Steven Crigton  
Daily Journal Staff Writer

U.S. Supreme Court sounded a rallying Amendment preceded shield for half a century gone unanswered by Thomas voted also

ing a petition by Kati to revive her defamed attorney Martin

McKee, who publicly assaulting her leaked to the press that damaged her case in deference to a landmark U.S. Supreme Court decision at the actual malice accused by public figures

While Thomas supports revival, he court should receive established. *M. v. U.S.* 254 (1964). Rather than protect ruling represents a of major aspects of subsequent decision cisions masquerading state courts and leg centuries.

"We should not policy-driven approval does not re actual malice stand then neither should Steve Wells, a Do often represents matters, said he believed that the court case has gone wars waged against political spectrum.

"I'd say that's pretion of press freedom In years past, Th support from former tonin Scalia. Kevin at Jassi, Vick & Ca while Scalia never the record as Thom of reversing it. In a

Scalia said he "abhor may have hoped to v such, who is often d

See Page 5 — WHILE

## US high court to take a look at Clean W

By Nicolas Sonnenburg

Daily Journal Staff Writer

The U.S. Supreme Court has

to contaminate such bodies of water through indirect sources. *County of Maui, Hawaii v. Hawaii Wildlife* opinion, meaning the pollutant

by ocean, Senior Judge Dorothy as overreaching.

W. Nelson noted in her unanimous

the pollutant

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# While some legal nonprofits reap big Trump era donations, others struggle

Continued from page 1

liberties at stake in the midterm elections,” said Associate Director Christine P. Sun. Volunteers knocked on 155,000 doors, she added. “We didn’t endorse candidates but offered information about ballots by mail and the location of polling places.”

Post-Trump, there were significant increases in donations to immigrant rights and access to justice groups because the public recognized administration policies were hostile to their core mission ideals, Cummings said. “Some groups have been able to mobilize effectively around the attacks on immigrants, for example.”

Elsewhere, direct legal services providers aren’t broke, but they’re struggling. “Individual donations have remained steady,” said Lynn Etkins of the Legal Aid Foundation of Los Angeles. “Almost all of the huge influx went to the ACLU, that was new money.” The funding doesn’t always keep pace with events, such as the partial government shutdown.

“During stressful times, more calls come in,” Etkins said. “Always, the need outstrips our resources.”

At Elder Law & Advocacy in San Diego and El Centro, Executive Director Carolyn L. Reilly said, “We have not gotten any Trump bump, and our funding through the Older Americans Act has been flat for years. It’s been a huge struggle for us. The aging population is increasing, there is a huge demand for our services, and there are just no additional funds.”

In fact, she said, while individu-

al donations increased somewhat during the 2008 recession, they have fallen since with no post-election bounce-back.

As it is for other marginalized legal aid nonprofits, the State Bar is a chief funding conduit for Elder Law & Advocacy. The bar’s legal aid grants to nearly 100 legal services organizations will total \$62 million this year, up from \$50 million in 2018. The money comes in part from the Leg-

**“It’s harder to explain our mission to the public. We’re a niche. We don’t tug at the heartstrings the way immigrants do. Dealing with elder abuse restraining orders or bedbug infestations — those are really important jobs, but they don’t translate well to fundraising pleas. People want to fund shining new projects, not nuts and bolts projects.”**

- Verna A. Haas, the executive director of Contra Costa Senior Legal Services

islature, roughly \$20 million, with another \$5 million from court filing fees.

More than half is from interest on pooled attorney client fund trust accounts, a source known as IOLTA.

Bar leaders said their efforts to maximize that income, combined with rising interest rates, has led to significant IOLTA income growth from \$5 million in 2013 to \$20 million last year and a projected \$39 million in 2019.

Salena G. Copeland, head of The Legal Aid Association of California, an advocacy organization, has worked to persuade Sacramento law-

makers to increase giving. She said the help from that quarter has been critical.

“State funding has improved because the Legislature has stepped in while federal funding has not increased at all,” she said. “We got an amazing bipartisan response in Sacramento, but even with the increases, we are still turning away a lot of people.”

She cited a study showing more

than 70 percent of low income households nationally have one or more civil legal problems annually, ranging in category of need from eviction defense to family law to education issues. Yet more than 80 percent of those households do not get adequate legal help.

Bringing that statistic home, “A back of the napkin calculation shows that some 5.5 million low income Californians need legal aid,” Copeland said. She has done the math: There are more than 7,500 eligible clients per legal aid lawyer in the state.

At the State Bar, Executive Director Leah T. Wilson pointed to the

group’s new justice gap study, due by the end of 2019, to better understand unmet civil legal needs.

“We’ll assess how far up the income ladder the gap goes. I assume it’s fairly high,” she said. “We’re also interested in whether law school debt burdens prevent young lawyers from staying in low-pay legal services jobs after they have families.”

In January, the bar hired Hellen Y. Hong to direct its new Office of

Access & Inclusion, which oversees Legal Service Trust Fund grants and policymaking on access to justice and inclusion work. For Hong, boosting interest on lawyer trust account income is an early priority. “We are encouraging banks to maximize the interest they offer on IOLTA accounts,” she said.

The bar’s review of funding for seniors needing legal services alarmed some providers who worried a wealth threshold built into the Older Americans Act could prompt the end of free aid for some on fixed incomes — but who nevertheless make more than 125 percent of the federal poverty lev-

el — facing loss of their homes.

Wilson said they have nothing to fear because the State Bar Board of Trustees voted in late January not to recommend changes in the current indigence rules. “We continue to interpret the Older Americans Act to mean that any senior has a presumption of eligibility,” she said.

For Verna A. Haas, the executive director of Contra Costa Senior Legal Services, funding threats are no novelty.

“It’s harder to explain our mission to the public,” she said. “We’re a niche. We don’t tug at the heartstrings the way immigrants do. Dealing with elder abuse restraining orders or bedbug infestations — those are really important jobs, but they don’t translate well to fundraising pleas. People want to fund shining new projects, not nuts and bolts projects.”

Her funding comes from government contracts, from foundations, from attorneys and from Legal Services grants. In the 2014-2015 fiscal year, Contra Costa Senior Legal Services got a *cy pres* bonanza of \$261,000, thanks to a local law firm that added the group as a recipient of residual funds in a class action settlement over landline phone overcharges.

“That was nearly as much as our entire budget for the previous year,” Haas said. “It has really been transformational. It gave us the opportunity to build infrastructure, add staff and expand services.”

*Cy pres* income also aided California

Rural Legal Assistance, said Executive Director Jose R. Padilla. In January his group received \$400,000 in *cy pres* funds; last year it was \$405,000 for the entire year. In 2017, *cy pres* income totaled \$1.3 million — a big chunk of an overall CRLA outgo of around \$14 million.

But *cy pres* is threatened too, thanks to *Frank v. Gaos*, 17-961, a case awaiting an opinion by the U.S. Supreme Court.

The petitioners challenge the distribution of the entire \$8.5 million settlement in a Google privacy case to institutions studying internet privacy instead of to class members because the cost of distributing the funds to class members — each would get 6.5 cents — would have been greater than the total of the settlement.

The 9th U.S. Circuit Court of Appeals approved the deal; foes of *cy pres* have proposed a rule barring all class settlements that do not benefit the class. The case was argued in October. An outcome unfavorable to *cy pres* awards could block an important funding channel for legal nonprofits.

The libertarian Cato Institute argued in an amicus brief that *cy pres* awards violate the First Amendment by compelling class members to support speech with which they may disagree.

Padilla’s fingers are crossed.

“The private bar keeps us in mind when *cy pres* funds become available,” he said. “But of course you can’t predict it when you are writing your budget.”

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# The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans

June 2017

**LSC** | America's Partner  
for Equal Justice  
LEGAL SERVICES CORPORATION



**About the Legal Services Corporation**

The Legal Services Corporation (LSC) was established by Congress in 1974 to promote equal access to justice. LSC operates as an independent 501(c)(3) non-profit corporation and currently serves as the single largest funder of civil legal aid for low-income Americans. More than 93% of LSC's total funding is currently distributed to 133 independent non-profit legal aid programs with more than 800 offices across America. LSC's mission is to help provide high-quality civil legal aid to low-income people. To learn more about LSC, please visit [www.lsc.gov](http://www.lsc.gov).

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## **Acknowledgements**

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LSC acknowledges NORC at the University of Chicago for its contributions to the *2017 Justice Gap Measurement Survey* and *The Justice Gap* report, and in particular, the work of Becky Reimer and Mary C. Slosar. NORC is an objective and independent research organization, which conducts work for a variety of federal agencies, foundations, associations, and other organizations. Under contract with LSC, NORC conducted survey data collection using its probability-based AmeriSpeak® Panel and also conducted the data analysis that informs this report. NORC does not take a position on the policy implications of this research.

LSC would also like to acknowledge the contributions of the Justice Gap Advisory Committee:

### **James Bamberger**

Director, Washington State Office of Civil Legal Aid

### **Terry Brooks**

Director, American Bar Association Division for Legal Services, and Chief Counsel, ABA Standing Committee on Legal Aid and Indigent Defendants

### **Colleen Cotter**

Executive Director, Legal Aid Society of Cleveland

### **Alex Gulotta**

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### **Scott Keeter**

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### **Lillian Moy**

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### **Rebecca Sandefur**

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### **William (Bill) Sabol**

Ph.D., Former Director, Bureau of Justice Statistics

### **Don Saunders**

Vice President, Civil Legal Services, National Legal Aid and Defender Association

### **Betty Balli Torres**

Executive Director, Texas Access to Justice Foundation



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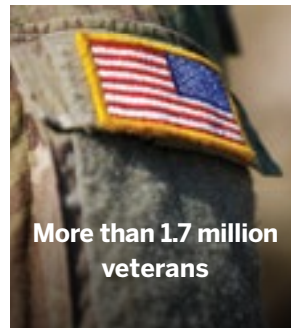
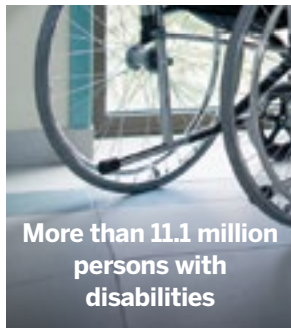
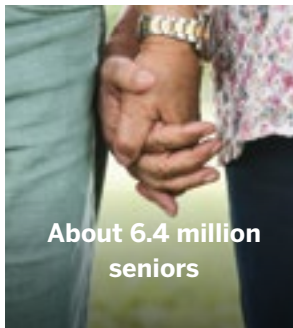
The Legal Services Corporation (LSC) contracted with NORC at the University of Chicago to help measure the justice gap among low-income Americans in 2017. LSC defines the justice gap as the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. NORC conducted a survey of approximately 2,000 adults living in households at or below 125% of the Federal Poverty Level (FPL) using its nationally representative, probability-based AmeriSpeak® Panel. This report presents findings based on this survey and additional data LSC collected from the legal aid organizations it funds.

**86%** of the civil legal problems reported by low-income Americans in the past year **received inadequate or no legal help.**

In the past year, **71%** of low-income households **experienced at least one civil legal problem**, including problems with domestic violence, veterans' benefits, disability access, housing conditions, and health care.

In 2017, low-income Americans will approach LSC-funded legal aid organizations for support with an estimated **1.7 million** problems. They will **receive only limited or no legal help for more than half of these problems** because of a lack of resources.

More than **60 million** Americans have family incomes at or below 125% of FPL, including:



Data Source: U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates

## Key Findings: Experience with Civil Legal Problems

Data Source: 2017 Justice Gap Measurement Survey



**71%** of low-income households have experienced a civil legal problem in the past year.

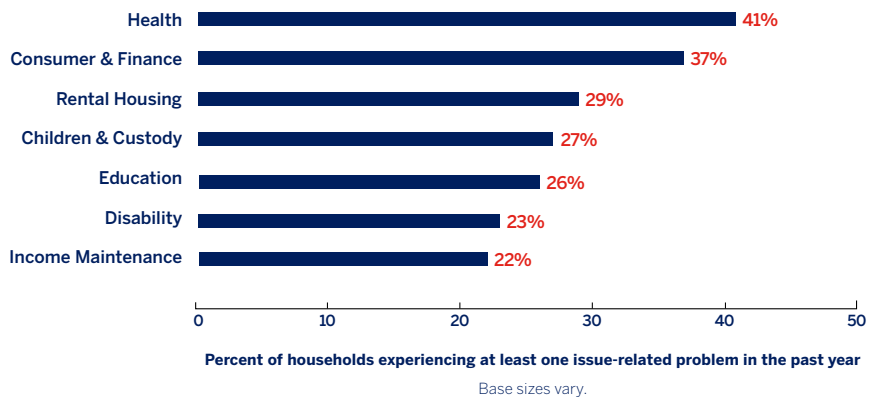
**The rate is even higher for some:** households with survivors of domestic violence or sexual assault (**97%**), with parents/guardians of kids under 18 (**80%**), and with disabled persons (**80%**).

**1 in 4** low-income households has experienced 6+ civil legal problems in the past year, including **67% of households with survivors of domestic violence or sexual assault.**

**7 in 10** low-income Americans with recent personal experience of a civil legal problem **say a problem has significantly affected their lives.**

**71%** of households with **veterans or other military personnel** have experienced a civil legal problem in the past year. They face the same types of problems as others, but **13%** also report problems specific to veterans.

### Common Civil Legal Problem Areas



## Key Findings: Seeking Legal Help

Data Source: 2017 Justice Gap Measurement Survey



Low-income Americans seek professional legal help for only **20%** of the **civil legal problems they face.**

**Top reasons** for not seeking professional legal help are:

- **Deciding to deal with a problem on one's own**
- **Not knowing where to look for help or what resources might exist**
- **Not being sure whether their problem is "legal"**

Low-income Americans are most likely to seek professional legal help on problems that are more **obviously "legal,"** like **custody issues** and **wills/estates.**



## Key Findings: Reports from the Field

Data Source: LSC 2017 Intake Census and LSC 2016 Grantee Activity Reports



The 133 LSC-funded legal aid organizations across the United States, Puerto Rico, and territories will serve an estimated **1 million** low-income Americans in 2017, but **will be able to fully address the civil legal needs of only about half of them.**

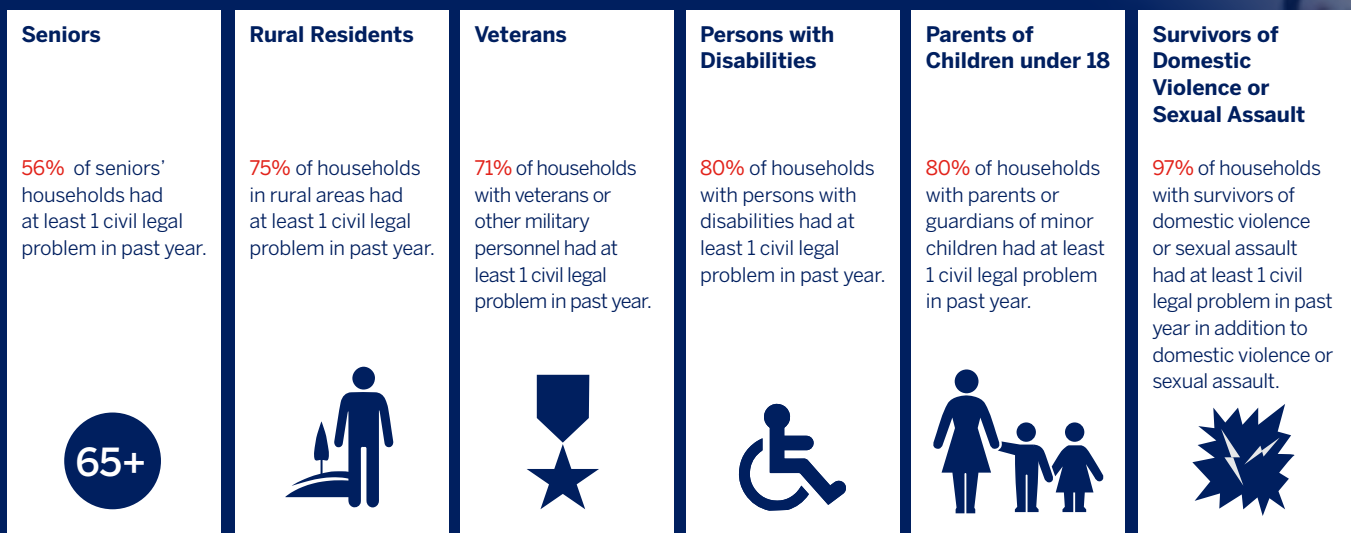
Among the low-income Americans receiving help from LSC-funded legal aid organizations, the top three types of civil legal problems relate to **family, housing, and income maintenance.**

In 2017, low-income Americans will **receive limited or no legal help** for an estimated **1.1 million** eligible problems after seeking help from LSC-funded legal aid organizations.

**A lack of available resources accounts for** the vast majority **(85% - 97%)** of civil legal problems that LSC-funded organizations **do not fully address.**

## Special Focus

The Special Focus section of this report presents key findings for several groups of interest.



## | Introduction |

The phrase “with liberty and justice for all” in the U.S. Pledge of Allegiance represents the idea that everyone should have access to justice, not just those who can afford legal representation. In criminal cases, legal assistance is a right. Americans accused of a crime are appointed legal counsel if they cannot afford it. As a general matter, however, there is no right to counsel in civil matters. As a result, many low-income Americans “go it alone” without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser.

This “justice gap” – the difference between the civil legal needs of low-income Americans and the resources available to meet those needs – has stretched into a gulf.<sup>1</sup> State courts across the country are overwhelmed with unrepresented litigants. In 2015, for example, an estimated 1.8 million people appeared in the New York State courts without a lawyer.<sup>2</sup> And we know that 98% of tenants in eviction cases and 95% of parents in child support cases were unrepresented in these courts in 2013.<sup>3</sup> Comparable numbers can be found in courts across the United States.

This study explores the extent of the justice gap in 2017, describing the volume of civil legal needs faced by low-income Americans, assessing the extent to which they seek and receive help, and measuring the size of the gap between their civil legal needs and the resources available to address these needs.



The **justice gap** is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.

### Background

The Legal Services Corporation (LSC) was created by Congress in 1974 with the mission to expand access to the civil justice system for low-income Americans. LSC supports civil legal aid organizations across the country, which in turn provide legal assistance to low-income Americans grappling with civil legal issues relating to essential human needs, such as safe housing and work environments, access to health care, safeguards against financial exploitation, and assistance with family issues such as protection from abusive relationships, child support, and custody.

In 2005 and 2009, LSC published studies measuring the justice gap.<sup>4</sup> Both were consistent in finding that about 50% of people who approached LSC-funded legal aid organizations for help did not receive help because of insufficient resources. The 2009 Report, *Documenting the Justice Gap in America*, also found that many courts were seeing increased numbers of unrepresented litigants.

LSC's two previous reports on the justice gap used three approaches to describe the gap:

- An intake census – a count of people seeking assistance from LSC grantees who were not served because of a lack of resources;
- A review of state-level studies about access to civil justice and about unrepresented litigants in state and local courts; and
- A comparison of the ratio of legal aid attorneys per capita for low-income Americans with the ratio of all private attorneys per capita for all Americans.

These approaches permitted analysis that shed light on the scarcity of resources and the expressed needs that go unmet. But they left key questions unanswered about the civil legal needs experienced by low-income Americans who do not seek professional legal help and about the paths they take when facing a civil legal problem (with or without the help of LSC-funded legal aid organizations).

The 2017 Justice Gap report seeks to answer these questions. It includes analysis of data from the 2017 Justice Gap Measurement Survey, which is the first national household survey on the justice gap in over 20 years. The most recent national study that assessed the justice gap with a household survey was conducted by the Institute for Survey Research at Temple University in 1994, with funding from the American Bar Association.<sup>5</sup> Since that time, a number of individual states have also conducted justice gap studies.<sup>6</sup> Notably, the Washington State Supreme Court conducted a study in 2014 (refreshing work completed in 2003), which took a comprehensive look at the civil legal needs of the state's low-income households.<sup>7</sup> The Washington State work served as a point of departure for the 2017 Justice Gap Measurement Survey, which is described in more detail below.

This report also presents analysis of data from LSC's 2017 Intake Census. LSC asked its 133 grantee programs to participate in an "intake census" during a six-week period spanning March and April 2017. As part of this census, grantees tracked the number of individuals approaching them for help with a civil legal problem whom they were unable to serve, able to serve to some extent (but not fully), and able to serve fully. Grantees recorded the type of assistance individuals received and categorized the reasons

individuals were not fully served where applicable. LSC sent the resulting data to NORC for analysis. The findings presented in this report are based on data from the LSC grantees that receive Basic Field Grants. See Appendix B4 for more information about the LSC 2017 Intake Census and how the data are used in this report.

In addition to the 2017 Justice Gap Measurement Survey and LSC's 2017 Intake Census, this report uses data from the U.S. Census Bureau's American Community Survey (ACS). More information about the ACS data used can be found in Appendix B1. Finally, this report uses data from LSC's 2016 Grantee Activity Reports, and more information about these data can be found in Appendix B4. Where the report relies on other data sources, this is referenced in endnotes as appropriate.

### **The 2017 Justice Gap Measurement Survey**

LSC contracted with NORC at the University of Chicago to conduct a survey of more than 2,000 adults living in low-income households using its nationally representative, probability-based AmeriSpeak® Panel. For the purposes of the survey, "low-income households" are households at or below 125% of the Federal Poverty Level (FPL), the income eligibility standard for people seeking assistance from an LSC-funded legal aid program. The survey was administered using telephone and web interview modes, which allowed a flexible survey logic to gather detailed information about low-income Americans' civil legal needs at the individual level, household level, and level of specific civil legal problems.

The survey was designed to accomplish the following goals:

- Measure the prevalence of civil legal problems in low-income households in the past 12 months;
- Assess the degree to which individuals with civil legal problems sought help for those problems;
- Describe the types and sources of help that low-income individuals sought for their civil legal problems;
- Evaluate low-income Americans' attitudes and perceptions about the fairness and efficacy of the civil legal system; and
- Permit analysis of how experiences with civil legal issues, help-seeking behavior, and perceptions vary with demographic characteristics.

This report uses data from the 2017 Justice Gap Measurement Survey to provide insight into the extent of the justice gap in 2017. It does not present or discuss all of the findings from the survey. Readers are encouraged to see the accompanying survey report that presents results from the entire 2017 Justice Gap Measurement Survey. Additionally, the survey instrument and data will be made publicly available.

More details on the survey and the AmeriSpeak® Panel can be found in Appendix A and also at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).

The units of analysis and the base sizes for the survey results presented throughout this report vary. Some results are based on respondents (or their households), some are based on their civil legal problems, and others are based on subsets of respondents, households, or problems. Readers are encouraged to pay close attention to information describing the units of analysis and which sets of observations comprise the relevant bases for results. Wherever a result is based on a variable containing a small number of observations ( $n < 100$ ), we indicate this with a special endnote, “SB-X” (where “SB” stands for “small base” and “X” corresponds to the endnote number in this series).

## Report Overview

The core findings of this report are organized in four sections:

**Section 1: Low-income America** | Using current data from the U.S. Census Bureau and other sources, this section describes the low-income population in America. More specifically, it explores how many people live in households below 125% of the Federal Poverty Level (FPL), how they are distributed across the U.S., and how key demographics like education and racial and ethnic background are distributed among them.

**Section 2: Experience with Civil Legal Problems** | Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on the prevalence of civil legal problems among low-income households, the types of problems they face, and the degree to which civil legal problems affect their lives.

**Section 3: Seeking Legal Help** | Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on which types of problems are most likely to receive legal attention, where people turn for legal help, what types of legal assistance they receive, and the reasons why people do not seek legal help.

**Section 4: Reports from the Field** | Using data from LSC’s 2017 Intake Census and 2016 Grantee Activity Reports, this section presents findings on the assistance low-income Americans receive after seeking help from a legal aid organization funded by LSC.

The report concludes with a “Special Focus” section. This section presents key findings for six groups that are highlighted throughout the report. These groups include seniors, persons with disabilities, veterans, parents and guardians of minor children, rural residents, and survivors of domestic violence or sexual assault. At the end of Sections 1, 2, and 3, we include a page that presents related findings for these groups.<sup>8</sup> The findings for these highlighted groups are then summarized in this final “Special Focus” section of the report.

Client stories are presented throughout the report. These are meant to help readers understand the types of problems faced by low-income Americans. The stories were collected by LSC, primarily through searches of grantees’ annual reports and websites, but also through specific requests to grantees for such stories. These stories were first edited by LSC’s Government Relations and Public Affairs unit and vetted by the corresponding grantees for accuracy. NORC later completed additional minor edits to the stories in an effort to shorten them for inclusion in this report. In this report, the names have been changed to protect the identity of individuals. Likewise, the accompanying photos are not of the actual clients.

### **Study Findings in Brief**

The findings presented in this report add important, new insights to the growing body of literature on the justice gap. We find that seven of every 10 low-income households have experienced at least one civil legal problem in the past year. A full 70% of low-income Americans with civil legal problems reported that at least one of their problems affected them very much or severely. They seek legal help, however, for only 20% of their civil legal problems. Many who do not seek legal help report concerns about the cost of such help, not being sure if their issues are legal in nature, and not knowing where to look for help.

In 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems. They will receive legal help of some kind for 59% of these problems, but are expected to receive enough help to fully address their legal needs for only 28% to 38% of them. More than half (53% to 70%) of the problems that low-income Americans bring to LSC grantees will receive limited legal help or no legal help at all because of a lack of resources to serve them.

Based on the analysis presented in this report, we have three key findings relating to the magnitude of the justice gap in 2017:

- Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help (see Section 3);
- Of the estimated 1.7 million civil legal problems for which low-income Americans seek LSC-funded legal aid, 1.0 to 1.2 million (62% to 72%) receive inadequate or no legal assistance (see Section 4),<sup>9</sup>
- In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs, due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all of the problems receiving limited or no legal assistance from LSC grantees (see Section 4).

## **Low-income America**



As a general rule, LSC funds may be used only to serve the legal needs of people with family incomes at or below 125% of the Federal Poverty Level.<sup>10</sup> This section describes this population of Americans. It explores how many people have family incomes at this level, how they are distributed across the U.S., and some key demographics of this population.



## About the Data

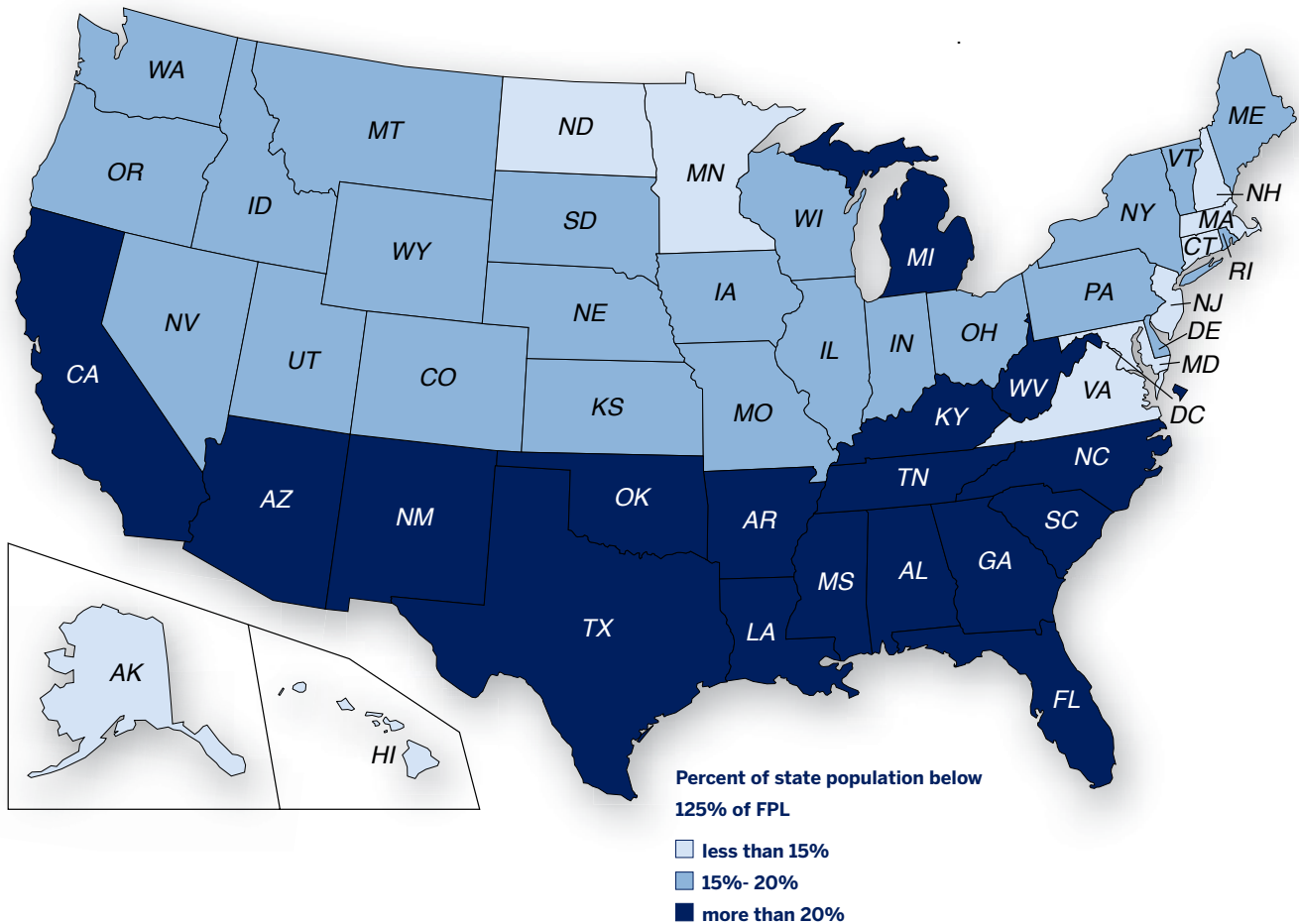
Most of the population estimates presented in this section come from the 2015 American Community Survey (ACS) Single Year Estimates.<sup>11</sup> Note that the ACS reports on people with family incomes *below* 125% of the Federal Poverty Level rather than *at or below* this income level (which is how income eligibility for LSC-funded services is defined). Occasionally, other data sources are also used and are noted accordingly. The unit of analysis in this section is individuals.

### **More than 60 million Americans have family incomes below 125% of the Federal Poverty Level.**

A family income below 125% of the Federal Poverty Level (FPL) corresponds to \$30,750 per year or less for a family of four.<sup>12</sup> Based on recent estimates from the Census Bureau, nearly one in five Americans (19%) have family incomes below 125% of FPL. This comes to about 60 million people, including approximately 19 million children (0-17 years), 35 million adults aged 18-64 years old, and 6.4 million seniors (65+ years).<sup>13,14</sup>

As Figure 1 shows, some states have higher proportions of people with family incomes below 125% of FPL. The states with the highest proportions of people in low-income families include Mississippi (28%), New Mexico (26%), Arkansas (25%), and Louisiana (24%). Looking at population counts, a few other states stand out. For example, California alone has 7.7 million people with family incomes below 125% of FPL and Texas has 5.7 million people.<sup>15</sup> Appendix B1 presents the population counts and proportions for all states in the U.S.

**Figure 1: Percentage of Each State's Population Below 125% of the Federal Poverty Level, 2015<sup>16</sup>**



**[ CLIENT STORY ]**



**Mary | Ohio | Health** | Mary lives in an assisted-living community. When a health condition required rehabilitation, she entered a skilled nursing facility for what she expected would be a short-term stay. Once therapy was completed, however, the nursing home refused to begin discharge, insisting she required 24-hour care and demanding payment for her continued stay. Mary could not afford to pay for both the nursing home and her assisted living residence. Legal aid attorneys got involved, advocating for her right to make an informed decision about her living situation. They also helped Mary work with her primary care physician to arrange for the necessary home health services she needed to return to her home.

Source: LSC Client Success Stories.

**Most American adults with family incomes below 125% of FPL do not have any college education.**

There is great disparity in education levels by income. About 62% of low-income Americans aged 25 years or older have no more than a high school education. Americans of the same age with higher family incomes are nearly three times more likely to have graduated from college (34% vs. 12%).<sup>17</sup> Existing literature on the justice gap suggests that educational background is important for understanding access to justice.<sup>18</sup>



**88%** of low-income adults do not have a college degree, including **62%** who have no more than a high school education.

**While low-income Americans come from very diverse racial and ethnic backgrounds, a plurality identify as white (with no Hispanic origin).**

Forty-four percent of Americans with family incomes below 125% of FPL identify themselves as white and claim no Hispanic origin. Another 28% identify as Hispanic, and 21% identify as black with no Hispanic origin. Four percent identify as Asian, 1% as American Indian, 8% as another race, and 4% as two or more races.<sup>19</sup> The life experiences of people with different racial and ethnic backgrounds are thought to be important for understanding people's likelihood to trust institutions and to seek civil legal assistance.<sup>20</sup>

## | Special Focus |

Millions of Americans from the various groups highlighted in this report have family incomes below 125% of FPL. This page presents population estimates for the number of low-income people for each group wherever such estimates are available. No such estimates are available for recent survivors of domestic violence or sexual assault, but we cite other information that speaks to rates of such violence among low-income Americans.

65+

Seniors

Approximately **6.4 million** seniors have family incomes below 125% of FPL.<sup>21</sup>



Rural Residents

Approximately **10 million** people living in rural areas of the U.S. have family incomes below 125% of FPL.<sup>22</sup>



Veterans

More than an estimated **1.7 million** veterans have family incomes below 125% of FPL.<sup>23</sup>



Persons with Disabilities

More than **11.1 million** people with a disability have family incomes below 125% of FPL.<sup>24</sup>



Parents/Guardians of Children under 18

Approximately **18 million** families with related children under 18 have incomes below 125% FPL.<sup>25</sup>



Survivors of Domestic Violence/Sexual Assault

Rates of intimate partner violence among people with family incomes at or below 100% of FPL are about **four times** the rates among people with incomes at or above 400% of FPL.<sup>26</sup>

## Experience with Civil Legal Problems



A large majority of low-income American households face civil legal problems in their everyday lives. These problems are most often related to basic needs like health care, safety, making ends meet, and housing. Using data from the 2017 Justice Gap Measurement Survey of low-income households, this chapter presents findings on the prevalence of civil legal problems among these households, the types of problems they face, and how civil legal problems affect their lives.

### About the Data

The findings presented in this section come from the 2017 Justice Gap Measurement Survey. Respondents were presented with an extensive list of specific problems that typically raise civil legal issues. They were asked whether they had experienced any of these problems in the past 12 months and whether anyone else in their household had. While not all of the reported problems would be able to be addressed through civil legal action, the resulting data make it possible to estimate how common various civil legal problems are at the household level. A total of 88 distinct problems (divided into 12 main categories) were explored in the survey. The primary unit of analysis in this section is households.

### **A large majority of low-income American households face civil legal problems.**

The 2017 Justice Gap Measurement Survey assessed the prevalence of various types of problems that typically raise “justiciable civil legal issues,” that is, issues that could be addressed through civil legal action. This is consistent with standard practice in the literature for measuring the prevalence of civil legal problems. While an in-depth interview with a legal professional would reveal that some of the problems reported by respondents are not actually justiciable, most will be. For ease of reporting, and to be consistent with established literature, we refer to these problems as “civil legal problems” throughout this and the next section.



**71%** of low-income households have experienced at least **one civil legal problem in the past year.**

Seventy-one percent of low-income households have experienced at least one civil legal problem in the past year. Many of these households have had to deal with several issues. Indeed, more than half (54%) faced at least two civil legal problems and about one in four (24%) has faced six or more in the past year alone. The civil legal problems these Americans face are most often related to basic needs like getting access to health care, staying in their homes, and securing safe living conditions for their families.

**Common civil legal problems among low-income households relate to issues of health, finances, rental housing, children and custody, education, income maintenance, and disability.**

As Figure 2 shows, civil legal problems related to health and to consumer and finance issues affect more households than any other type of issue. Health issues, for example, affect more than two in five (41%) low-income households. The most common problems in this area include having trouble with debt collection for health procedures (affecting 17% of households), having health insurance that would not cover medically needed care or medications (17%), and being billed incorrectly for medical services (14%).

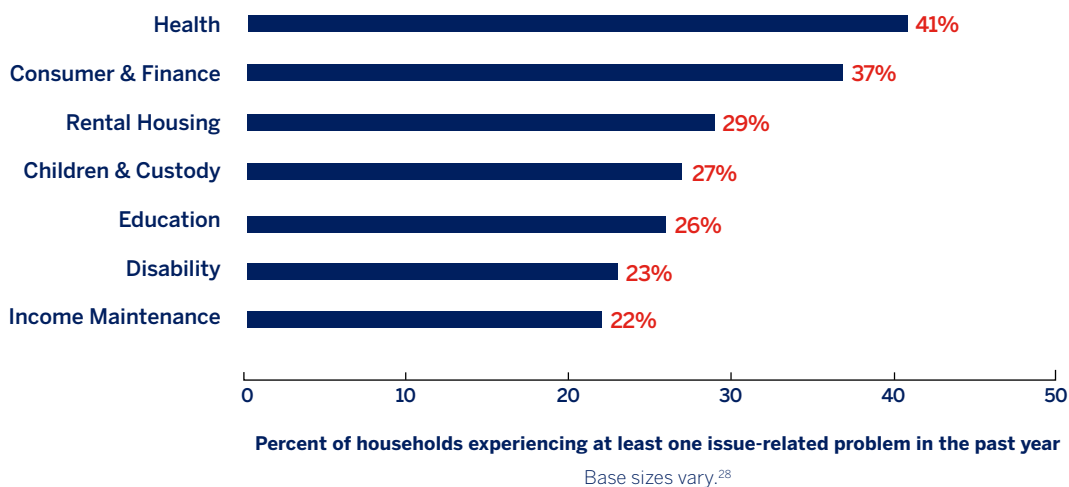
Over one-third (37%) of low-income households have experienced consumer and finance problems in the past year. These issues typically follow from not being able to make payments for debt or utilities on time. The most common issues in this area include difficulties with creditors or collection agencies (affecting 16% of households), having utilities disconnected due to nonpayment or a billing dispute (14%), and having problems buying or paying for a car, including repossession (8%).

Other common categories of civil legal problems include rental housing, children and custody, and education. Each of these problem categories affects more than one in four low-income households in which the issue is relevant (e.g., rental housing problems affect 29% of households living in a rented home). Income maintenance and disability issues affect one in five issue-relevant households.

[ CLIENT STORY ]



**Ronald | Louisiana | Consumer and Finance** | Ronald needed legal help when FEMA filed a claim against him for repayment of disaster funds issued after Hurricane Katrina. He had never even applied for, much less received, any FEMA funds. FEMA seized his income tax refund and told him he had to pay an additional \$8,000. With the help of legal aid, Ronald was able to demonstrate that the funds in question had been issued to someone else. FEMA dismissed the claim and returned the money wrongfully seized from Ronald's accounts.

**Figure 2: Common Civil Legal Problem Categories<sup>27</sup>**

**Rental Housing** | A full 29% of households living in a rented home have experienced a related civil legal problem in the past year. Such problems include having a landlord fail to provide basic services or repairs (affecting 16% of rental households), having a dispute with a landlord or public housing authority over rules or terms of a lease (11%), and living in unsafe rental housing (9%).



**Children and Custody** | Twenty-seven percent of households with parents or guardians of children under the age of 18 have experienced a civil legal problem related to children or custody in the past year. Related problems include difficulty collecting child support payments or setting up a child support obligation (affecting 13% of these households), being investigated by Child Protective Services (9%), and having trouble with custody or visitation arrangements (8%).



**Education** | Twenty-six percent of households with someone who is in school or someone who has a child in school have experienced at least one civil legal problem related to education in the past year. Problems in this area include being denied access to special education services or problems with access to learning accommodations (affecting 15% of these households), attending a school that was unsafe or had problems with bullying (9%), and being suspended from school (7%).





**Disability** | Twenty-three percent of low-income households where someone lives with disability report at least one civil legal problem related to disability in the past year. The most common problems are being denied state or federal disability benefits or services or having them reduced or terminated (affecting 14% of these households) and being denied or experiencing limited access to public programs, activities, or services because no reasonable accommodation was made (8%).



**Income Maintenance** | Twenty-two percent of low-income households have experienced at least one problem related to income maintenance in the past year. Related problems include not being approved for state government assistance or having that assistance reduced or terminated (affecting 15% of households), being denied or terminated from Social Security Disability income (SSDI) or Social Security Survivors benefit (6%), and being denied or terminated from Supplemental Security Income (SSI) (6%).

### Other Types of Civil Legal Problems

Other areas where low-income Americans report civil legal problems include the following:

**Employment.** Civil legal problems related to employment affect 19% of all low-income households. Problems include being terminated from a job for unfair reasons (8%), having a workplace grievance not taken seriously or not adequately addressed (7%), and being exposed to working conditions that were physically unsafe or unhealthy (7%).

**Family.** Civil legal problems related to family affect 17% of all low-income households. Problems include experiencing domestic violence or sexual assault (8%), filing for divorce or legal separation (5%), and situations where a vulnerable adult has been taken advantage of or abused (4%).

**Homeownership.** Civil legal problems related to homeownership affect 14% of low-income homeowners. Problems include falling several payments behind on a mortgage (9%) and having a home go into foreclosure (5%).

**Veterans' Issues.** Civil legal problems related to veterans' issues affect 13% of low-income households with veterans or other military personnel. Problems include difficulty getting medical care for service-related health conditions (9%), being denied service-related benefits (8%), and problems with discharge status (4%).

**Wills and Estates.** Civil legal problems related to wills and estates affect 9% of all low-income households. Problems include needing help drawing up a legal document like a will or advance directive (7%) and needing help with probate or administering an estate, trust, or will (5%).



## Civil legal problems affect people's lives.

Civil legal problems can have a substantial impact on people's lives. Many of the civil legal problems low-income Americans face relate to life-essential matters like losing a home, dealing with debt, or managing a health issue. There are also less direct, yet important, ways these problems affect people's lives. For example, other research has shown that the stress of dealing with civil legal issues can lead to mental health conditions like anxiety and depression, which further complicate the situations of the families affected.<sup>29</sup> Many civil legal problems, like having unsafe housing and losing benefits to buy food, can also pose a threat to physical health.

For each issue that respondents indicated they had personally experienced within the last 12 months, the survey asked them to rate the effect the problem had on them on a five-point scale from "not at all" to "severe." Seventy percent of low-income Americans who personally experienced a civil legal problem in the past year, say at least one of the problems has affected them "very much" or "severely." This amounts to more than half (55%) of all the problems personally experienced by low-income Americans. The types of problems most likely to have a substantial impact are those related to veterans' issues (85%),<sup>SB-1</sup> income maintenance (65%), employment (65%), rental housing (63%), and family (62%). See Figure 3 below.

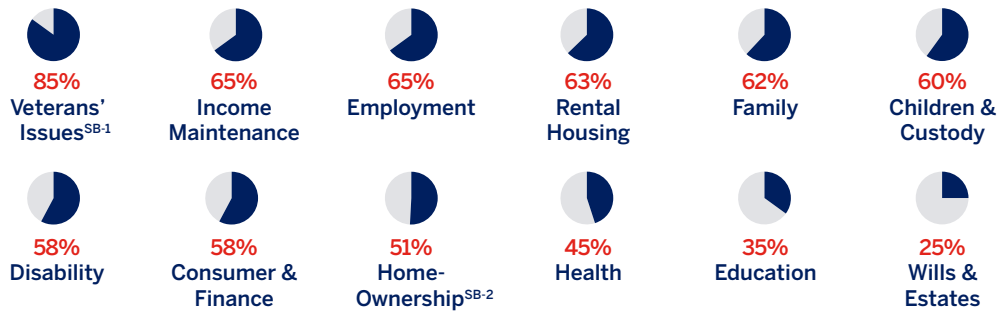
### [ CLIENT STORY ]



**Jill | Indiana | Housing** | Jill, a senior and legal guardian of two young granddaughters, faced possible homelessness. Jill's sole income came from Social Security Disability benefits, which qualified her for Section 8 subsidized housing. When Jill's apartment was cited for not meeting Section 8 standards, the landlord refused to make the repairs, and the housing authority stopped its payments. The landlord filed an eviction notice for failure to pay rent despite Jill's attempts to continue paying her portion of the rent. A legal aid attorney represented Jill in small claims court, and Jill and her two granddaughters were allowed to stay in the apartment while she searched for another suitable place to live. Without an eviction on her record, Jill retained her Section 8 eligibility and found a new, safe home for her granddaughters.

Source: LSC Client Success Stories.

Figure 3: Civil Legal Problems Substantially Affecting People's Lives<sup>30</sup>



Percent of personally experienced problems affecting individuals "very much" or "severely"



**70%** say at least one of their civil legal problems has "very much" or "severely" affected their lives.

[ CLIENT STORY ]



**Misty | Nebraska | Income Maintenance** | While giving birth to her third child, Misty, 32, went into cardiac arrest and was left with a serious heart condition that made her eligible for Social Security Disability benefits. She filed for benefits to help make ends meet and take care of her family, but was denied two times. With the help of legal aid attorneys, Misty's third application for disability benefits was expedited and shortly thereafter, she received a favorable decision. The decision, which granted her \$700 per month, also granted her Medicaid, which allowed her to secure a Ventricular Assist Device that has allowed her to live a more full life with her family again.

Source: LSC Client Success Stories.

**| Special Focus |** Civil legal problems are common among the groups highlighted in this report, and many have experienced multiple problems. Households with survivors of domestic violence or sexual assault are particularly likely to experience civil legal problems. Ninety-seven percent have experienced at least one problem in addition to their problems related to violence. Additionally, compared to other households, households with survivors tend to face more problems in a year and are more likely to experience problems in most of the issue areas covered in the survey.



**Seniors' Households** (n=286)

**56%** had at least 1 civil legal problem in past year

10% had 6+ problems in past year

Common problem areas: **Health (33%)**, and **Consumer/Finance (23%)**, and **Income Maintenance (13%)**



**Households in Rural Areas** (n=285)

**75%** had at least 1 civil legal problem in past year

23% had 6+ problems in past year

Common problem areas: **Health (43%)**, **Consumer/Finance (40%)**, and **Employment (25%)**



**Households with Veterans or Other Military Personnel** (n=297)

**71%** had at least 1 civil legal problem in past year

21% had 6+ problems in past year

Common problem areas: **Health (38%)**, **Consumer/Finance (36%)**, and **Employment (20%)**



**Households with Persons with Disabilities** (n=950)

**80%** had at least 1 civil legal problem in past year

32% had 6+ problems in past year

Common problem areas: **Health (51%)**, **Consumer/Finance (44%)**, **Income Maintenance (28%)**, and **Disability (23%)**



**Households with Parents/Guardians of children under 18** (n=874)

**80%** had at least 1 civil legal problem in past year

35% had 6+ problems in past year

Common problem areas: **Health (46%)**, **Consumer/Finance (45%)**, and **Income Maintenance (28%)**, **Custody (27%)**, **Family (26%)**, **Employment (26%)**, and **Education (25%)**



**Households with Recent Survivors of Domestic Violence/Sexual Assault (DV/SA)** (n=194)

**97%** had at least 1 civil legal problem in past year in addition to DV/SA

67% had 6+ problems

Common problem areas: **Consumer/Finance (66%)**, **Health (62%)**, **Employment (46%)**, **Rental Housing (45%)**, **Income Maintenance (44%)**, and **Family (40%)** (in addition to DV/SA)



## Seeking Legal Help



While most low-income Americans face at least one civil legal problem in a given year, only one in five seeks help from a legal professional. Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on which types of problems are most likely to receive legal attention, where people turn for legal help, what types of legal assistance they receive, and reasons why so many people do not seek legal help. One noteworthy finding from this section is that 86% of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.

### About the Data

The findings presented in this section come from a section of the 2017 Justice Gap Measurement Survey that asked detailed questions about a subset of the civil legal problems reported by respondents. For each respondent, the survey randomly selected up to four personally-experienced problems affecting them more than “not at all.” Due to the low incidence of problems relating to veterans’ issues and disabilities, these problems were always selected if they met the other criteria. Respondents answered questions about what, if any, help they sought to address each of these problems. The unit of analysis in this section is problems.

### **Low-income Americans do not seek the help of legal professionals for most of their civil legal problems.**

Low-income Americans report seeking the help of a legal professional for only 20% of their problems. Interestingly, people are only slightly more likely to seek professional legal help for problems that substantially affect them (24% of problems that affect them very much or severely) compared to problems that do not affect them much (17% of problems that affect them moderately or slightly).

Additionally, while we might expect to see differences in help-seeking behavior across education levels, low-income Americans with less education are only slightly less likely to seek professional legal help for their civil legal problems. Those with no more than a high school education seek professional legal help for 19% of their civil legal problems, and people with more education seek it for 22% of their civil legal problems. In fact, none of the differences observed by educational attainment are statistically significant.



Low-income Americans seek professional legal help for only  
**20%** of the civil legal problems they face.

### Low-income Americans get inadequate or no professional legal help for most of the civil legal problems they face.

Low-income Americans say they have received or expect to receive as much legal help as they need for 69% of the problems where they sought professional legal help. While this is a promising result, it is important to remember that they seek professional legal help for only 20% of their problems. Additionally, some respondents indicate that they tried to get professional legal help but were unable to do so.<sup>31</sup> Taking all of this together, we find that low-income Americans receive inadequate or no professional legal help for 86% of their civil legal problems in a given year.<sup>32</sup>

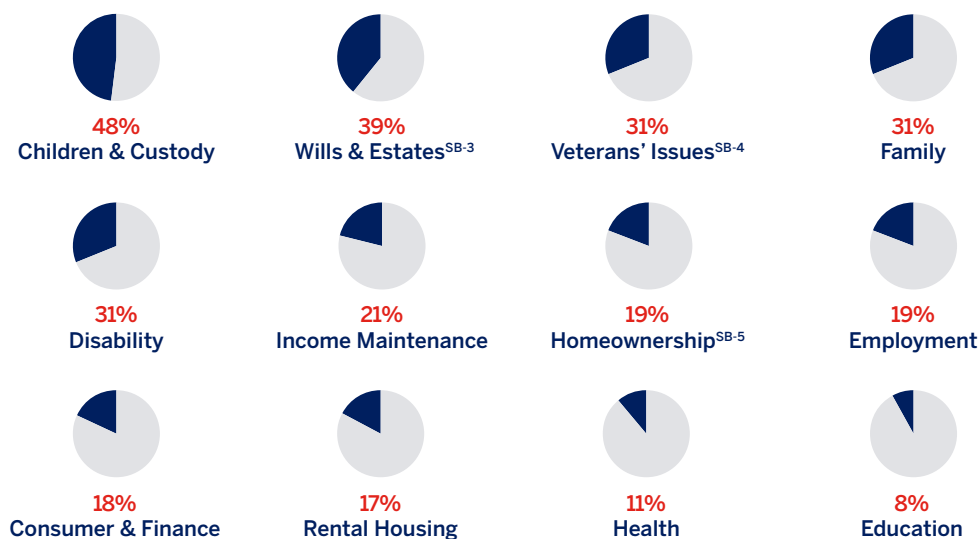


Low-income Americans receive inadequate or no professional legal help for **86%** of the civil legal problems they face in a given year.

### People are more likely to seek professional legal help for problems that are more plainly “legal” in nature.

People are most likely to seek professional legal help for problems related to children and custodial issues and wills and estates. Low-income Americans seek such help for 48% of their civil legal problems related to children and custody and for 39% of their problems related to wills and estates.<sup>SB-3</sup> Of all the civil legal problems explored in the survey, the ones in these categories are more obviously “legal.” Issues relating to children and child custody, for example, usually have to be decided or approved by a judge. Similarly, issues dealing with wills and estates involve legal paperwork and often lawyers as well.

While civil legal problems related to health issues and consumer and finance issues are the most commonly experienced problems among low-income Americans, they are not the problem areas most likely to get attention from a legal professional. As Figure 4 shows, people seek professional legal help for only 18% of their civil legal problems related to consumer and finance and for only 11% of those related to health.

**Figure 4: Civil Legal Problems for which Professional Legal Help Is Sought<sup>33</sup>**

Percent of issue-related problems for which professional legal help is sought

Base sizes vary.

### Low-income Americans who seek professional legal help rely on a variety of sources and most often receive help in the form of legal advice.

People who seek the help of a legal professional rely on various sources. They most often turn to legal aid organizations (30% of problems), paid private attorneys (29%), and social or human services organizations (24%). They go to volunteer attorneys 11% of the time and to disability service providers 10% of the time. Finally, low-income Americans reach out for help through legal hotlines for 8% of their civil legal problems.

As Figure 5 shows, when people get help from legal professionals, they are most likely to receive this help in the form of legal advice. Two in five (40%) problems receiving some sort of professional legal help are addressed with legal advice. People report receiving assistance filling out legal documents or forms for 21% of these problems, being represented by a legal professional in court for 20% of them, and getting help negotiating a legal case for 14% of them.



The legal services that people receive vary for at least two reasons. Of course, different types of problems require different types of help and to varying degrees. The help people receive also varies according to what resources might be available to help them address their specific civil legal needs. In the next section, discussion about the work of LSC grantees sheds light on how limited resources means that some cases receive more attention from legal aid professionals than others.

Figure 5: Types of Services Received from Legal Professionals<sup>34</sup>



[ CLIENT STORY ]



**Michaela | New Jersey | Veterans** | Michaela is a lifelong New Jersey resident, always living there except for six years serving in the armed forces in the 1990s. While stationed in Alabama, she divorced, but a name change was not included in the divorce. As a result, when she returned to New Jersey after her service ended, she was compelled to obtain a driver's license using her married name. Michaela used her maiden name in all other matters, causing issues in the various aspects of her life that involve identification (e.g., finances, utilities, leases, etc.). A legal aid attorney represented Michaela in a name change, permitting her to resume use of her maiden name and to once and for all clarify her identification in all aspects of her life.

Source: LSC Client Success Stories.

### **When people do not seek professional legal help, they often turn to other resources.**

Low-income Americans do not seek professional legal help for 78% of the civil legal problems they face in a given year. When someone does not seek such help, they turn to other resources about half of the time (for 54% of problems for which professional legal help is not sought). They speak with others who are not legal professionals (commonly friends and family members) for 33% of these problems, search for information online for 13% of these problems, or take both of these actions for 8% of these problems. When people search for information online, they often search for legal information about procedures to resolve a specific civil legal problem, legal rights on specific issues, or how to get legal assistance.<sup>35</sup>

### **Many people do not seek legal help because they think they can handle their problems on their own or because they do not know where to turn for help.**

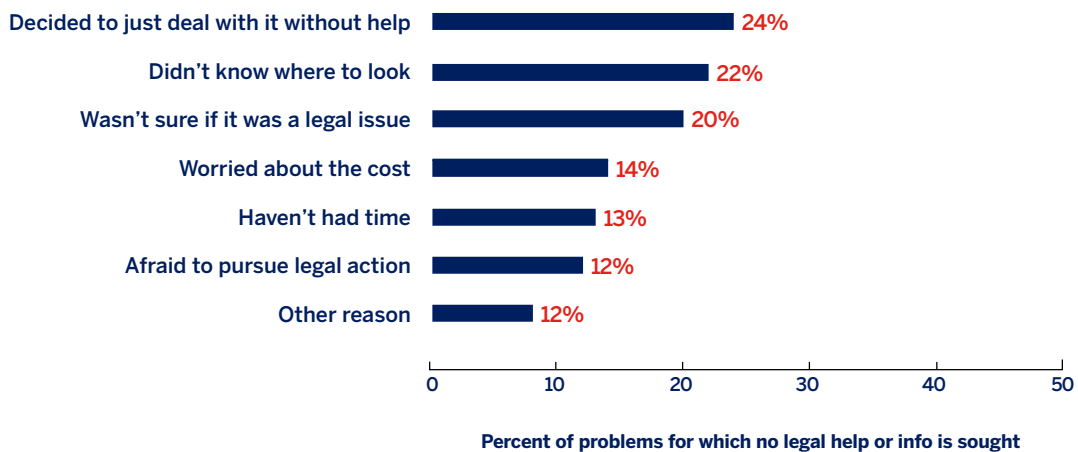
Combining the survey results on seeking professional legal help with those on searching for legal information online, we find that low-income Americans do not seek either type of legal help for 72% of the civil legal problems they face in a given year. Their reasons for not seeking either type of legal help or information are varied. See Figure 6. The most common reason is that they decide to deal with the problem on their own. This is cited 24% of the time. This is consistent with previous studies that find that many people are inclined to believe they can take care of their civil legal problems on their own.<sup>36</sup> The next most common type of reason relates to not knowing where to look for help or what resources might be available. People cite this type of reason 22% of the time.

### **Not seeing their problem as a “legal” problem is another major barrier to seeking legal help.**

We know from other studies related to the justice gap that a major reason people do not seek legal help is because they do not perceive their civil legal problems to be legal.<sup>37</sup> We find that low-income Americans cite this reason for one in five (20%) civil legal problems where no legal help was sought. This is also consistent with the findings above showing that people are more likely to seek professional legal help for issues that are more plainly legal in nature like custody issues and wills, and less likely to do so for problems like health and finances, which are not as obviously legal.

Other reasons people give for not seeking legal help are being concerned about the cost of seeking such help (14%), not having time (13%), and being afraid to pursue legal action (12%). See Figure 6.

**Figure 6: Reasons for Not Seeking Legal Help<sup>38</sup>**



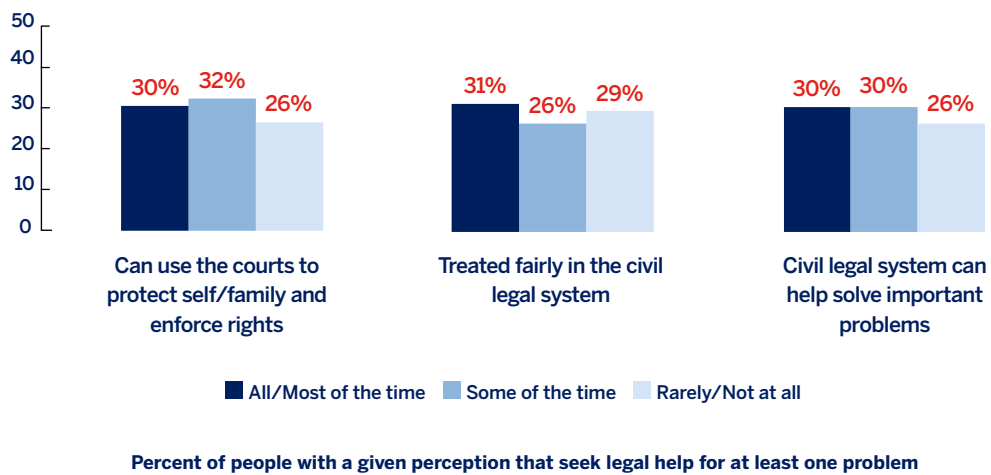
### Views of the justice system do not seem to influence whether or not one seeks legal help.

The survey asked respondents the following three questions to assess their perceptions of the civil legal system:

- To what extent do you think people like you have the ability to use the courts to protect yourself and your family or to enforce your rights?
- To what extent do you think people like you are treated fairly in the civil legal system?
- To what extent do you think the civil legal system can help people like you solve important problems such as those you identified in this survey?

We compared people offering more positive views with those offering more negative views to see if there are any noteworthy differences in their patterns of seeking legal help. More specifically, we compared people to see if those holding certain perceptions would be more or less likely than others to seek legal help for at least one of their civil legal problems explored in depth in the survey. They are not. Low-income Americans who view the system in a more negative light are no more or less likely to seek professional legal help or to search for legal information online. See Figure 7.

**Figure 7: Seeking Legal Help by Perceptions of the Civil Legal System<sup>39</sup>**



**| Special Focus |** Rates of seeking professional legal help do not vary much across the groups highlighted in this report.<sup>40</sup> All seek such help for only about one in five of their civil legal problems. For most, the two most common reasons for not seeking legal help are not knowing where to look and deciding to deal with the problem on their own. The only exception is recent survivors of domestic violence or sexual assault, who cite not being sure if a problem was a legal issue 31% of the time. Also noteworthy is that seniors are more likely than others to cite not having time as a reason for not seeking legal help.



**Seniors** (n=306 problems)

Seek professional legal help for  
**19%** of problems]

Top reasons for not seeking legal help: **didn't know** where to look (22%), **decided to deal with problem on own** (21%), and **didn't have time** (19%)



**Rural Residents** (n=558 problems)

Seek professional legal help for  
**22%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (26%), **wasn't sure if legal** (21%), and **didn't know where to look** (18%)



**Veterans** (n=511 problems)

Seek professional legal help for  
**21%** of problems

Top reasons for not seeking legal help: **didn't know** where to look (29%), **decided to deal with problem on own** (25%), and **wasn't sure if legal** (18%)



**Persons with Disabilities** (n=1986 problems)

Seek professional legal help for  
**20%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (25%), **didn't know where to look** (21%), and **wasn't sure if legal** (19%)



**Parents/Guardians of Children under 18**  
(n=1758 problems)

Seek professional legal help for  
**21%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (25%), **didn't know where to look** (21%), and **wasn't sure if legal** (20%)



**Survivors of Domestic Violence/Sexual Assault**  
(n=621 problems)

Seek professional legal help for  
**23%** of problems

Top reasons for not seeking legal help: **wasn't sure if legal** (31%), **didn't know where to look** (23%), and **decided to deal with problem on own** (20%)

## Reports from the Field



The previous section explored the demand side of the justice gap. This section explores the supply side. Using data from LSC's 2017 Intake Census, this section presents findings on the assistance low-income Americans receive after seeking help from an LSC-funded legal aid organization. One key finding is that, given the number of low-income Americans who are expected to seek help in 2017, LSC grantees will not be able to provide adequate legal assistance for an estimated 1 million civil legal problems due to a lack of resources.

## About the Data

Most of the findings in this section are based on analysis of the data collected during LSC's 2017 Intake Census. For six weeks in March and April 2017, LSC grantees tracked the individuals who contacted them seeking assistance with civil legal problems. Individuals coming to LSC grantees with problems were grouped into three main categories: unable to serve, able to serve to some extent (but not fully), and able to serve fully.<sup>41</sup> The resulting data permit estimates of the rates at which people seeking legal help for a problem from LSC-funded legal aid organizations receive the legal assistance necessary to meet their needs. The unit of analysis in this section is problems.<sup>42</sup>

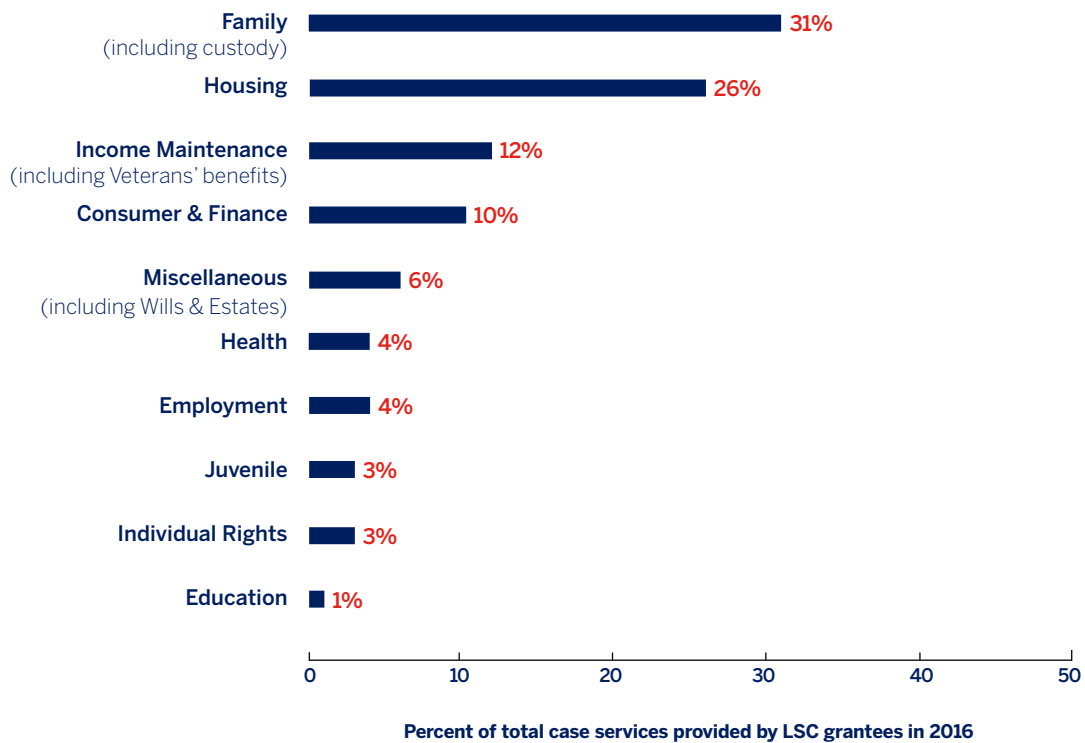
### **More than half of the problems receiving legal case services from LSC-funded legal aid programs involve family and housing issues.**

As a general rule, to be eligible for LSC-funded legal assistance, an individual must have a family income at or below 125% of the Federal Poverty Level (FPL), and their civil legal problem cannot be related to issues for which use of LSC funds is prohibited, like abortion, euthanasia or class-action litigation.<sup>43</sup> We will refer to civil legal problems that meet these criteria as “eligible problems” or “eligible civil legal problems” throughout this section.

Not all income-eligible individuals with a legal problem receive the legal assistance they need. To maximize the use of available legal aid resources, LSC grantees develop guidelines on the types of legal problems they prioritize for service. LSC requires grantees to conduct comprehensive legal needs assessments in their communities on a regular basis to inform these guidelines. Some income-eligible individuals have problems that fall within these priority guidelines, but still do not receive the assistance they need for other reasons. We examine these instances throughout this section, trying to assess the extent to which they are shaped by a lack of resources.



The types of problems for which LSC grantees provided case services in 2016 are summarized in Figure 8.<sup>44</sup> Family problems, including child custody, as well as housing problems like evictions and rental repairs, form the bulk of LSC grantees' casework. The reader will notice that the distribution across the problem categories reported by LSC grantees is different from the distribution of problems experienced by low-income Americans that was presented in Section 2 (see Figure 2). This is due in large part to the types of problems LSC grantees prioritize as well as the fact that people are more likely to seek legal help for certain types of problems, as was discussed in Section 3.

**Figure 8: Civil Legal Case Services by Problem Category, 2016<sup>45,46</sup>**

**In 2017, low-income Americans are expected to approach LSC-funded legal aid organizations for help with more than 1.7 million civil legal problems.**

During LSC's six-week-long Intake Census, low-income Americans approached grantees for assistance to address nearly 196,000 eligible civil legal problems. Based on this, we project that low-income Americans will approach LSC grantees with an estimated 1.7 million eligible civil legal problems in 2017.

Our projection likely underestimates the number of eligible problems that will be brought to LSC grantees. While the vast majority (89%) of reporting grantees said their intake during this six-week period was typical in terms of the number and type of problems brought to them, 12 grantees reported they processed fewer problems than normal due to staff shortages, office closures, or other reasons. Three other grantees reported it was atypical in other ways, including one who says they experienced more traffic than usual. Additionally, one grantee (out of a 133 total grantees) did not report any data for



the Intake Census and, thus, the problems they processed during the six-week period are not accounted for in the sample counts nor in the 12-month projections. Finally, LSC grantees counted individuals (not problems or case services) during the Intake Census, and it is possible that one person could seek assistance for more than one civil legal problem.

It is important to keep in mind that these estimated 1.7 million civil legal problems represent less than 6% of the total civil legal problems faced by low-income Americans. Recall from Section 3 that low-income Americans seek professional legal help for only 20% of their civil legal programs, and they turn to legal aid organizations for only 30% of the problems for which they seek such help. Taken together, this means they seek professional legal help from legal aid organizations 6% of the time. Note that this corresponds to help sought from the set of all legal aid organizations in the U.S., not just those funded by LSC.

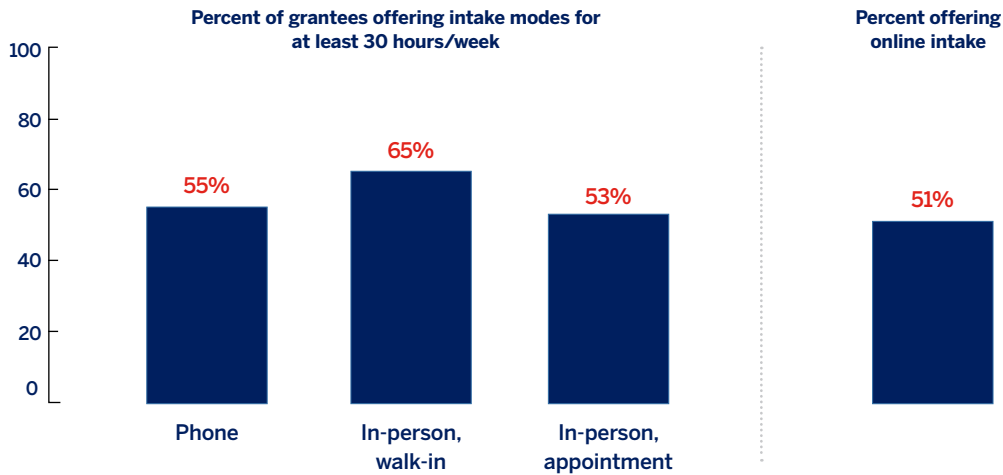
**Low-income Americans likely seek the help of legal aid organizations for even more problems that do not get processed for intake.**

The estimated 1.7 million problems low-income Americans will bring to LSC grantees in 2017 is more accurately described as the number of problems that LSC grantees will process for intake in 2017. There are likely other problems that people consider bringing or try to bring to an LSC grantee, but are unable to get to or through the point of intake. These situations are not captured in the Intake Census data. It is difficult to know how often this happens, but because legal aid organizations can only offer intake for so many hours and in so many ways, it is bound to happen. The types and availability of various intake modes varies across LSC grantees, depending on the resources they have at their disposal (e.g., staffing, technology, and other resources).

There are three primary intake modes currently offered by LSC-funded legal aid organizations:

- In-person: This a face-to-face interview that takes place at the legal aid program's office. This can happen on a walk-in basis or as the result of an appointment.
- Phone: This involves conducting the screening process over the phone. This often involves a mix of going through an automated process (e.g., "press two if you...") and speaking with a legal aid staff member directly.
- Online: This method involves submitting interview information via an online form or web application.

**Figure 9: Intake Modes Offered by LSC-funded Legal Aid Programs<sup>47</sup>**



Most legal aid organizations have set hours for intake, which are scheduled times when new requests for assistance are received. Intake hours can vary for a variety of reasons, including program resources and community needs. Online options are the exception; these screening tools are usually available continuously and monitored regularly by staff during business hours.

When grantees submitted their Intake Census data to LSC, they also indicated how many hours per week they offered various intake modes (on average). Figure 9 presents the percent of LSC grantees that offer various intake modes for at least 30 hours per week and that offer online intake. Sixty-five percent of grantees offer in-person intake on a walk-in basis for at least 30 hours per week; 53% offer in-person intake by appointment for at least 30 hours per week; and 55% offer intake by phone for at least 30 hours per week. About half (51%) of LSC grantees offer online modes of intake.

### [ CLIENT STORY ]



**Donna | New York | Domestic Violence** | Donna, a rural resident of New York State, suffered from severe mental health problems resulting from domestic violence and the sexual abuse of one of her children. She did not feel comfortable speaking about her situation before contacting an LSC grantee, who helped her address various civil legal problems she was facing. Specifically, the legal aid attorney helped Donna avoid a workfare sanction by the local Department of Social Services and won her SSI appeal, permanently removing her from the county welfare rolls. Donna received over \$40,000 in retroactive SSI benefits, which has allowed her to establish her own home and provide a college education for her child.

**Low-income Americans receive some kind of legal help for 59% of the eligible civil legal problems they bring to LSC-funded organizations.**

In 2017, LSC grantees will provide some form of legal assistance for an estimated 999,600, or 59%, of eligible problems presented by low-income Americans. The type and extent of help vary, depending on the requirements and complexity of a given problem and the resources available. From the Intake Census data, we can group eligible problems for which LSC grantees provide assistance into three main categories: “fully served”; “served, but not fully”; and “served, but extent of service pending” (or, for short, “served, extent pending”). This information is summarized in Table 1 along with corresponding 12-month projections for 2017.

**Table 1: Distribution of Eligible Problems by Extent of Service<sup>48</sup>**

	Percent of total eligible problems	Total from 2017 Intake Census sample	Total 12-month projection
<b>Total eligible problems</b>	<b>100%</b>	<b>195,776</b>	<b>1,701,400</b>
<b>Total served to some extent</b>	<b>59%</b>	<b>115,024</b>	<b>999,600</b>
<b>Served fully</b>	<b>28%</b>	<b>54,657</b>	<b>475,000</b>
<b>Served, but not fully</b>	<b>21%</b>	<b>41,371</b>	<b>359,500</b>
<b>Served, but extent of service is pending</b>	<b>10%</b>	<b>18,996</b>	<b>165,100</b>
<b>Not served</b>	<b>41%</b>	<b>80,752</b>	<b>701,800</b>
<b>Total problems not served or not served fully (excluding pending)</b>	<b>62%</b>	<b>122,123</b>	<b>1,061,300</b>
<b>Total problems not served or not served fully (including pending)</b>	<b>72%</b>	<b>141,119</b>	<b>1,226,400</b>

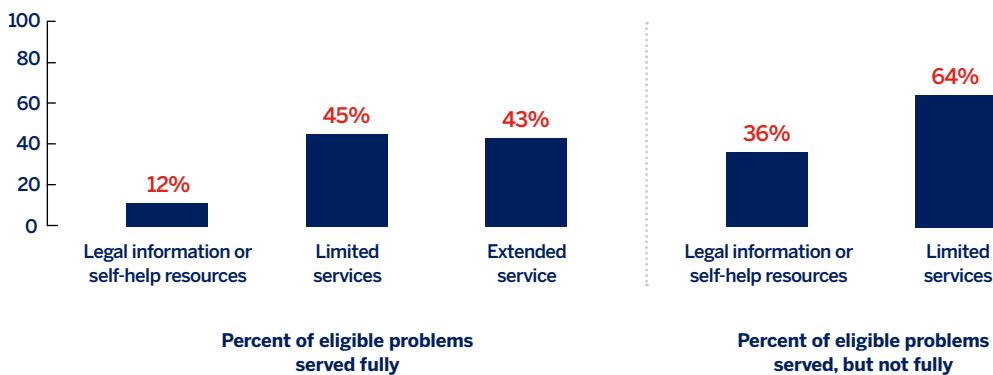
**Problems fully served**

LSC grantees reported they will be able to “fully serve” at least 28% of all the eligible problems low-income Americans presented during the intake census (see Table 1 above). In these instances, people receive legal assistance expected to fully address their legal needs. This can take the form of providing legal information or self-help resources (12% of fully-served problems) or of “limited services” like providing legal advice, speaking with third parties on behalf of a client, or helping to prepare legal documents (45% of fully-served problems).<sup>49</sup> Another 43% of fully-served problems receive “extended service,” which includes cases in which a legal aid attorney represents a client in negotiated settlements (with or without litigation), in administrative agency hearings or other administrative processes, or in a court proceeding.<sup>50</sup> See Figure 10.

### Problems served, but not fully

Of all the eligible problems low-income Americans presented to LSC grantees during the intake census, at least 21% will receive some legal assistance, but not to the extent necessary to fully address the clients' legal needs (see Table 1 above). Help for people with these “served, not fully” problems takes the form of providing legal information or self-help resources (36% of problems served, but not fully) and “limited service” like providing legal advice, speaking with third parties on behalf of a client, or help preparing legal documents (64% of problems served, but not fully).<sup>51</sup> See Figure 10.

**Figure 10: Types of Legal Assistance Provided<sup>52</sup>**



### Problems served, but extent of service pending

At the conclusion of the Intake Census, LSC grantees had not yet determined the level of legal assistance for 10% of eligible problems presented to them.

### After seeking legal assistance from LSC grantees, low-income Americans will not receive any legal assistance for an estimated 700,000 eligible problems in 2017.

Forty-one percent of the eligible problems low-income Americans presented to LSC grantees during the intake census will not receive any legal help from grantees. This corresponds to slightly more than an estimated 700,000 problems for 2017. There are many reasons why an individual with an eligible civil legal problem might not receive legal assistance. More than half (54%) of these problems are not served because they fall outside of the guidelines grantees use to prioritize eligible problems due to limited resources. About one in four (24%) eligible problems falls within grantees' priorities, but is not served due to insufficient resources. A small portion (6%) are not served because

the grantee has identified a conflict of interest. For example, the organization might already be representing another party to the dispute. Finally, 16% do not receive legal assistance for other reasons, often involving situations where contact with a client is lost.

### **Low-income Americans will receive insufficient or no legal help for an estimated 1.1 million eligible problems this year alone.**

Estimating the number of eligible problems for which low-income Americans will receive insufficient legal help (“underserved”) or no legal help (“unserved”) requires making some assumptions. Because the extent of legal assistance provided for the problems currently categorized as “served, but extent pending” is not known, we cannot provide a simple estimate for the percent of eligible problems that receive insufficient or no legal assistance. However, by making some assumptions about the extent to which these problems will be served, we can arrive at a range of estimates. We find that between 62% and 72% of all eligible problems brought to LSC grantees either receive no legal assistance or receive a level of assistance that is not expected to fully address the client’s legal needs. That corresponds to an estimated 1.1 to 1.2 million eligible civil legal problems expected to go unserved or underserved in 2017 alone.

The 62% figure underestimates the problems unserved or underserved. It treats “served, but extent pending” problems as being “served fully.” Conversely, the 72% figure is an overestimation, treating “served, but extent pending” problems as “served, but not fully.” In reality, the rate will fall somewhere in between. See Table 1 above.

### **A lack of available resources accounts for the vast majority of eligible civil legal problems that go unserved or underserved.**

Civil legal problems that are unserved or underserved due to limited resources account for the vast majority of the problems that do not receive the assistance necessary to fully address the client’s needs. Table 2 presents two estimates of the number of eligible problems that go unserved or underserved for this reason. Overall, we estimate that insufficient resources account for between 85% and 97% of all unserved or underserved eligible problems, representing 53% to 70% of all eligible problems. This corresponds to an estimated range of about 900,000 to 1.2 million problems for which the assistance necessary to meet the legal needs of low-income Americans cannot be provided due to a lack of resources. See Table 2.

The upper-bound estimate of 97% is likely an overestimation. Only problems that involve a conflict of interest between parties are not included, corresponding to 3% of unserved or underserved problems. In this case, we assume the worst-case scenario and count all of the “served, but extent pending” problems as served but not to the full extent necessary and attribute this to a lack of resources.

**Table 2: Estimates of Eligible Problems that are Unserved or Underserved Due to a Lack of Resources<sup>53</sup>**

	Lower-bound	Upper-bound
Intake Census sample count	104,364	136,278
12-month projection count	907,000	1,184,300
Percent of all eligible problems	53%	70%
Percent of all eligible problems that are unserved or underserved	85%	97%

Additionally, this 97% estimate treats eligible problems that go unserved due to “other reasons” as unserved due to a lack of resources, because many of the underlying reasons could potentially be resolved or avoided if there were more resources. For example, these reasons often involve situations where legal aid staff lose touch with clients. If there were more resources to facilitate follow-up by legal aid staff or to help clients with transportation to and from meetings, for example, many of these problems would receive the legal assistance needed. To create a simple upper-bound estimate, we assume all of these problems would have received the necessary legal assistance had more resources been available.

The lower-bound estimate of 85% is likely an underestimation. In this case, we assume that all of the “served, but extent pending” problems will be served to the full extent necessary and that none of the problems that are unserved for “other reasons” could have been successfully served had more resources been available.

See Appendix B4 for a detailed explanation of how these estimates were calculated.



In 2107, an estimated **1 million civil legal problems** brought to LSC grantees by low-income Americans **will not receive the legal assistance required** to fully address their needs due to a lack of available resources.

## **Special Focus**



This section presents key findings for the six groups of low-income Americans highlighted throughout this report. These groups include seniors, persons with disabilities, veterans, parents and guardians of children under 18, rural residents, and survivors of domestic violence or sexual assault.

65+

## Seniors

### Key findings related to the civil legal needs and experiences of low-income seniors include the following:

- Approximately 6.4 million seniors have family incomes below 125% of FPL.<sup>a</sup>
- 56% of low-income seniors' households experienced a civil legal problem in the past year, including 10% that have experienced 6+ problems.<sup>b</sup>
- LSC-funded legal aid organizations provided legal services to low-income Americans aged 60+ years old for about 135,000 cases in 2016.<sup>c</sup>
- The most common types of civil legal problems for low-income seniors' households include: health (33%), consumer and finance (23%), income maintenance (13%), and wills and estates (12%).<sup>b</sup>
- Low-income seniors seek professional legal help for 19% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.<sup>b</sup>
- The top reasons low-income seniors give for not seeking legal help include the following:<sup>b</sup>
  - Not knowing where to look or what resources were available (22%)
  - Deciding to deal with problem on their own (21%)
  - Not having time (19%)
  - Wasn't sure if it was a legal issue (17%)

Low-income seniors **received inadequate or no professional legal help** for **87%** of their civil legal problems in 2017.

#### [ CLIENT STORY ]



**Helen | Pennsylvania | Income Maintenance** | Helen is a 68-year-old widow whose only income is a monthly Social Security Administration (SSA) widow's benefit. When she sought help from an LSC grantee, she was scared, vulnerable and overwhelmed. She had just received a letter from the SSA indicating they had overpaid her \$47,000 and notifying her that they would stop her monthly benefit payment until the debt was repaid. The legal aid attorney found that the overpayment was caused by fraudulent conduct by Helen's late ex-husband that occurred after their divorce and long after they had separated. The attorney helped Helen resolve the situation, and she continued to receive her SSA widow's benefit.

Source: LSC Client Success Stories.

<sup>a</sup>U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. Senior is defined as ages 65+. <sup>b</sup>2017 Justice Gap Measurement Survey. <sup>c</sup>2016 Legal Services Corporation Grantee Activity Report.





## Rural Residents

### Key findings related to the civil legal needs and experiences of low-income, rural residents include the following:

- Approximately 10 million rural residents have family incomes below 125% of FPL.<sup>a</sup>
- 75% of low-income rural households experienced a civil legal problem in the past year, including 23% that have experienced 6+ problems.<sup>b</sup>
- The most common types of civil legal problems among low-income, rural households include: health (43%), consumer and finance (40%), and employment (25%).<sup>b</sup>
- Low-income rural residents seek professional legal help for 22% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 86% of all their problems.<sup>b</sup>
- The top reasons low-income, rural residents give for not seeking legal help include the following:<sup>b</sup>
  - Deciding to deal with problem on their own (26%)
  - Wasn't sure if it was a legal issue (21%)
  - Not knowing where to look or what resources were available (18%)

Low-income rural residents received inadequate or no professional legal help for **86%** of their civil legal problems in 2017.

### [ CLIENT STORY ]



**Charles | California | Housing** | Charles and his wife care for their elderly parents and grandchildren in their home in rural California. They first experienced financial problems when Charles's employer reduced his work hours. Then he became ill from a life-threatening disease. He and his wife asked their lending bank for help. When the bank did not respond to their modification request, they sought help from an LSC grantee. The legal aid staff succeeded in obtaining a modification that lowered their monthly mortgage payment and established a fixed payment for principal and interest.

Source: LSC Client Success Stories.

<sup>a</sup>U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. Senior is defined as ages 65+. <sup>b</sup>2017 Justice Gap Measurement Survey.



## Veterans

### Key findings related to the civil legal needs and experiences of low-income veterans and other military personnel include the following:

- More than 1.7 million veterans have family incomes below 125% of FPL.<sup>a</sup>
- 71% of low-income households with veterans or other military personnel experienced a civil legal problem in the past year, including 21% that have experienced 6+ problems.<sup>b</sup>
- LSC-funded legal aid organizations provided legal services to low-income households with veterans for about 41,000 cases in 2016.<sup>c</sup>
- The most common types of civil legal problems for low-income households with veterans and other military personnel include: health (38%), consumer and finance (36%), and employment (20%).<sup>b</sup>
- Low-income veterans and other military personnel seek professional legal help for 21% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 88% of all their problems.<sup>b</sup>
- The top reasons low-income veterans and other military personnel give for not seeking legal help include the following:<sup>b</sup>
  - Not knowing where to look or what resources were available (29%)
  - Deciding to deal with problem on their own (25%)
  - Wasn't sure if it was a legal issue (18%)

Low-income veterans and other military personnel **received inadequate or no professional legal help** for **88%** of their civil legal problems in 2017.

### [ CLIENT STORY ]



**Bud | West Virginia | Veteran Benefits** | Bud is a 68 year-old Vietnam veteran who had been receiving his Marine pension benefits for the past eight years. After a government clerk keyed in the wrong social security number, his benefits were suspended. Moreover, the Department of Veterans Affairs (VA) deemed the money he had been receiving as overpayment and threatened action against him. Bud tried to correct his record, but he was having a difficult time and, meanwhile, his savings were being depleted. An attorney with an LSC grantee's Veteran's Assistance Program worked with the Social Security office, the VA, and the Internal Revenue Service, and was eventually able to establish Bud's identity, win reinstatement of his pension, and resolve the false overpayment issue.

Source: LSC Client Success Stories.

<sup>a</sup>U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. Senior is defined as ages 65+. <sup>b</sup>2017 Justice Gap Measurement Survey. <sup>c</sup>2016 Legal Services Corporation Grantee Activity Report.



## Persons with Disabilities

### Key findings related to the civil legal needs and experiences of low-income persons with disabilities include the following:

- More than 11.1 million people with a disability have family incomes below 125% of FPL.<sup>a</sup>
- 80% of low-income households with someone with a disability experienced a civil legal problem in the past year, including 32% that have experienced 6+ problems.<sup>b</sup>
- The most common types of civil legal problems among low-income households with someone with a disability include: health (51%), consumer and finance (44%), income maintenance (28%), and disability (23%).<sup>b</sup>
- Low-income persons with a disability seek professional legal help for 20% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.<sup>b</sup>
- The top reasons low-income persons with a disability give for not seeking legal help include the following:<sup>b</sup>
  - Deciding to deal with problem on their own (25%)
  - Not knowing where to look or what resources were available (21%)
  - Wasn't sure if it was a legal issue (19%)

Low-income persons with a disability **received inadequate or no professional legal help** for **87%** of their civil legal problems in 2017.

#### [ CLIENT STORY ]



**Elinor | New York | Housing** | Elinor has a daughter with a disability who had to crawl four flights of stairs each day to their apartment. Her daughter spent about 30 minutes sliding down the steps to reach the wheelchair stashed under the stairwell alcove and more than an hour getting in and out of her building to attend school five days a week. When there was a vacancy on the ground floor, Elinor sought to move there, but the landlord told them “transfers” weren’t allowed. Represented by an LSC grantee lawyer, the family was able to acquire the apartment on the ground floor and maintain their \$700 rent for their three-bedroom, rent-controlled apartment.

Source: LSC Client Success Stories.

<sup>a</sup>U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. <sup>b</sup>2017 Justice Gap Measurement Survey.



## Parents of Children under 18

### Key findings related to the civil legal needs and experiences of low-income parents and guardians of minor children include the following:

- Approximately 18 million families with related children under 18 have incomes below 125% of FPL.<sup>a</sup>
- 80% of low-income households with parents or guardians of minor children experienced a civil legal problem in the past year, including 35% that have experienced 6+ problems.<sup>b</sup>
- Common types of civil legal problems among low-income households with parents or guardians of minor children include: health (46%), consumer and finance (45%), income maintenance (28%), children and custody (27%), family (26%), employment (26%), and education (25%).<sup>b</sup>
- Low-income parents and guardians of minor children seek professional legal help for 21% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.<sup>b</sup>
- The top reasons low-income parents and guardians of minor children give for not seeking legal help include the following:<sup>b</sup>
  - Deciding to deal with problem on their own (25%)
  - Not knowing where to look or what resources were available (21%)
  - Wasn't sure if it was a legal issue (20%)

Low-income parents and guardians of minor children **received inadequate or no professional legal help** for **87%** of their civil legal problems in 2017.

### [ CLIENT STORY ]



**Patricia | Georgia | Education** | Patricia was worried about her 13-year-old daughter, a middle-schooler diagnosed with leukemia. She was being bullied at school and, because she was often ill or hospitalized, she needed help with academics and extra time to complete assignments. After speaking with school officials, Patricia did not feel her concerns were being heard. LSC grantee lawyers worked with the school to develop a special education plan, bringing in an education specialist from the hospital where her daughter was being treated. An individual education plan (IEP) was developed, giving Patricia's daughter the extra support she needed and permission to wear a hat to cover her bald head. School officials also addressed the bullying, making her time in school safer and more productive.

Source: LSC Client Success Stories.

<sup>a</sup>CPS Table Creator, Current Population Survey Annual Social and Economic Supplement, US Census Bureau, 2016. <https://www.census.gov/cps/data/cpstablecreator.html>. <sup>b</sup>2017 Justice Gap Measurement Survey.



## Survivors of Domestic Violence or Sexual Assault

### Key findings related to the civil legal needs and experiences of low-income survivors of domestic violence or sexual assault include the following:

- Rates of intimate partner violence among people with family incomes at or below 100% of FPL are about four times higher than the rates among people with incomes at or above 400% of FPL.<sup>a</sup>
- 97% of low-income households with survivors of recent domestic violence or sexual assault (DV/SA) experienced a civil legal problem in the past year (in addition to problems related to DV/SA), including 67% that have experienced 6+ problems.<sup>b</sup>
- Common types of civil legal problems among low-income households with recent survivors include: consumer and finance (66%), health (62%), employment (46%), rental housing (45%), income maintenance (44%), and family (40%) (in addition to DV/SA-related problems).<sup>b</sup>
- Low-income survivors seek professional legal help for 23% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 86% of all their problems.<sup>b</sup>
- The top reasons low-income survivors give for not seeking legal help include the following:<sup>b</sup>
  - Wasn't sure if it was a legal issue (31%)
  - Not knowing where to look or what resources were available (23%)
  - Deciding to deal with problem on their own (20%)

Low-income survivors of recent domestic violence or sexual assault **received inadequate or no professional legal help** for **86%** of their civil legal problems in 2017.

### [ CLIENT STORY ]



**Frida | Washington | Domestic Violence** | Frida, a domestic violence survivor, and her four children, fled abuse at the hands of her husband. The children were sexually molested by their father, confined to the house, and repeatedly threatened with weapons. During the subsequent divorce, the husband was granted unsupervised telephone contact with the children. When one child became suicidal, a legal aid attorney helped Frida secure an order to stop the phone calls. The grantee was able to secure a lifetime protection order and child support. Frida has since started her own business, and her children are doing well in therapy.

Source: LSC Client Success Stories.

<sup>a</sup>Erika Harrell, Ph.D., and Lynn Langton, Ph.D., BJS Statisticians, Marcus Berzofsky, Dr.P.H., Lance Couzens, and Hope Smiley-McDonald, Ph.D., *RTI International, Household Poverty and Nonfatal Violent Victimization, 2008–2012*, Table 2, Rate of violent victimization, by victim–offender relationship and poverty level, 2008–2012.  
<sup>b</sup>2017 Justice Gap Measurement Survey.

- <sup>1</sup> This is how the Legal Services Corporation (LSC) defines the justice gap and is consistent with the way others in the literature on the topic use the term.
- <sup>2</sup> New York State Courts Access to Justice Program, “Report to the Chief Judge and the Chief Administrative Judge of the State of New York,” 2015. [www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2015report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2015report.pdf).
- <sup>3</sup> James J. Sandman, “Rethinking Access to Justice”, Hawaii Access to Justice Conference, June 20, 2014. <http://www.lsc.gov/rethinking-access-justice-james-j-sandman-hawaii-access-justice-conference>.
- <sup>4</sup> Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans*. September 2005 (Updated June 2007 and September 2009). <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>; and [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).
- <sup>5</sup> American Bar Association. 1994. *Legal Needs and Civil Justice: A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study*. [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/downloads/legalneedstudy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf).
- <sup>6</sup> See, for example: Documenting the Justice Gap in Michigan, State Bar of Michigan in Collaboration with Michigan’s Legal Services Corporation Funded Providers, Spring 2012 (Updated Spring 2015). <http://www.michbar.org/file/programs/atj/pdfs/JusticeGap.pdf>;  
Florida Commission on Access to Civil Justice Interim Report, October 1, 2015. [http://devlamp2.flabar.org/wordpress/flaccesstojustice/wp-content/uploads/sites/3/2015/10/CivilLegalNeedsstudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](http://devlamp2.flabar.org/wordpress/flaccesstojustice/wp-content/uploads/sites/3/2015/10/CivilLegalNeedsstudy_October2015_V21_Final10_14_15.pdf).
- <sup>7</sup> Washington State Supreme Court’s Civil Legal Needs Study Update Committee. 2015. *2015 Washington State Civil Legal Needs Study Update*. [http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).
- <sup>8</sup> Unfortunately, given the nature of the data analyzed in Section 4, it was not possible to present findings specific to these groups in that section.
- <sup>9</sup> These figures include only problems for which LSC funds may be used to help an individual based on the person’s income and the type of problem they are facing. LSC eligibility is discussed in further detail in Section 4.
- <sup>10</sup> See 45 CFR part 1611.3 (October 2015 Edition): <https://www.gpo.gov/fdsys/pkg/CFR-2015-title45-vol4/pdf/CFR-2015-title45-vol4-subtitleB-chapXVI.pdf>. In limited circumstances, an LSC grantee can provide legal assistance to individual up to an income of 200% of the federal poverty level: 45 CFR Part 1611.5.
- <sup>11</sup> See Appendix B1 for details on the data used and estimates made.
- <sup>12</sup> *U.S. Federal Poverty Guidelines used to Determine Financial Eligibility for Certain Federal Programs*, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, January 2017. <https://aspe.hhs.gov/poverty-guidelines>. Note that these guidelines are estimated by household size for households in the 48 contiguous states, with higher guidelines issued for households in Hawaii and Alaska, where Americans face higher prices on average for basic household necessities.
- <sup>13</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, *Table S1701, Poverty Status in the Past 12 Months*. The base for this estimate is the entire population for whom poverty status is determined.
- <sup>14</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the entire population for whom poverty status is determined.

## Endnotes

- <sup>15</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the total number of people for whom poverty status is determined in the state.
- <sup>16</sup> This map is based on the map presented in the Legal Services Corporation FY2018 Budget Request, available at <http://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>. The data are from the U.S. Census Bureau, 2015 American Community Survey 1-year estimates, Table S1701, Poverty Status in the Past 12 Months.
- <sup>17</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the total number of people for whom poverty status is determined in the U.S who are age 25+.
- <sup>18</sup> Charn, Jeanne. "Celebrating the 'Null' Finding: Evidence-Based Strategies for Improving Access to Legal Services," 122 *The Yale Law Journal*, 2206-2234 (2013).
- <sup>19</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the estimated number of people below 125% FPL.
- <sup>20</sup> Greene, Sara Sternberg. "Race, Class, and Access to Civil Justice," 101 *Iowa Law Review* 1234-1322 (2016).
- <sup>21</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. Senior is defined as ages 65+.
- <sup>22</sup> American Community Survey Single Year Estimates, 2015. Table C17024: Age by Ratio of Income to Poverty Level in the Past 12 Months. Geography: United States – Rural. The ACS defines rural as 'Territory, population and housing units not classified as urban. 'Rural' classification cuts across other hierarchies and can be in metropolitan or non-metropolitan areas.' See <https://factfinder.census.gov/help/en/index.htm#rural.htm>.
- <sup>23</sup> Calculated from U.S. Bureau of the Census, American Community Survey 2015 1-Year Estimates, *Table S1701: Poverty Status In The Past 12 Months and Table S2101: Veteran Status*. To compute this estimate, the ratio of the estimated number of persons with incomes less than 125% of FPL to Persons with incomes less than 100% FPL was applied to the total number of veterans below 100% FPL to estimate the number of veterans below 125% FPL.
- <sup>24</sup> U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*.
- <sup>25</sup> CPS Table Creator, Current Population Survey Annual Social and Economic Supplement, US Census Bureau, 2016. <https://www.census.gov/cps/data/cpstablecreator.html>.
- <sup>26</sup> Erika Harrell, Ph.D., and Lynn Langton, Ph.D., BJS Statisticians, Marcus Berzofsky, Dr.P.H., Lance Couzens, and Hope Smiley-McDonald, Ph.D., *RTI International, Household Poverty and Nonfatal Violent Victimization, 2008–2012*, Table 2, Rate of violent victimization, by victim–offender relationship and poverty level, 2008–2012, see <https://www.bjs.gov/content/pub/pdf/hpnr0812.pdf>.
- <sup>27</sup> 2017 Justice Gap Measurement Survey, 2017, computed variables indicating whether households and individuals experienced at least one civil legal problem in each category in the past 12 months, based on several questionnaire items.
- <sup>28</sup> Base sizes vary and can be referenced in the supporting Justice Gap Appendix B2 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).

- <sup>29</sup> Rebecca L. Sandefur, "Accessing Justice in the Contemporary United States. Findings from the Community Needs and Services Study," American Bar Foundation and University of Illinois at Urbana-Champaign, August 2014; Megan Sandel, Mark Hansen, Robert Kahn, Ellen Lawton, Edward Paul, Victoria Parker, Samantha Morton, and Barry Zuckerman, "Medical-Legal Partnerships: Transforming Primary Care by Addressing the Legal Needs of Needs of Vulnerable Populations," 29 *Health Affairs* 9, 1697-1705.
- <sup>30</sup> 2017 Justice Gap Measurement Survey, 2017, computed variable indicating the severity of each civil legal problem that was personally experienced, based on responses to questionnaire items asking: How much did the following issue(s) personally affect you? Response options: not at all, slightly, moderately, very much, and severely.
- <sup>SB1</sup>Note small base size of n=56 for personally experienced problems relating to veterans' issues; this statistic has a large standard error. See Justice Gap Appendix B2 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).
- <sup>SB2</sup>Note small base size of n=84 for personally experienced problems relating to homeownership; this statistic has a large standard error. See Justice Gap Appendix B2
- <sup>31</sup> At certain points in the survey, some respondents were able to indicate that they had sought help but did not receive it. Unfortunately, not all respondents who sought help had the opportunity to explicitly indicate this so it is not possible to give an estimate of how often this occurs.
- <sup>32</sup> This figure includes problems for which respondents indicated (1) they sought no help of any kind, (2) they sought some sort of assistance from others and/or information online, but they did not seek the help of a legal professional, (3) they sought help from a legal professional, but were unable to get it, or (4) they sought and received help from a legal professional, but felt that they did not or would not be able to get as much legal help with the issue as they felt they needed.
- <sup>SB3</sup>Note small base size of n=69 for problems relating to wills and estates; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).
- <sup>33</sup> 2017 Justice Gap Measurement Survey, 2017, computed variable summarizing legal help-seeking behavior for civil legal issues, based on multiple questionnaire responses.
- <sup>SB4</sup>Note small base size of n=32 for problems relating to veterans' issues; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).
- <sup>SB5</sup>Note small base size of n=45 for problems relating to issues of homeownership; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).
- <sup>34</sup> 2017 Justice Gap Measurement Survey, question 30: What kind of legal help [have you received so far / did you receive]? (multiple response).
- <sup>35</sup> Due to limited survey data on online searches for legal information, we cannot present detailed findings on this topic.
- <sup>36</sup> Sarah Sternberg Greene, "Race, Class, and Access to Civil Justice," 101 *Iowa Law Review*, 1263-1321 (2016); Rebecca L. Sandefur, "Accessing Justice in the Contemporary United States. Findings from the Community Needs and Services Study," American Bar Foundation and University of Illinois at Urbana-Champaign, August 2014.
- <sup>37</sup> Rebecca L. Sandefur, "Bridging the Gap. Rethinking Outreach for Greater Access to Justice," University of Arkansas at Little Rock *Law Review* 4, 721-740, 2015.
- <sup>38</sup> 2017 Justice Gap Measurement Survey, questions 35 and 37: Why [haven't you talked / didn't you talk] to a legal professional for this issue? Why [haven't you talked / didn't you] talk to anyone else for help or looked for information online about this issue? (multiple response).



## Endnotes

- <sup>39</sup> 2017 Justice Gap Measurement Survey, questions 41, 42, and 43: To what extent do you think people like you have the ability to use the courts to protect yourself and your family or enforce your rights?, To what extent do you think people like you are treated fairly in the civil legal system?, To what extent do you think the civil legal system can help people like you solve important problems such as those you identified in this survey?
- <sup>40</sup> We present the total number of problems examined in this section of the survey for each group listed. Please see the Justice Gap Appendix B3 Tables at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017) for the number of corresponding respondents as well as other supporting statistical information on these findings.
- <sup>41</sup> See Appendix B4 for more information about LSC's 2017 Intake Census and the resulting data analysis.
- <sup>42</sup> The Intake Census tracked the number of individuals, not the number of problems, but it is fair to assume that the number of individuals approaching LSC grantees is very close to the number of problems presented to them in this six-week period of time. It is possible that an individual had more than one problem, but this is not likely a common occurrence given the short span of time. For the remainder of this section, we assume that the number of individuals and the number of problems tracked during the Intake Census are equivalent, referring to the number of problems for the purposes of analysis. Our estimates are therefore conservative: to the extent individuals and problems are not equivalent, we are underestimating the number of legal problems for which low-income Americans will seek help from LSC grantees in 2017.
- <sup>43</sup> For more information on the rules governing the use of LSC funds, see: <http://www.lsc.gov/lsc-restrictions-and-funding-sources>.
- <sup>44</sup> Case services incorporate eligible problems for which LSC grantees provide legal advice and/or representation. Case services do not include problems for which LSC grantees provide pro se assistance if only legal information or referrals to resources is provided. Case services correspond with "cases closed" and "cases open" in the Grant Activity Reports submitted to LSC.
- <sup>45</sup> Grant Activity Reports, Calendar Years 2014-2016, Legal Service Corporation. Note that the proportions calculated are based on both open and closed cases in a given calendar year.
- <sup>46</sup> Note that the distribution of case services presented for 2016 is consistent with for other recent years, including 2013, 2014, and 2015.
- <sup>47</sup> 2017 LSC Intake Census. Note, LSC grantees also regularly engage in outreach intake. The numbers for this are not represented in Figure 9.
- <sup>48</sup> LSC 2017 Intake Census. See Appendix B4 for details on calculations.
- <sup>49</sup> The problems coded as fully served with "limited services" include cases that are expected to be fully resolved with the legal assistance provided and have been closed with the following LSC Case Service Report (CSR) Closure categories: A "Counsel and Advice", B "Limited Action", and L "Extensive Service (not resulting in settlement or court or administrative action)". See the LSC 2017 Case Service Report (CSR) Handbook for more information on these definitions: <http://www.lsc.gov/csr-handbook-2017>.
- <sup>50</sup> The problems coded as fully served with "extended services" include cases that have been closed with the following LSC Case Service Report (CSR) Closure categories: F "Negotiated Settlement without Litigation", G "Negotiated Settlement with Litigation", H Administrative Agency Decision, and I "Court Decision." See LSC 2017 CSR Handbook referenced above for more information: <http://www.lsc.gov/csr-handbook-2017>.
- <sup>51</sup> The types of cases counted as receiving more involved assistance like providing legal advice, speaking with third parties on behalf of a client, or help preparing legal documents include cases that have been closed with the following LSC CSR Closure categories AND are expected to be fully resolved with the legal assistance provided: A "Counsel and Advice", B "Limited Action", and L "Extensive Service (not resulting in settlement or court or administrative action)". See the LSC 2017 Case Service Report (CSR) Handbook for more information on these definitions: <http://www.lsc.gov/csr-handbook-2017>.
- <sup>52</sup> LSC 2017 Intake Census. See Appendix B4 for details.
- <sup>53</sup> LSC 2017 Intake Census. See Appendix B4 for details on calculations.

## **Appendix A: 2017 Justice Gap Measurement Survey Methodology**

Readers are encouraged to visit [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017), where they can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey. In this appendix, we present some important methodological information about the survey, including information about sampling, survey structure, survey administration, statistical weighting, and the demographic profile of the sample. Additional methodology details can be found in the full technical survey report.

### **Sampling**

For this study, LSC was specifically interested in surveying approximately 2,000 adults living in households with incomes at or below 125% of the federal poverty threshold. Identifying and interviewing a large number of respondents meeting this criterion via many traditional survey methods would be logistically challenging and costly due to the amount of outreach and screening that would be necessary. To efficiently identify individuals residing in such households and interview them in a cost-effective manner, LSC contracted with NORC to conduct the survey using AmeriSpeak®, which is NORC’s probability-based panel designed to be representative of the entire U.S. household population. The AmeriSpeak Panel is designed to provide a nationally representative sample of US households for public opinion research. AmeriSpeak was built using a rigorous sampling and recruitment methodology based on probability sampling techniques employed by federally sponsored research.

There are three principal design elements responsible for the scientific integrity of AmeriSpeak. First, it is probability-based, meaning that randomly selected households are sampled with a known, non-zero probability of selection from a documented sample frame. (Almost all other commercially available household panels are based on non-probability, convenience sampling.) AmeriSpeak’s sample source is the NORC National Frame, which is an area probability sample designed to provide at least 97% sample coverage of the U.S. population, and allows for increased sample coverage for rural and low-income households. The NORC National Frame is the sample source for landmark NORC surveys such as the General Social Survey and the Survey of Consumer Finance.

Second, AmeriSpeak has the highest American Association for Public Opinion Research (AAPOR) response rate – a key measure of sample quality – among commercially available household panels. The industry-leading response rate for AmeriSpeak is attributable to the extraordinary contact and gaining cooperation techniques used by AmeriSpeak in recruiting randomly sampled US households. The gaining-cooperation techniques rely on traditional methodologies employed in federally sponsored research for decades. Households selected for AmeriSpeak are contacted in English and Spanish, by a series of U.S. mailings and by NORC telephone and field interviewers. Use of field interviewers for in-person recruitment (i.e., face-to-face interviewing) enhances response rates and representativeness for young adults, lower socio-economic households, and non-internet households.

Third, AmeriSpeak in its design facilitates the representation of US households that are commonly under-represented in online panel research. While many panels conduct surveys via the web only, AmeriSpeak recruits households using a combination of telephone and face-to-face methodologies in order to assure that non-internet, “net averse” households, and persons with low literacy levels are represented in AmeriSpeak. Moreover, after joining AmeriSpeak, panelists have the option to participate in the survey program via web or

telephone (speaking with NORC’s professional telephone interviewers). Because AmeriSpeak conducts its surveys in both the telephone and web modes of data collection, AmeriSpeak provides data collections for panelists whether they are comfortable or uncomfortable with web-based surveys.

While NORC keeps recently updated income information on file for all AmeriSpeak panelists, it was important to verify each household’s income level relative to the federal poverty guidelines for this study. NORC drew a sample of roughly 10,500 adults age 18 and older who had previously indicated that their household earnings were at or below 200% of the federal poverty level, with the plan to screen these panelists and select only those with current household incomes at or below 125% of the federal poverty threshold as eligible to complete the survey. The 2016 federal poverty guidelines set by the U.S. Department of Health and Human Services were used to determine income thresholds for screening households of various sizes.<sup>a</sup>

**Survey Structure**

The household screening portion of the survey consisted of only two questions, which assessed current household size and income level. Following the screening questions, eligible respondents proceeded to a section containing questions about household characteristics. This was followed by the largest portion of the main survey instrument, which contained questions assessing the prevalence of various types of civil legal needs. LSC and NORC worked to refine a list of common civil legal issues to include in this portion of the survey, arriving at a final list of 88 distinct issues. These issues were divided into 12 categories.

Some of the categories of civil legal problems were issues that might affect any low-income family, including employment, health, consumer and finance, income maintenance, family and custodial issues, as well as assistance with wills and estates. Other categories of problems only applied to certain subpopulations – survivors of domestic violence, homeowners, renters, households with children, individuals with disabilities, and veterans, so the survey was structured in a way that used earlier answers about household characteristics to selectively present questions related to those characteristics. For example, survey respondents were asked about their living situations, and those who indicated that they owned their homes were presented with a section covering civil legal problems experienced by homeowners, while those who indicated that their homes were rented were presented with a battery of questions about issues with rental housing instead. In addition, only those respondents who indicated that someone in the household was in school (or had children in school) received the section about civil legal issues related to education, while others did not. Finally, sections about disability issues and veterans’ issues were only presented to respondents who indicated that at least one member of their household had a disability, or were military personnel or veterans, respectively.

Within each section of the survey assessing the prevalence of civil legal problems, respondents were presented with a number of specific issues and asked to indicate for each one whether they personally had experienced the issue and whether someone else in their household had experienced the issue within the last 12 months. Each of these questions allowed for multiple selections, so it was possible for respondents to indicate that the issue had been experienced both by themselves and by others. There was also an option to indicate that no one in the household had experienced the problem in the last 12 months.

To delve further into the problems affecting individual respondents, the survey dynamically presented questions about problem severity at the conclusion of each battery of problems. For each issue that

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<sup>a</sup>U.S. Department of Health and Human Services. 2016. <https://aspe.hhs.gov/poverty-guidelines>

respondents indicated they had personally experienced within the last 12 months, they were asked to rate the effect the problem had on them on a five-point scale from “not at all” to “severe.”

Following the problem prevalence and severity sections, respondents who had reported that they were personally affected by at least one civil legal issue were presented with a section related to help-seeking behaviors. The first item in this section was a multi-part question covering each relevant civil legal problem and asking respondents to indicate whether they had talked to someone about the problem, had looked for information online, both talked to someone and gone online, or not engaged in either of these behaviors. This question covered all personally experienced problems, except for those that were rated as affecting respondents “not at all”.

Next, the survey included detailed questions about help-seeking behaviors for a subset of the problems reported. As to not overburden respondents who had reported a large number of issues, the survey randomly selected a maximum of four problems for follow-up questions. Each respondent looped through this section up to four times, depending on the number of issues he or she had reported earlier in the survey. The detailed questions included items about the current state of each problem, who (if anyone) the respondent had talked to about the problem (including legal professionals), the type of information sought online (if any), the type of legal assistance received (if any), and reasons why help was not sought (if appropriate). The final section of the survey included three questions assessing perceptions about the fairness and efficacy of the civil legal system.

### **Survey Administration**

A total of 2,028 respondents completed the survey between the dates of January 5, and February 10, 2017, including 1,736 who completed via the web and 292 who completed via telephone. Interviews were completed in both English and Spanish, depending on respondent preference. The screener completion rate for this study was 38.5%. The incidence or eligibility rate was 56.4%. The interview completion rate was 89.1%. The final response rate was 11.2%, based on the American Association for Public Opinion Research Response Rate 3 Method.

### **Statistical Weighting**

Statistical weights for the study-eligible respondents were calculated using panel base sampling weights to start. Panel base sampling weights for all sampled housing units are computed as the inverse of probability of selection from the NORC National Sample Frame (the frame used to sample housing units for AmeriSpeak) or address-based sample. The sample design and recruitment protocol for the AmeriSpeak Panel involves subsampling of initial non-respondent housing units. These subsampled non-respondent housing units are selected for an in-person follow up. The subsample of housing units that are selected for the nonresponse follow up have their panel base sampling weights inflated by the inverse of the subsampling rate. The base sampling weights are further adjusted to account for unknown eligibility and nonresponse among eligible housing units. The household-level nonresponse adjusted weights are then post-stratified to external counts for number of households obtained from the Current Population Survey. Then, these household-level post-stratified weights are assigned to each eligible adult in every recruited household. Furthermore, a person-level nonresponse adjustment accounts for nonresponding adults within a recruited household.

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Finally, panel weights are raked to external population totals associated with age, sex, education, race/ethnicity, housing tenure, telephone status, and Census division. The external population totals are obtained from the Current Population Survey.

Study-specific base sampling weights are derived using a combination of the final panel weight and the probability of selection associated with the sampled panel member. Since not all sampled panel members respond to the screener interview, an adjustment is needed to account for and adjust for screener non-respondents. This adjustment decreases potential nonresponse bias associated with sampled panel members who did not complete the screener interview for the study.

Furthermore, among eligible sampled panel members (as identified via the survey screener questions), not all complete the survey interview for the study. Thus, the screener nonresponse adjusted weights for the study are adjusted via a raking ratio method to 125% of the federal poverty line population totals associated with the following socio-demographic characteristics: age, sex, education, race/ethnicity, and Census division.

Population totals for the 125% of the federal poverty line sample for the Justice Gap Study were obtained using the screener nonresponse adjusted weight for all eligible respondents from the screener question(s). At the final stage of weighting, any extreme weights were trimmed based on a criterion of minimizing the mean squared error associated with key survey estimates, and then, weights re-raked to the same population totals. The overall margin of sampling error was +/- 3.27 percentage points for a 50% statistic, adjusted for design effect resulting from the complex sample design.

A more detailed description of AmeriSpeak panel recruitment and management methodology, and additional information about the Justice Gap Study methodology, are included in Appendices A and B, respectively.

### Sample Demographic Profile

The respondents who completed the survey represent households in the United States with incomes at or below 125% of the federal poverty level, based on the 2016 federal poverty guidelines set by the Department of Health and Human Services. These households include a range of incomes depending on household size, from \$14,850 for a single person household to \$61,520 for households of 10 or more. For a family of four, the threshold was \$30,380. About a quarter (24%) of this group have annual household incomes of \$9,999 or less, while 19% have incomes between \$10,000 and \$14,999, 31% have incomes between \$15,000 and \$24,999, and 26% have incomes of \$25,000 or more.

Roughly one third (34%) of this group are under the age of 35, and the remainder are evenly split between the age groups of 35 to 49 (23%), 50 to 64 (22%), and 65 and older (21%). There are more women than men in low-income households (58% vs. 42%). In terms of racial and ethnic identification, just under half (46%) are white, a quarter are Hispanic, 21% are African-American, and 8% fall into some other category or identify as multi-racial. Eighty-five percent live within a metropolitan area, while 15% live outside of metropolitan areas. Most have at least a high school education, but few have a college degree. Twenty-eight percent have not finished high school, while 35% have a high school diploma or equivalent, 29% have completed some college, 6% have a bachelor's degree, and 2% have a graduate degree. Over a third (35%) are currently employed, but

nearly two-thirds (65%) are not working, including 17% who are retired, 13% who are looking for work, and 21% who are not working due to disabilities.

Over a third (34%) reported that the home they live in is owned, and roughly the same number (36%) said they live in a rented home without public assistance, while 17% live in a home that is rented with public assistance, and 13% report having some other housing arrangement. Roughly a quarter are married, and three-quarters are not. Nearly 3 in 10 (28%) live alone, and about half live in households with at least two other members. Four in 10 of these households include parents of children or teenagers under the age of 18 in their households. Six in 10 have internet access at home, at work, or at some other location, while the remaining 4 in 10 only have internet access on a mobile phone or have no access at all.

### Appendix B1: Section 1 Data Sources and Methodology

Most of the descriptive data on the population below 125% FPL come from the American Community Survey (ACS) 2015 Single Year Estimates. Most figures are based on data from table S1703: Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months. At times additional tables were used to provide estimates and are noted in endnotes. To estimate the number of Americans under 125% FPL for each of the groups presented in the report, we used the percent of the population that is estimated to be under 125% FPL and the total number of people estimated to comprise each group. Figures for the estimated number of veterans under 125% FPL are not readily available and had to be calculated. We estimated this figure by calculating ratio of the number of people below 100% FPL and the number of people below 125% FPL nationwide. We applied this ratio to the total number of veterans living below 100% FPL in order to estimate the total number of veterans living below 125% FPL nationwide.

**Appendix Table B1.1:**  
**Percent of state populations below 125% of the Federal Poverty Level (FPL).**

Data Source: United States Census Bureau, American Community Survey 2015 1-year Estimates, Table S1703: Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, accessed June 6, 2017.

State	Total Population	Percent of Population below 125% FPL
Alabama	4,736,333	23.8%
Alaska	720,765	13.9%
Arizona	6,671,705	22.3%
Arkansas	2,887,337	25.3
California	38,398,057	20.2%
Colorado	5,339,618	15.2%
Connecticut	3,480,932	13.7%
Delaware	920,355	15.9%
District of Columbia	638,027	21.4%
Florida	19,850,054	21.1%
Georgia	9,943,145	22.1%
Hawaii	1,394,121	13.2%

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State	Total Population	Percent of Population below 125% FPL
Idaho	1,622,116	19.9%
Illinois	12,559,422	17.8%
Indiana	6,417,418	19.0%
Iowa	3,021,823	16.3%
Kansas	2,830,943	17.3%
Kentucky	4,290,022	23.3%
Louisiana	4,541,688	24.8%
Maine	1,292,996	17.8%
Maryland	5,863,290	12.7%
Massachusetts	6,558,724	14.8%
Michigan	9,698,396	20.2%
Minnesota	5,366,594	14.0%
Mississippi	2,896,579	28.3%
Missouri	5,901,967	19.4%
Montana	1,007,727	19.1%
Nebraska	1,842,682	16.6%
Nevada	2,850,472	19.7%
New Hampshire	1,288,060	10.7%
New Jersey	8,781,575	14.3%
New Mexico	2,044,431	26.0%
New York	19,283,776	19.8%
North Carolina	9,790,073	21.8%
North Dakota	731,354	14.4%
Ohio	11,295,340	19.3%
Oklahoma	3,795,764	21.5%
Oregon	3,952,077	20.0%
Pennsylvania	12,385,716	17.0%
Rhode Island	1,016,343	18.0%
South Carolina	4,750,144	21.7%
South Dakota	829,644	18.4%
Tennessee	6,440,381	22.1%
Texas	26,846,203	21.1%
Utah	2,947,861	15.2%
Vermont	600,659	15.0%
Virginia	8,131,328	14.8%
Washington	7,036,725	16.0%
West Virginia	1,793,096	23.2%
Wisconsin	5,620,223	16.1%
Wyoming	572,319	15.0%

### **Appendix B2: Section 2 Data Sources and Methodology**

The findings presented in Section 2, “Experience with Civil Legal Problems,” come exclusively from the 2017 Justice Gap Measurement Survey. Respondents were presented with an extensive list of specific problems that usually raise civil legal issues. They were asked whether they had experienced any of these problems in the past 12 months and whether anyone else in their household had experienced any of them.

Readers are encouraged to visit [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017), where they can find a document that supplements this appendix called, “Justice Gap Appendix B2 Tables.” This document presents a number of tables with additional information on the survey results presented in Section 2 of this report. For a given set of survey results, the tables present the calculated proportion (or “percent”) along with the standard error of the percent and the unweighted base for the corresponding variable.

On the same landing page ([www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017)), readers can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey.

### **Appendix B3: Section 3 Data Sources and Methodology**

The findings presented in Section 3, “Seeking Legal Help,” come exclusively from the 2017 Justice Gap Measurement Survey. More specifically, this section presents findings from a part of the survey that asked detailed questions about a subset of the civil legal problems reported by respondents. For each respondent, the survey randomly selected up to four personally-experienced problems affecting them more than “not at all.” Due to the low incidence of problems relating to veterans’ issues and disabilities, these problems were always selected if they met the other criteria. Respondents answered questions about what, if any, help they sought to address each of these problems. The primary unit of analysis in this section is problems.

Readers are encouraged to visit [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017), where they can find a document that supplements this appendix called, “Justice Gap Appendix B3 Tables.” This document provides additional information on the survey results presented in Section 3 of this report. For a given set of survey results, the table presents the calculated proportion (or “percent”) along with the standard error of the percent and the unweighted base for the corresponding variable. Because the primary unit of analysis in this section is problems, the bases represent a number of problems (with the exception of Appendix Table B3.6, where individuals are the unit of analysis). For reference, we have also included the (unweighted) number of respondents corresponding to those problems.

On the same landing page ([www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017)), readers can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey.

### **Appendix B4: Section 4 Data Sources and Methodology**

Most of the findings presented in Section 4, “Reports from the Field,” are based on data collected during the Legal Services Corporation’s (LSC) 2017 Intake Census. Additional data used in that section come from LSC’s 2016 Grantee Activity Report. This appendix provides more information about both of these data sources as well as details about the assumptions underlying estimates presented in Section 4.



### The Legal Services Corporation 2017 Intake Census

#### Data Collection

As with LSC's two prior justice gap studies, LSC asked its grantees to conduct an Intake Census by documenting the number of individuals who approached LSC grantees with legal needs that could not be addressed because of insufficient resources. The 2017 Intake Census instrument has more categories than the two previous instruments to yield a more granular analysis of the reasons why an individual may not receive services from a grantee. LSC recognizes that this process is imperfect and will not capture all of the unmet need, which is why LSC pursued the national survey with NORC using the AmeriSpeak Panel in addition to conducting the Intake Census.

From March 6, 2017 to April 14, 2017, LSC grantees tracked and collected data about those individuals who approached their program with a legal problem. The Intake Census Instrument has three main data collection categories: (1) Unable to Serve, (2) Unable to Serve Fully, and (3) Fully Served.

**Unable to Serve.** An individual may fall into the "Unable to Serve" category for a number reasons, including being financially ineligible for services (with a household income that is too high) or being a non-citizen. Other reasons for placing an individual in this category are that the person's problem was not the type of legal issue the grantee handles on a regular basis (e.g., commercial transactions) or the grantee has insufficient resources to assist the individual with their problem.

The five subcategories within "Unable to Serve" are:

- Unable to Serve – Ineligible
- Unable to Serve – Conflict of Interest
- Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
- Unable to Serve – Insufficient Resources
- Unable to Serve – Other Reasons

**Unable to Serve Fully.** An individual may be placed in the "Unable to Serve Fully" category if the individual received some form of legal information or legal advice to help address their problem. In this category, the grantee assesses if the case would have been appropriate for full representation if the grantee had sufficient funding. The legal information or legal advice the individual received is not expected to fully resolve the individual's case.

The two subcategories within "Unable to Serve Fully" are:

- Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
- Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code "L"

**Fully Served.** An individual is categorized as "Fully Served" if the grantee has sufficient resources to fully address the individual's problem at an appropriate level given the facts and nature of the case. The legal assistance provided in these cases can vary from providing brief legal advice, or help filling out a form, to full legal representation in court.

The three subcategories within "Fully Served" are:

- Fully Served – Provision of Legal Information or Pro Se Resources
- Fully Served – Provision of Limited Services or Closing Code L
- Fully Served – Extended Service Case Accepted

Finally, there is an additional category called “Pending,” which includes individuals that will receive legal help of some kind, but for whom program management had not made a final decision on the level of legal assistance they will be able to provide before data collection for the Intake Census had ended. Had data collection continued for a longer period of time, such individuals would most likely have been coded into one of the following subcategories:

- Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”
- Fully Served – Provision of Limited Services or Closing Code L
- Fully Served – Extended Service Case Accepted

Additional information about the 2017 Intake Census, including the detailed definitions of each of these categories and the data collection instructions given to grantees, can be found at [www.lsc.gov/justicegap2017](http://www.lsc.gov/justicegap2017).

A total of 132 LSC grantees (out of 133) submitted 2017 Intake Census data. When submitting their data, grantees were also asked to provide the average number of hours they offer intake to potential clients in various modes (e.g., by phone, online, in-person appointments, walk-in) on a weekly basis. They were also asked to indicate the extent to which the six-week Intake Census period was typical and, where applicable, to elaborate about why intake might have been atypical. Fifteen of the total 132 grantees indicated that this period was atypical for them. Twelve of the 15 who said it was atypical, say they processed fewer people for intake than usual because of holidays, staff shortages, or other reasons.

## Data Analysis

**Unit of Analysis.** It is important to note that while the Intake Census tracked the number of individuals, the analysis in Section 4 uses problems as the unit of analysis. It is fair to assume that the number of individuals approaching LSC grantees is very close to the number of problems presented to them in this six-week period of time. It is possible that an individual had more than one problem, but this is not likely a common occurrence given the short span of time covered during data collection. Throughout Section 4, we assume that the number of individuals and the number of problems tracked during the Intake Census are equivalent, referring to the number of problems for the purposes of analysis. The estimates in this report are therefore conservative: to the extent individuals and problems are not equivalent, we are underestimating the number of legal problems for which low-income Americans will seek help from LSC grantees in 2017.

**12-month Projections.** Throughout this section, we provide 12-month projection estimates for the total number of problems low-income Americans will present to LSC grantees in 2017 and subsets of those problems. These projections were calculated by multiplying the relevant Intake Census figure by 8.6905 (52.14 weeks divided by 6 weeks) and rounding to the nearest hundred.

**Estimating the Number of Problems Unserved and Underserved Due to Lack of Resources.** In Section 4, we present a range of estimates for the number of problems presented to LSC grantees that do not receive any legal help (“unserved”) or do not receive enough legal help to fully address the client’s needs (“underserved”). In that section, we describe the assumptions we make to produce these estimates and the reasoning behind them. Here, we lay out these assumptions in terms of the original data collection coding scheme.

To produce the upper-bound estimate, we make the following assumptions:

- All observations coded as “Pending” would eventually be coded as “Unable to Serve Fully” and the reason they would not be “Fully Served” is for reasons related to a lack of resources.

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- All observations coded in the following categories were “Unable to Serve” for reasons related to a lack of resources:
  - Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
  - Unable to Serve – Insufficient Resources
  - Unable to Serve – Other Reasons
- All observations coded in the following subcategories were “Unable to Serve Fully” for reasons related to a lack of resources:
  - Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
  - Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”

To produce the lower-bound estimate, we make the following assumptions:

- All observations coded as “Pending” would eventually be coded as “Served Fully.”
- All observations coded in the following categories were “Unable to Serve” for reasons related to a lack of resources:
  - Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
  - Unable to Serve – Insufficient Resources
- None of the observations coded as “Unable to Serve – Other Reasons” would have been served if more resources were available.
- All observations coded in the following subcategories were “Unable to Serve Fully” for reasons related to a lack of resources:
  - Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
  - Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”

### Legal Service Corporation Grantee Activity Report

Section 4 presents the distribution of the types of problems for which LSC grantees provided case services in 2016. The data for this come from the Legal Services Corporation Grantee Activity Report (GAR) data. GAR is the largest and longest running data collection effort on civil legal aid in the United States. Dating back to 1976, LSC has recorded and reported data from grantees in a variety of ways. Information from the Grantee Activity Reports is summarized on an annual basis by LSC staff for public reports and for internal use by management and program staff. The data are also publicly available through the Grantee Data Page on the LSC site and as a full dataset at LCS’s DATA.GOV site: <https://catalog.data.gov/organization/legal-services-corporation>.

The data are gathered annually from all grantees on a calendar year basis. Grantees use automated reporting forms that are accessible via the Internet. Grantees report on the conduct of their Basic Field, Agricultural Worker and Native American grant programs to LSC on a calendar year basis, using automated reporting forms that are accessible via the Internet. The reports are collected in January and February of each year.

More information about the GAR can be found at <http://www.lsc.gov/grant-activity-reports>.

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13 **SUPERIOR COURT OF CALIFORNIA**  
14 **COUNTY OF SACRAMENTO**

15 JAMES ACRES, an individual,  
16 Plaintiff,  
17 vs.  
18 Lester Marston, *et al.*,  
19 Defendants.  
20

) Case No.: 34-2018-00236829

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION TO QUASH SERVICE AND**  
) **DISMISS [C.C.P. § 418.10]**

) Hearing date: January 11, 2019  
) Hearing time: 2:00 p.m.  
) Department: 53

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1 **INTRODUCTION**

2 Plaintiff, James Acres ("Acres") seeks compensatory and punitive damages against ten  
3 lawyers;<sup>1</sup> three law firms with which those lawyers are in some way associated; the Chief Judge of  
4 the Blue Lake Rancheria's Tribal Court; the Clerk of the Blue Lake Rancheria's Tribal Court; the  
5 elected Vice Chair of the Blue Lake Rancheria's governing body, who also serves as the Tribe's  
6 Administrator and CEO of the Blue Lake Casino & Hotel ("Casino"); and a former Tribal  
7 government and Casino senior executive, based upon an alleged conspiracy among the defendants to  
8 maliciously prosecute a Blue Lake Rancheria Tribal Court action against him and his company,  
9 Acres Bonusing, Inc. ("ABI"), and to seek and obtain the dismissal of the two federal district court  
10 lawsuits filed by Acres against the Tribe, its Tribal Court and its Chief Judge.

11 By this motion pursuant to C.C.P. § 418.10, specially-appearing defendants "Rapport and  
12 Marston",<sup>2</sup> Tribal Court Chief Judge Lester Marston, Tribal Court Clerk Anita Huff, Tribal Vice  
13 Chairperson/Tribal Administrator/Casino CEO Arla Ramsey, former Casino and Tribal executive  
14 Thomas Frank, Tribal attorneys David Rapport and Cooper DeMarse, and Tribal Court law clerks  
15 Ashley Burrell, Darcy Vaughn and Kostan Lathouris (unless otherwise specified, the foregoing  
16 defendants will be referred to herein as the "Blue Lake Defendants") hereby seek an order quashing  
17 service of the Summons and Complaint and dismissing Acres' action on the grounds that (1) these  
18 defendants are cloaked with the Tribe's unwaived sovereign immunity to unconsented suit, which  
19 consent has not been given; and (2) Acres' causes of action alleged against defendants Judge  
20 Marston, Clerk Huff, and attorneys Rapport, Vaughn, Burrell, DeMarse, and Lathouris are barred by  
21 either absolute judicial or prosecutorial immunity.

22 **FACTUAL BACKGROUND**

23 The Complaint (¶ 8) alleges that the Blue Lake Rancheria is federally-recognized Indian  
24 Tribe that owns and operates the Blue Lake Casino & Hotel ("Casino"). Complaint, ¶ 11. The

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants Rapport, Burrell, DeMarse, Vaughn, Lathourise, Chase, Stouder, O'Neil, Yarnell, and Burroughs.

27 <sup>2</sup> "Rapport and Marston" appears in quotations because, as shown by the Declarations of David Rapport (¶ 3,  
28 Exhibit DR-1) and Lester Marston (¶ 22, Exhibit LM-12) lodged herewith, "Rapport and Marston" as an entity had no  
legal relationship with the Tribe or the Casino; rather, defendants David Rapport and Lester Marston each had his own  
contractual relationship directly with the Tribe.

1 Casino is located on the federal trust lands of the Blue Lake Rancheria<sup>3</sup> in Humboldt County.  
2 Complaint, ¶ 8. The Casino is not separately organized apart from the Tribe itself; it is an enterprise  
3 fund of the Tribe, operated under the direction of the Tribe's Business Council, which under the  
4 Tribe's Constitution is the Tribe's governing body. Complaint, ¶ 9; Ramsey Declaration, ¶ 5.

5 According to the Complaint, defendants DeMarse, Vaughn and Burrell are attorneys  
6 associated with "Rapport & Marston" and are Tribal Court "associate judges" who participated in  
7 various aspects of the litigation between the Tribe and Acres (¶¶ 12, 18-20); defendant Lathouris  
8 allegedly is an attorney associated with "Rapport & Marston" who performed legal research and  
9 drafted orders for Judge Marston – *i.e.* acted as Judge Marston's law clerk (¶ 21); defendant Huff is  
10 the Tribal Court's Clerk and the Tribe's "Grants and Contracts Manager" (¶ 14); defendant Ramsey is  
11 the Casino's CEO, a Tribal Court Judge, the Tribe's Vice Chairperson and the Tribe's Administrator  
12 responsible for day-to-day functioning of the Tribe's government (¶¶ 12, 18-20); defendant Frank  
13 is/was a high-level Casino executive and the Tribe's Director of Business Development (¶ 13);  
14 defendant "Rapport & Marston" is an association of defendant attorneys David Rapport and Lester  
15 Marston, exact form unknown (¶ 16); defendant Rapport has served as the Tribe's legal counsel since  
16 1983 (¶ 17).

17 In 2010, Acres' company, ABI and the Tribe, through the Casino, entered into a contract  
18 under which ABI was to provide an "iSlot" gaming system to the Casino. Complaint, ¶ 48. A  
19 dispute arose between the Tribe and Acres over the interpretation of the contract and the  
20 performance of the iSlot system, and in January, 2016, the Tribe, dba the Casino, sued Acres and  
21 ABI in the Tribe's Tribal Court, alleging causes of action for breach of contract, tortious breach of  
22 the covenant of good faith and fair dealing, money had and received, unjust enrichment and  
23 fraudulent inducement. Complaint, ¶ 57.

24 In response to the Tribal Court lawsuit, Acres filed two successive federal district court  
25 actions against the Tribe, the Tribal Court, and defendant Judge Marston, seeking to stop the Tribal  
26

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27 <sup>3</sup> "Blue Lake Rancheria" can mean either the federally-recognized tribal entity or the tribal entity's federal trust  
28 land base. In this Memorandum, "Tribe" is used to refer to the tribal entity, rather than the land over which the Tribe  
exercises jurisdiction.

1 Court proceedings for lack of jurisdiction and bias. Complaint, ¶¶ 22-28. Both federal actions  
2 ultimately were dismissed. Complaint, ¶¶ 110, 111.

3 Acres' current Complaint alleges seven causes of action:

4 1. Ramsey, Frank, the Boutin Jones and Janssen Malloy law firms, and defendant  
5 attorneys Stouder, O'Neill, Burroughs and Yarnell committed the tort of malicious prosecution by  
6 filing and prosecuting the Tribal Court action against Acres and ABI;

7 2. Tribal attorney Rapport, "Rapport and Marston," Judge Marston, Clerk Huff, and  
8 attorneys DeMarse, Vaughn, Burrell, Lathouris, and Chase aided and abetted the commission of the  
9 tort of malicious prosecution against him in Tribal Court;

10 3. "Rapport & Marston," Judge Marston, David Rapport, Clerk Huff, and defendant  
11 attorneys Burrell, DeMarse, Vaughn, Lathouris and Chase conspired with their client and the other  
12 attorneys named as defendants to commit the tort of malicious prosecution against Acres;

13 4. Judge Marston breached a fiduciary duty to Acres by not having disclosed that he had  
14 performed legal work for the Tribe in an unrelated matter, and by not having recused himself from  
15 the Tribal Court suit against Acres sooner than he eventually did;

16 5. Judge Marston, Ramsey, Frank, Clerk Huff, "Rapport and Marston," the Boutin Jones  
17 law firm, and attorneys Rapport, Burrell, DeMarse, Vaughn, Lathouris, Chase, Stouder and O'Neill,  
18 and the Boutin Jones and Janssen Malloy law firms, aided and abetted Judge Marston's alleged  
19 breach of his purported fiduciary duty to Acres by somehow assisting and encouraging Judge  
20 Marston's alleged breach of his purported fiduciary duty to Acres;<sup>4</sup>

21 6. Judge Marston committed constructive fraud against Acres by failing to disclose that  
22 he had received compensation from the Tribe for legal work unrelated to Acres allegedly performed  
23 in a capacity other than as Tribal Court Judge; and

24 7. Ramsey, Frank, Clerk Huff, "Rapport & Marston," attorneys Rapport, Burrell,  
25 DeMarse, Vaughn, Lathouris, Chase, Stouder and O'Neill and the Boutin Jones law firm aided and  
26 abetted Judge Marston's alleged commission of constructive fraud against Acres.

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28 <sup>4</sup> The Complaint does not explain how Judge Marston aided and abetted his own acts or omissions.

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**ARGUMENT**

**I. C.C.P. § 418.10 IS AN APPROPRIATE MEANS TO ASSERT THAT DEFENDANTS ARE CLOAKED WITH THE TRIBE'S UNWAIVED SOVEREIGN IMMUNITY**

In *Boisclair v. Sup. Ct.* (1990) 51 Cal.3d 1140, 1140 n.1, the California Supreme Court expressly approved the use of C.C.P. § 418.10 by a Tribe or a Tribal official asserting tribal sovereign immunity as a bar to maintenance of an action in the Superior Court: "[A]lthough a motion to quash is normally directed at defects in personal, as opposed to subject matter, jurisdiction we have recognized the hybrid motion to quash/dismiss as a proper means of challenging the court's authority without making a general appearance." *See also, Brown v. Garcia* (1st Dist., 2017) 17 Cal.App.5th 1198, 1204.

**II. THE BLUE LAKE RANCHERIA POSSESSES INHERENT SOVEREIGN IMMUNITY THAT CLOAKS THE TRIBAL COURT, THE CASINO AND TRIBAL OFFICIALS ACTING WITHIN THE SCOPE OF THEIR AUTHORITY**

**A. The Tribal Court and the Casino Are "Arms of the Tribe" Cloaked with its Immunity**

The Complaint (§ 8) alleges that the Blue Lake Rancheria is a federally-recognized Indian Tribe. As a recognized Indian Tribe, the Blue Lake Rancheria cannot be sued unless it has expressly consented to be sued. *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 58 ["Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers."]; see also *Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788. Tribal sovereign immunity "is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation." *Warbutton/Buttner v. Sup. Ct.* (2002) 103 Cal.App.4th 1170, 1182. Tribal sovereign immunity presents a pure jurisdictional question, and is a matter of federal law that state courts cannot diminish. *Id.*, at 1172; see also, *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.* (1998) 523 U.S. 751, 756; *People ex rel. Owen v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 235. Sovereign immunity has two aspects: (1) submission to the jurisdiction of the forum in which a claim is asserted; and (2) consent to the creation of the substantive right to the relief sought. *U.S. v. Testan* (1976) 424 U.S. 392, 399.

A Tribe's sovereign immunity extends to the Tribe's governmental and commercial activities,

1 whether they occur on or off of a reservation. See *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*  
2 (1998) 523 U.S. 751. Tribal sovereign immunity also extends to an entity that is an "arm of the  
3 Tribe." *White v. Univ. of Calif.* (9th Cir. 2014) 765 F.3d 1010, 1025. In *People ex rel. Owen v.*  
4 *Miami Nation Enterprises* (2016) 2 Cal.5th 222, at 244, the California Supreme Court established a  
5 five-factor test for determining whether a tribally-affiliated entity is an "arm of the Tribe" cloaked  
6 with the Tribe's sovereign immunity: (1) method of creation; (2) tribal intent; (3) purpose; (4)  
7 control; and (5) financial relationship to the Tribe. Both the Tribal Court and the Casino easily  
8 satisfy all five factors:

9 (1) Creation: The Complaint (¶ 10) alleges that the Blue Lake Rancheria's Tribal  
10 Court "... was established by the Blue Lake Business Council through its enactment of ordinance No.  
11 07-01, and under "its inherent sovereign authority to establish and operate its own judicial system."  
12 The Complaint (¶ 11) alleges that the Casino, "is an economic enterprise owned and operated by  
13 Blue Lake. According to a gaming ordinance enacted by the Blue Lake Business Council, profits  
14 from gaming at the casino are deposited directly in Blue Lake's general treasury."<sup>5</sup> Thus, the  
15 allegations of the Complaint itself show that the Tribal Court and the Casino both were established  
16 by the Tribe as, respectively, instruments for self-government and on-Reservation tribal economic  
17 development. These allegations are confirmed by the Declaration of Arla Ramsey, at ¶ 5.

18 (2) Intent: The same allegations of the Complaint that describe the Tribal Court's and  
19 Casino's method of creation also substantiate the Tribe's intent that the entities were created for  
20 purposes of self-governance and on-Reservation tribal economic development. Indeed, the  
21 Complaint expressly alleges that under the Tribe's laws, the Casino's profits must go to the Tribe's  
22 Treasury. Complaint, ¶¶ 11, 37; Ramsey Decl., ¶ 5.

23 (3), (4) and (5): Purpose, Control and Financial Relationship: Based on the  
24 allegations of the Complaint (¶¶ 12, 13, 36, 64) and the Ramsey Declaration, there can be no dispute  
25 that the Court's and Casino's purposes are, respectively, tribal self-governance and economic  
26

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27 <sup>5</sup> Under both federal law, 25 U.S.C. § 2710(b)(2)(a), and § 6.2 of the Class III gaming compact between the  
28 Tribe and the State of California, Complaint, ¶ 35, see also, <http://www.cgcc.ca.gov/?pageID=compacts>, only the Tribe  
may own the Casino.

1 self-sufficiency. The Complaint's allegations and Ramsey's Declaration show that the Tribe controls  
2 both the Tribal Court and the Casino. Because the Tribe must have the sole proprietary interest in  
3 the Casino, and Casino revenues must go into the Tribe's treasury, there could not be a closer  
4 financial relationship between the Tribe and the Casino.

5 In sum, the Tribal Court and the Casino both are "arms of the Tribe" and are therefore  
6 cloaked with the Tribe's sovereign immunity.

7 **B. The Tribe's Sovereign Immunity Cloaks the Blue Lake Defendants**

8 A Tribe's sovereign immunity extends not only to its arms, but also "to tribal officials when  
9 they act in their official capacity and within the scope of their authority." *Brown v. Garcia* (1st Dist.  
10 2017) 17 Cal.App.5th 1198, 1204 [tribal officials immune from suit for publishing allegedly  
11 defamatory statements concerning grounds for disenrolling members]; *Great W. Casinos v. Morongo*  
12 *Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1421 [tribal council members and non-Indian  
13 tribal attorney immune from suit over Tribe's termination of gaming management contract]; *see also*,  
14 *Imperial Granite Co. v. Pala Band of Mission Indians* (9th Cir. 1991) 940 F.2d 1269, 1271. Thus, a  
15 plaintiff generally may not avoid the operation of tribal immunity by suing tribal officials as  
16 individuals for acts in their official capacities and within their authority.

17 Based on the foregoing, the Tribe's inherent sovereign immunity clearly extends to all of the  
18 Blue Lake Defendants, because all of their alleged actions in connection with the *Blue Lake v. Acres*  
19 and *Acres v. Blue Lake* litigation were taken in their official tribal capacities, within the scope of  
20 their authority, and solely on behalf of the Tribe or its arms. The judge(s), Court Clerk and law  
21 clerk(s) of the Tribal Court are being sued for acts that can only have been committed in their official  
22 capacities as judicial personnel. The Complaint contains no allegations whatsoever identifying any  
23 specific act or omission on the part of defendant Casino CEO/Tribal Vice Chair/Tribal Court  
24 Judge/Tribal Administrator Ramsey that would have been outside the scope of her authority as the  
25 Casino's chief executive officer, elected Vice Chair of the Tribe's governing body, or the Tribe's  
26 Administrator. The Complaint's only specific allegation against defendant Frank (Complaint, ¶ 119)  
27 is that he verified the Casino's discovery responses in *Blue Lake v. Acres*.

28 The only specific allegations in the Complaint against attorney defendants Burrell, Vaughn



1 and DeMarse relating in any way to Acres are that they are Associate Tribal Court Judges  
2 (Complaint, ¶¶ 18-20), served as law clerks for the Tribal Court (*see, e.g.*, Complaint, ¶ 65), and/or  
3 through their association with Rapport and Marston, assisted in the defense of the Tribe and its  
4 Tribal Court in the federal actions filed by Acres (*see, e.g.*, Complaint, ¶¶ 78, 84, 85), as well as  
5 performing other legal services for the Tribe that had no relation to Acres.

6 Acres alleges that attorney defendant Lathouris similarly served as a law clerk to Chief Judge  
7 Marston (Complaint, ¶¶ 80, 81, 124), and, through association with "Rapport and Marston,"  
8 performed other legal services for the Tribe that had no relation to Acres.

9 Acres alleges that defendant attorney Rapport is part of the "Rapport and Marston" law firm,  
10 and has served as the Tribe's attorney since 1983. Complaint, ¶¶ 16, 17. As documented in the  
11 attached Declaration of David Rapport, Mr. Rapport is under contract to the Tribe to serve as its  
12 general legal counsel, ¶¶ 3, 4. As tribal attorney, Rapport's official duties included advising and  
13 representing the Tribe, and he was entitled to provide the Tribe with advice and representation  
14 without being inhibited by concerns about being sued individually for the advice he provided to his  
15 client. Defendant DeMarse assisted defendant Rapport in providing legal advice and representation  
16 to the Tribe in connection with defending against Acres' federal lawsuits (Rapport Decl., ¶¶ 7, 8),  
17 and thus he, too, is cloaked with the Tribe's immunity.

18 The oversight and management of *Blue Lake v. Acres* by Judge Marston, the associate judges,  
19 Clerk Huff and the attorneys who acted as Judge Marston's law clerks, likewise were – and could  
20 only have been – acting in their respective official capacities on behalf of the Tribe and its arms, and  
21 were well within the scope of the authority that the Tribe validly conferred upon them. Similarly, the  
22 actions by defendants Ramsey and Frank of which Acres complains were taken in their official  
23 capacities on behalf of the Tribe and/or the Casino, rather than for their individual benefit.  
24 Accordingly, the Tribe's unwaived sovereign immunity cloaks all of the Blue Lake Defendants, and  
25 the Court lacks and cannot acquire jurisdiction over them or Acres' causes of action alleged against  
26 them.

27 ///

28 ///

1 **III. DEFENDANTS MARSTON, RAMSEY, HUFF, BURRELL, VAUGHN, DeMARSE**  
2 **AND LATHOURIS ARE CLOAKED WITH ABSOLUTE JUDICIAL OR**  
3 **QUASI-JUDICIAL IMMUNITY**

4 **A. Tribal Court Judges Marston, Ramsey, Burrell, Vaughn and DeMarse, Tribal**  
5 **Court Clerk Huff, and Tribal Court Law Clerks Burrell, Vaughn, DeMarse and**  
6 **Lathouris Are Immune from Suit Arising Out of Their Judicial Acts**

7 A long line of [United States Supreme Court] precedents acknowledges that, generally, a  
8 judge is immune from a suit for money damages." *Mireles v. Waco* (1991) 502 U.S. 9, citing  
9 *Forrester v. White* (1988) 484 U.S. 219. California law is consistent with federal law. See *Olney v.*  
10 *Sacramento County Bar Ass'n.* (1989) 212 Cal.App.3d 807: "Judges enjoy absolute immunity from  
11 liability for damages for acts performed in their judicial capacities. (*Stump v. Sparkman* (1978) 435  
12 U.S. 349, 356-357 [55 L. Ed. 2d 331, 338-339, 98 S. Ct. 1099]; *Greene v. Zank* (1984) 158 Cal.App.  
13 3d 497, 507 [204 Cal. Rptr. 770].) Immunity exists for 'judicial' actions; those relating to a function  
14 normally performed by a judge and where the parties understood they were dealing with the judge in  
15 his official capacity. (*Stump, supra*, at p. 362 [55 L.Ed.2d at p. 342]; *Greene, supra*, at p. 507.

16 See also *Regan v. Price* (2005) 131 Cal.App.4th 1491, 1495. "[A] tribal court judge is  
17 entitled to the same absolute judicial immunity that shields state and federal court judges." *Penn v.*  
18 *United States* (8th Cir. 2003) 335 F.3d 786, 789.

19 "Like other forms of official immunity, judicial immunity is an immunity from suit, not just  
20 from ultimate assessment of damages." *Mireles v Waco, supra*, at 11. This immunity applies  
21 "however erroneous the act may have been, and however injurious in its consequences it may have  
22 proved to the plaintiff." *Cleavinger v. Saxner* (1985) 474 U.S. 193,199-200. Indeed, even "[g]rave  
23 procedural errors or acts in excess of judicial authority" do not deprive a judge of this immunity.  
24 *Moore v. Brewster* (9th Cir. 1996) 96 F.3d 1240, 1243.

25 Judicial immunity "applies even where the judge's acts are alleged to have been done  
26 maliciously and corruptly." *Frost v. Geernaert* (1988) 200 Cal.App.3d 1104, 1107, citing *Tagliavia*  
27 *v. County of Los Angeles* (1980) 112 Cal.App.3d 759, 761. As noted in *Moore v. Brewster, supra*, at  
28 1246,

Nor is judicial immunity lost by allegations that a judge conspired with  
one party to rule against another party: 'a conspiracy between a judge  
and [a party] to predetermine the outcome of a judicial proceeding,

1 while clearly improper, nevertheless does not pierce the immunity  
2 extended to judges . . .

3 In addition, "the privilege of judicial immunity applies not only to judges, but to all persons  
4 who act in a judicial capacity" *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 851 [Psychologist  
5 who performed evaluation in family law proceedings entitled to quasi-judicial immunity]. "The  
6 concern for the integrity of the judicial process that underlines the absolute immunity of judges also  
7 is reflected in the extension of absolute immunity to 'certain others who perform functions closely  
8 associated with the judicial process.'" *Moore v. Brewster, supra*, at 1246. "Under this functional  
9 approach, immunity flows from the nature of the responsibilities of the individual official." *Id.* at  
10 1244-1245. This immunity extends to law clerks. *Id.*, at 1246; *see also, Mitchell v. McBryde* (5th  
11 Cir.1991) 944 F.2d 229, 230. Likewise, "[c]ourt clerks and administrators are also entitled to  
12 absolute immunity from liability for damages 'when they perform tasks that are an integral part of the  
13 judicial process.'" *Mullis v. United States Bankruptcy Court* (9th Cir. 1987) 828 F.2d 1385, 1390;  
14 *see also Howard v. Drapkin, supra*.

15 Here, Acres has sued Chief Judge Marston, Clerk Huff, and Law Clerks/Associate Judges  
16 Ramsey, Burrell, Vaughn, DeMarse, and Law Clerk Lathouris for judicial or quasi-judicial acts taken  
17 while Judge Marston presided over *Blue Lake v. Acres*. Unless Acres can demonstrate that the acts  
18 for which they are being sued are beyond the scope of their judicial immunity, his action is barred by  
19 that immunity.

20 **B. Acres' Complaint Fails to Allege an Exception to Judicial Immunity**

21 Although Acres' Complaint characterizes the conduct of the defendants as "despicable, and  
22 rife with malice, oppression and fraud," *see, e.g.,* Complaint, ¶¶ 2, 75, 142, 150, 157, 166, 173, 183,  
23 192, defendants sued in connection with their service to the Tribal Court still are protected by  
24 judicial immunity, *see, e.g., Frost v. Geernaert*, 200 Cal. App. 3d, *supra*, at 1107, because absolute  
25 judicial immunity can only be overcome in two limited sets of circumstances. *Mireles v Waco*,  
26 *supra*, at 11; *Regan v. Price* (3rd Dist. 2005), 131 Cal.App.4th 1491 at 1496.

27 First, a judge is not immune from suit based on actions, though judicial in nature, taken in the  
28 "complete absence of all jurisdiction." *Id.* A judicial officer acts in the clear absence of jurisdiction

1 only if he "knows that he lacks jurisdiction, or acts despite a clearly valid statute or case law  
2 expressly depriving him of jurisdiction." *Mills v. Killebrew* (6th Cir. 1985) 765 F.2d 69, 71, citing  
3 *Rankin v. Howard* (9th Cir. 1980) 633 F.2d 844, 849. The scope of a judge's jurisdiction is  
4 construed broadly where judicial immunity is at stake. *Penn v. United States, supra* at 789-790.  
5 Therefore, courts have held that judges enjoy judicial immunity even when there are procedural  
6 defects in their appointment if they are "discharging the duties of that position under the color of  
7 authority." *White by Swafford v. Gerbitz* (6th Cir. 1989) 892 F.2d 457, 462; see also *Wagshal v.*  
8 *Foster* (D.C. Cir. 1994) 28 F.3d 1249, 1254.

9 Any claim by Acres that the Tribal Court's judges, clerk and law clerk(s) acted in complete  
10 absence of all jurisdiction is effectively refuted by the district court's orders dismissing the two  
11 federal district court lawsuits that Acres filed against the Tribe, the Tribal Court and Chief Judge  
12 Marston. See *Acres v. Blue Lake Rancheria Tribal Court, et al.* (N.D. Cal. Aug. 10, 2016) No.  
13 16-cv-02622-WHO, 2016 U.S. Dist. LEXIS 105786, at \*9-13 ("Acres I"); and *Acres v. Blue Lake*  
14 *Rancheria Tribal Court, et al.* (February 24, 2017) No. 16-cv-05391-WHO, 2017 U.S. Dist. LEXIS  
15 26447, at \*9 ("Acres II"), in which the Court found that a "colorable or plausible basis for [tribal  
16 court] jurisdiction exists in this case based on the first *Montana* [*v. United States* (1981) 450 U.S.  
17 544, 565] exception, which 'allows a tribe to exercise jurisdiction over the activities of non-members  
18 who enter into a consensual relationship with a tribe,'" that the "tribal court does not 'plainly' lack  
19 jurisdiction," and that consideration of the case elements "weigh in favor of a finding of tribal  
20 jurisdiction." Moreover, even as the Tribal Court granted summary judgment in favor of Acres and  
21 against the Tribe, the Tribal Court found that it had jurisdiction over the action:

22 Tribal Court jurisdiction over both [Acres Bonusing, Inc.] and Acres  
23 arises directly from the consensual relationship established through the  
24 Agreement and commercial negotiations" between James Acres, Acres  
25 Bonusing, Inc. and Blue Lake, that "facts submitted by the parties  
establish that all claims in the action arose on tribal trust land and are thus  
subject to the Tribal Court's sovereign jurisdiction," and that "[t]he  
Tribal Court has jurisdiction over ABI and James Acres"].

26 *Blue Lake Casino & Hotel v. Acres, et al.* (Jul. 18, 2017), Blue Lake Rancheria Tribal Court Case  
27 No. C-15-1215-JRL, Order, Complaint, Exhibit 2, pp. 6-11. Acres' allegations regarding Judge  
28 Marston's judicial bias and his duty to recuse, if any, also do not allege a "complete lack of

1 jurisdiction." *See, Arnold v. Melwani* (9th Cir. 2017) 680 F. App'x 600, 602. Deciding whether or  
2 not to recuse is a judicial act within a court's jurisdiction.

3 The second circumstance to which absolute judicial immunity does not apply is if the  
4 complained-of act constitutes a non-judicial act – *i.e.*, an act not taken in the exercise of a judicial  
5 function. *See Mireles v. Waco, supra*, at 11; *Regan v. Price, supra*, at 1496. Whether an act taken  
6 by a judge or other court official is "judicial" is based on factors that relate to the nature of the act  
7 itself: *i.e.*, (1) whether the precise act is a normal judicial function; (2) whether the events occurred  
8 in the judge's chambers; (3) whether the controversy centered around a case then pending before the  
9 judge; and (4) whether the events at issue arose directly and immediately out of a confrontation with  
10 the judge in his or her official capacity. *Meek v. County of Riverside* (9th Cir. 1999) 183 F.3d 962,  
11 967, citing *New Alaska Development Corp. v. Guetschow* (9th Cir. 1989) 869 F.2d 1298, 1302.

12 Courts have found conduct to be non-judicial in nature and declined to find judicial immunity  
13 only in rare circumstances. *See, e.g., Archie v. Lanier* (6th Cir. 1996) 95 F.3d 438 [judge stalked and  
14 sexually assaulted a litigant]; *Gregory v. Thompson* (9th Cir. 1974) 500 F.2d 59 [justice of the peace  
15 accused of forcibly removing a man from courtroom and physically assaulting him]; *Regan v. Price,*  
16 *supra* [discovery referee deliberately slammed door on party to litigation].

17 Acres' Complaint alleges no facts to support the second exception to defendants' absolute  
18 judicial immunity. Each of Judge Marston's acts of which Acres complains was a commonly  
19 executed judicial task, well within the scope of his judicial authority: *i.e.*, managing a case by  
20 reviewing court filings, issuing orders, and holding hearings. *See Jenkins v. Kerry* (D.D.C. 2013)  
21 928 F.Supp. 2d 122, 134.

22 Acres' allegations regarding Blue Lake Defendants Burrell, Vaughn, DeMarse and Lathouris,  
23 whether as Associate Tribal Court Judges or Law Clerks to Judge Marston, demonstrate that they  
24 also performed functions "closely associated with the judicial process" and therefore are entitled to  
25 absolute judicial immunity from suit. *Moore* at 1246. Ms. Burrell allegedly drafted orders and a  
26 tentative ruling that Judge Marston reviewed, and took notes for Judge Marston during a hearing.  
27 Complaint, ¶¶ 81(b), 84, 85, 102, and 122. Ms. Vaughn allegedly drafted a tribal court order for  
28 Judge Marston threatening to sanction Acres should he continue to "flout tribal court rules."

1 Complaint, ¶¶ 65, 123.

2 The Complaint alleges that Judge Marston tasked Mr. Lathouris with drafting a memorandum  
3 of decision as to whether the Tribal Court could exercise jurisdiction over Acres; Mr. Lathouris was  
4 supervised by Judge Marston. Complaint, ¶¶ 80, 124. Based on Acres' own factual allegations, the  
5 nature of the work allegedly performed by Ms. Burrell, Ms. Vaughn, Mr. DeMarse and Mr. Lathouris  
6 as it related to litigation involving Acres was clearly that of associate judges and/or judicial law  
7 clerks, and therefore they are shielded by the doctrine of absolute judicial immunity.

8 Acres alleges that he was harmed by Clerk Huff's erroneous issuance of a Tribal Court  
9 summons requiring that the complaint against ABI and Acres be answered within five days, rather  
10 than 30 days, Complaint, ¶ 41, and that Clerk Huff used her discretion to reject one of Mr. Acres'  
11 court filings for failing to substantially conform to Blue Lake Tribal Court Rule 12 dealing with the  
12 form, size, and duplication of papers. Complaint, ¶ 62. Even if Clerk Huff mistakenly issued an  
13 incorrect summons or erroneously rejected a filing, her acts were quintessentially judicial or  
14 quasi-judicial acts for which she enjoys absolute judicial immunity. *Moore v. Brewster, supra*, at  
15 1246.

16 Simply put, the Complaint fails to allege any extra-judicial or non-judicial interactions  
17 between Acres and any of the Blue Lake Defendants – no stalking, no physical altercations, no  
18 contacts outside the courtroom.<sup>6</sup> Thus, the harm alleged by Acres is a result of, and can only be the  
19 result of, these defendants' alleged judicial acts or omissions in the exercise of the Tribal Court's  
20 jurisdiction. Because Acres has alleged only acts that are judicial in nature, absolute judicial  
21 immunity bars all of Acres' causes of action against these defendants.

22 **IV. PROSECUTORIAL IMMUNITY BARS ACRES' CLAIMS AGAINST DEFENDANTS**  
23 **RAPPORT, BURRELL, VAUGHN, DeMARSE, LATHOURIS AND "RAPPORT &**  
24 **MARSTON"**

24 For substantially the same reasons that judges have absolute immunity for their judicial  
25 actions, attorneys acting on behalf of a government, whether federal, state or tribal, also possess

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26 <sup>6</sup> At least no interactions initiated by any of the defendants. Indeed, the Complaint alleges that Judge Marston  
27 specifically avoided any *ex parte* contact with Acres. Complaint, ¶ 95. However, Acres physically accosted and verbally  
28 abused Judge Marston at a meeting of the California Tribal Court-State Court Forum held in San Francisco on February  
17, 2017. Marston Decl. ¶ 33.

1 absolute immunity from civil suit for damages. This immunity is known as "prosecutorial  
2 immunity."

3 The common-law immunity of a prosecutor is based upon the same  
4 considerations that underlie the common-law immunities of judges and  
5 grand jurors acting within the scope of their duties. These include  
6 concern that harassment by unfounded litigation would cause a  
7 deflection of the prosecutor's energies from his public duties, and the  
8 possibility that he would shade his decisions instead of exercising the  
9 independence of judgment required by his public trust.

10 *Imbler v. Pachtman* (1976) 424 U.S. 409, 422-24.

11 Prosecutorial immunity also is available in a civil or administrative context. As the Supreme  
12 Court has held, government attorneys who initiate administrative proceedings are, like prosecutors,  
13 absolutely immune from liability since "[t]he decision to initiate administrative proceedings against  
14 an individual or corporation is very much like the prosecutor's decision to initiate or move forward  
15 with a criminal prosecution." *Butz v. Economou* (1978) 438 U.S. 478, 515. This principle, in turn,  
16 has been extended to apply in some instances to government attorneys defending or prosecuting civil  
17 suits. See *Bradley v. Med. Bd.* (1997) 56 Cal.App.4th 445, 454 n.7 [citing *Buckley v. Fitzsimmons*  
18 (1993) 509 U.S. 259, at 270; *Sellars v. Procnier* (9th Cir. 1981) 641 F.2d 1295, 1303; *Mangiafico*  
19 *v. Blumenthal* (2d Cir. 2006) 471 F.3d 391, 396-97 [prosecutorial immunity may apply to the  
20 functions of a government attorney "that can fairly be characterized as closely associated with the  
21 conduct of litigation or potential litigation ... including the defense of such actions"].

22 In this case, defendants Rapport, Burrell, Vaughn, DeMarse and "Rapport & Marston" all are  
23 cloaked with prosecutorial immunity for legal services that they may have rendered to the Tribe or  
24 the Casino in their capacities as the Tribe's attorneys. Mr. Rapport, as the long-time Tribal Attorney  
25 for the Tribe, and attorney DeMarse, as a contractor working for Mr. Rapport, were involved in  
26 representation of the Blue Lake tribal government in the underlying federal court suit against the  
27 Tribe by Mr. Acres. Mr. DeMarse, working under Mr. Rapport's supervision, worked on the  
28 ultimately successful motions to dismiss Acres' federal court lawsuits aimed at stopping the Tribal  
Court proceedings against him, and Mr. Rapport reviewed those drafts. Rapport Decl., ¶¶ 7, 8.

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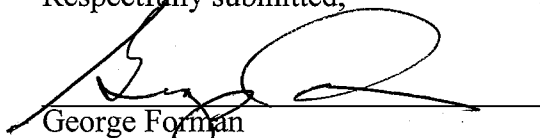
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**CONCLUSION**

For all of the foregoing reasons, defendants Judge Marston, Clerk Huff, Ramsey, Frank, Burrell, Vaughn, DeMarse, Lathouris, Rapport, and "Rapport and Marston" respectfully request that the Court issue an order quashing service of the Summons and Complaint, and dismissing the action in its entirety.

Dated: December 12, 2018

Respectfully submitted,



George Forman  
Attorney for Specially Appearing Defendants Lester Marston, Arla Ramsey, Thomas Frank, Anita Huff, "Rapport and Marston," David Rapport, Cooper DeMarse, Darcy Vaughn, Ashley Burrell and Kostan Lathouris



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Arla Ramsey, Anita Huff, Thomas Frank, Rapport and Marston,  
11 David Rapport, Darcy Vaughn, Ashley Burrell  
Cooper DeMarse and Kostan Lathouris  
12

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF SACRAMENTO**

15 JAMES ACRES, an individual,

16 Plaintiff,

17 vs.

18 Lester Marston, *et al.*,

19 Defendants.  
20

Case No.: 34-2018-00236829

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN REPLY TO  
OVERSIZED<sup>1</sup> OPPOSITION TO MOTION  
TO STRIKE THE COMPLAINT [Civil  
Code § 1714.10]**

Hearing date: January 11, 2019

Hearing time: 2:00 p.m.

Department: 53

21  
22 **INTRODUCTION**

23 Specially appearing defendants demonstrated in their opening memorandum that Acres'  
24 Complaint sufficiently alleges a civil conspiracy between defendant attorneys and their client, the  
25 Blue Lake Rancheria, that Acres was required by Civil Code § 1714.10 to obtain leave of Court  
26 before filing his Complaint. In opposition, Acres denies alleging a conspiracy between defendant  
27

28 <sup>1</sup> Plaintiff did not obtain leave of Court to file his 18-page opposition memorandum.

1 attorneys Rapport, Burrell, DeMarse, Vaughn, and Lathouris and their client, the Blue Lake  
2 Rancheria ("Tribe") doing business as the Blue Lake Casino and Hotel. He claims to have avoided  
3 alleging such a conspiracy between an attorney and his/her client because he has only sued individual  
4 defendants, not the Tribe, and is seeking to recover money damages from them as individuals, based  
5 on their allegedly tortious conduct.

6 He also argues against the application of Section 1714.10 on the grounds that he has not  
7 alleged a conspiracy between the Tribe and its other attorneys. He has tried to limit his causes of  
8 action to one for civil conspiracy (his third cause of action), while his second, fifth and seventh  
9 causes of action purport to be limited to aiding and abetting claims that he argues are distinct causes  
10 of action not subject to Section 1714.10.

11 Finally, he argues that even if he has alleged a lawyer-client conspiracy against him, the  
12 conspiracy claim is exempt from the pre-filing requirement under Section 1714.10(c), because the  
13 attorneys had an independent legal duty to him not to commit the tort of malicious prosecution.

14 **I. CONTRARY TO ACRES' CONTENTION, ACRES CAN AND HAS**  
15 **ALLEGED A CONSPIRACY BETWEEN ATTORNEYS AND THEIR**  
16 **CLIENT THAT IS SUBJECT TO THE PRE-FILING REQUIREMENT OF**  
17 **CIVIL CODE SECTION 1714.10**

18 Relying on *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal. App. 4th 189, 207-209,  
19 Acres argues that Section 1714.10 has become virtually meaningless, because a legal duty must be  
20 owed to the plaintiff by the conspirator defendant attorney as an essential element of the cause of  
21 action, and subsection (c)(1) exempts such a claim from the statute's pre-filing requirements.

22 However, in the recently decided case of *Cortese v. Sherwood* (2018) 26 Cal. App. 5th 445,  
23 456-457, the court found that while not pleaded as such, the complaint in that case alleged a civil  
24 conspiracy cause of action against the attorney defendant for conspiring with his client, the trustee of  
25 a trust, to breach the trustee's fiduciary duty to the beneficiary. The court found that the attorney did  
26 not owe a fiduciary duty to the beneficiary; his attorney-client relationship was strictly between the  
27 attorney and the trustee. Nevertheless, the court inferred that the attorney could not have engaged in  
28 the alleged conduct without an agreement between the lawyer and the client, which agreement was  
sufficient to establish the conspiracy cause of action. To establish a conspiracy for breach of trust,

1 the attorney had to gain financially from the breach (beyond merely earning a normal professional  
2 fee). The court found sufficient financial gain to establish the conspiracy, but insufficient financial  
3 gain to trigger the exemption in subsection (c)(2). As a result, the plaintiff alleged sufficient facts to  
4 establish a conspiracy where the attorney did not owe an independent duty to the plaintiff, avoiding  
5 the exemption in subsection (c)(1).

6 As will be shown below, despite how he has labeled his causes of action, Acres has pleaded  
7 facts establishing a civil conspiracy between the attorney defendants and their client in which the  
8 attorneys did not owe a legal duty to Acres and from which they have not benefitted financially  
9 beyond receipt of their fees. This Court, like the court in *Cortese*, should ". . . review the factual  
10 allegations underlying [Acres'] cause[s] of action to determine whether he alleges a conspiracy, no  
11 matter what labels are used." (*Id.* at 455.)

## 12 II. ACRES HAS EFFECTIVELY ALLEGED A CONSPIRACY BETWEEN THE 13 TRIBAL CLIENT AND THE ATTORNEYS REPRESENTING THE TRIBE

14 Contrary to Acres' characterization of his action, he has, in effect, alleged a conspiracy  
15 between the Tribe's attorneys and the Tribe. As pointed out in these defendants' Memorandum of  
16 Points and Authorities in Support of Motion to Strike [Civil Code §1714.10] ("MTS Memo") at p. 4,  
17 fn. 8, Acres alleges in his complaint that defendant Arla Ramsey was both the CEO of the Tribe's  
18 Casino (which has no legal identity apart from the Tribe itself) and the Tribal Administrator  
19 responsible for the day-to-day operations of the affairs of the tribal government, as well as the  
20 elected Vice- Chairperson of the Tribal Business Council, described in the Complaint as the Tribe's  
21 "executive political arm", and that defendant Thomas Frank was an executive in the Casino and the  
22 Tribe's Director of Business Development. (Complaint, p. 4, 9, 12 and 13.)

23 Acres has not alleged that defendants Ramsey or Frank engaged in conduct for their own  
24 interests or to gain a personal advantage. They have been named as defendants solely because Acres  
25 believes that they are responsible, through their acts as tribal officials and employees acting on the  
26 Tribe's behalf, for the Tribe's decision to file and maintain an allegedly meritless lawsuit against  
27 Acres in tribal court, presided over by an allegedly biased judge. Like a corporation or other legal  
28 entity, the Tribe can only act through its officers and employees. See *Shoemaker v. Myers* (1990) 52

1 Cal.3d 1, 25:

2 Here, the parties against whom plaintiff seeks recovery on this cause of  
3 action are plaintiff's supervisors: agents of the employer who are  
4 vested with the power to act for the employer (rightly or wrongly) in  
5 terminating plaintiff's employment. For purposes of this cause of  
6 action, then, these defendants stand in the place of the employer,  
7 because the employer -- the other party to the supposed contract --  
8 cannot act except through such agents.

9 Acres cannot avoid the requirements of § 1714.10 by the simple expedient of not naming the Tribe  
10 as a party.

11 **III. ACRES HAS ALLEGED A CONSPIRACY BETWEEN THE TRIBAL  
12 CLIENT AND ATTORNEYS REPRESENTING THE TRIBE IN  
13 CONNECTION WITH THE RELEVANT PROCEEDINGS**

14 Acres argues that the defendant attorneys did not represent the Tribe in the tribal court  
15 proceedings and thus his causes of action did not arise from any attempt to contest or compromise a  
16 claim or dispute based upon the attorneys' representation of the client in the tribal court proceedings.  
17 (Plaintiff's Memorandum of Points and Authorities in Opposition to Motion to Strike ("Opposition  
18 Memo"), p. 11, lines 7-11, quoting from 1714.10(a).) As noted above, Acres' complaint alleges in  
19 the first cause of action that defendants Ramsey and Frank, along with the Boutin Jones law firm and  
20 lawyers in that firm committed the tort of malicious prosecution, labeled by Acres as "Wrongful Use  
21 of Civil Proceedings", when they filed and prosecuted the action against Acres in Tribal Court. In  
22 paragraph 153 of his complaint, "Mr. Acres claims [that] the 'Wrongful Use Conspirators' (Rapport  
23 and Marston, David Rapport, Anita Huff, Ashley Burrell, Cooper DeMarse, Darcy Vaughn, Kostan  
24 Lathouris and Michael Chase) *conspired* with the Wrongful Use Defendants (Arla Ramsey, Thomas  
25 Frank, Boutin Jones, Amy O'Neal, Daniel Stouder, Janssen Malloy, LLP, Megan Yarnall and Amelia  
26 Burroughs) to undertake the tortious conduct described in the first cause of action." The Wrongful  
27 Use Defendants include Ramsey and Frank, acting in their role as tribal officials and employees on  
28 the Tribe's behalf, and are, therefore, effectively the Tribe, since it can only act through its officers  
and employees.

29 If the conspiracy exists, it does not matter whether defendant attorneys David Rapport,  
30 Ashley Burrell, Cooper DeMarse, Darcy Vaughn, and Kostan Lathouris performed legal services for  
31 the Tribe in the capacity of Tribal Attorney, tribal court law clerk or in defense of the tribal court's

1 jurisdiction to hear the case in the first instance. Based on the allegations in the complaint, it cannot  
2 be fairly claimed that for purposes of 1714.10(a), the alleged civil conspiracy is between two  
3 individuals who happen to have had an attorney-client relationship in another context. (Opposition  
4 Memo, p. 11, line 12, quoting from *Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1110.) Moreover,  
5 Acres alleges in paragraph 23 of the complaint that Michael Chase is Vice-President and a  
6 shareholder attorney at Boutin Jones. Accordingly, Acres alleges a conspiracy between the Tribe and  
7 at least one of its lawyers in the tribal court action, Michael Chase.

8 Acres has alleged that attorneys representing the Tribe conspired with the Tribe, through its  
9 tribal officials acting on its behalf, to commit the tort of malicious prosecution and through assisting  
10 Judge Marston in his breach of an alleged fiduciary duty and committing a constructive fraud to  
11 conspire with the Tribe to subject Acres to the tribal court proceedings against him. He may call it  
12 something else, but however he may label it, this is an alleged conspiracy to which § 1714.10  
13 applies.

14 **IV. ACRES DOES NOT AVOID THE PRE-FILING REQUIREMENTS OF**  
15 **SECTION 1714.10 BY ALLEGING AIDING AND ABETTING, RATHER**  
16 **THAN CONSPIRACY CLAIMS, IN HIS SECOND, FIFTH AND SEVENTH**  
17 **CAUSES OF ACTION**

18 Acres relies on the distinction between his third cause of action, which is expressly based on  
19 a civil conspiracy, and his second, fifth and seventh aiding and abetting causes of action. Acres  
20 cannot avoid the pre-filing requirements of Section 1714.10 by carefully crafting his seven causes of  
21 action to straddle the line between causes of action for conspiracy and causes of action for aiding and  
22 abetting.<sup>2</sup>

23 The Court should consider Acres' general allegations in evaluating whether Acres has  
24 successfully avoided alleging a conspiracy that triggered 1714.10's pre-filing requirement. After  
25 alleging in paragraphs 69-74 that Judge Marston and David Rapport have a long history of working

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26  
27 <sup>2</sup> See *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal. App. 4th 1451, 1474, that, while  
28 ultimately concluding otherwise, noted the close relationship between conspiracy and aiding and abetting and that some  
courts have suggested that the law should treat conspiracy to breach a fiduciary duty and aiding and abetting a breach of  
fiduciary duty similarly.

1 together and representing the Tribe,<sup>3</sup> and that Rapport and Marston and Boutin Jones have worked  
2 together in representing the Tribe since 2011, Acres alleges in paragraph 75 that, "Mr. Acres is  
3 informed and believes [that] Mr. Chase and Mr. Rapport worked together to coordinate the  
4 despicable conduct of their respective firms towards Mr. Acres." In ¶ 129, the complaint alleges  
5 that, "The conduct of each of the defendants described in the General Allegations above was part of a  
6 pattern of despicable behavior, rife with malice, oppression and fraud in which Blue Lake, its  
7 entities, and agents, wrongfully each used civil proceedings in Blue Lake Tribal Court for their own  
8 individual benefit." In ¶ 148.c, the complaint alleges that: "The Wrongful Use Abettors partook in  
9 the *tortious confederacy* [emph. added] arrayed against Mr. Acres, and the fact this confederacy  
10 included five judges, three law firms, nine attorneys, a sovereign nation, and its entire justice system  
11 caused Mr. Acres to suffer . . .".

12         These allegations in the complaint go far beyond the elements of an aiding and abetting cause  
13 of action (that these defendants knew of the wrongful conduct and engaged in actions which were a  
14 substantial factor in causing the damage suffered by the plaintiff as a result of that conduct). They  
15 allege an agreement to coordinate the commission of the Wrongful Use tort (First Cause of Action)  
16 and constructive fraud (Sixth Cause of Action), and breach of fiduciary duty (Fourth Cause of  
17 Action). While the aiding and abetting causes of action based on breach of fiduciary duty and  
18 constructive fraud are alleged between Judge Marston and attorneys representing the Tribe without  
19 expressly including either the Tribe, defendant Ramsey or defendant Frank as aiders and abettors  
20 under those causes of action (but including Judge Marston as an aider and abetter of his own alleged  
21 breach of fiduciary duty), these claims are alleged as part of this concerted scheme by the Tribe  
22 through its official Arla Ramsey to use the tribal court improperly.

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23  
24         <sup>3</sup> Acres misstates the facts as stated in the Declaration of David J. Rapport when he claims that Rapport and  
25 Marston and David Rapport and Lester Marston have represented the Tribe since 1983. As stated in ¶ 2 of the  
26 declaration, in 1979, as an attorney with California Indian Legal Services, David Rapport filed a class action lawsuit to  
27 restore federal recognition for a class of Indians from 34 California Indian Rancherias and obtained a stipulated judgment  
28 restoring federal recognition for class members from 17 of those rancherias, including the Blue Lake Rancheria.  
Litigating that class action lawsuit did not establish an attorney-client relationship between David Rapport or Lester  
Mr. Marston and the Tribe. As stated in ¶ 3, David Rapport first began representing the Tribe as a sole practitioner in 1995.  
Mr. Marston first began working for the Tribe as a sole practitioner under a judicial services contract that he entered in  
2007.

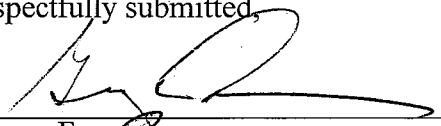


1 As such, the Complaint was and is subject to the pre-filing requirements of § 1714.10, and Acres'  
2 failure to comply with those requirements warrants the striking of his Complaint.

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Dated: January 4, 2019

Respectfully submitted,



George Forman  
Attorney for Specially Appearing Defendants Lester  
Marston, Arla Ramsey, Thomas Frank, Anita Huff,  
"Rapport and Marston," David Rapport, Cooper  
DeMarse, Darcy Vaughn, Ashley Burrell and  
Kostan Lathouris



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 02/11/2019

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: A. Contreras

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2018-00236829-CU-PO-GDS** CASE INIT.DATE: 07/13/2018

CASE TITLE: **Acres vs. Marston**

CASE CATEGORY: Civil - Unlimited

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**EVENT TYPE:** Motion to Quash Deposition Subpoena - Civil Law and Motion

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**APPEARANCES**

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**Nature of Proceeding: Ruling on Submitted Matter (Motion to Quash and/or Dismiss (Janssen Malloy LLP) – Joinder) taken under submission on 2/5/2019**

**TENTATIVE RULING**

Defendants Janssen Malloy LLP, Megan Yarnall and Amelia Burroughs move to quash or dismiss the Verified Complaint of Plaintiff James Acres ("Acres") upon the general ground that the Court lacks subject matter jurisdiction based on tribal sovereign immunity. The Janssen Malloy defendants contend that Acres' allegations establish they were acting solely as legal counsel for a federally recognized indian tribe in a Tribal Court action. Thus, moving defendants argue they are entitled to the protections of the tribe's sovereign immunity in this action.

Defendants Boutin Jones Inc., Michael Chase, Daniel Stouder, and Amy O'Neill have filed a timely joinder in the Janssen Malloy motion, contending that their interests are identical to the interests of the Janssen Malloy defendants because they too were acting solely as legal counsel for the same indian tribe in the same Tribal Court action and are entitled to the same protections of the tribe's sovereign immunity in this action. The joinder is granted.

The motions to quash/dismiss for lack of subject matter jurisdiction premised upon tribal sovereign immunity are GRANTED. The Court notes that the technical ground for the motion may be lack of personal jurisdiction as noted in *People v. Miami Nation Enterprises* (2016) 2 Cal. 5th 222, 243. However, the differential grounds for the motion do not affect the result.

The core questions of law presented by these motions are whether attorneys who represent a recognized indian tribe in a civil action prosecuted in a Tribal Court are cloaked with the tribe's sovereign immunity as against a resulting action in California state court alleging: (1) malicious prosecution of the civil action in the Tribal Court; and/or (2) aiding and abetting the Tribal Court judge's alleged breach of a fiduciary duty owed to an opposing party in the Tribal Court civil action.

This Court finds that the tribe's attorneys are entitled to the same sovereign immunity that would protect the tribe in the state court action, or a relative of sovereign immunity referred to as prosecutorial immunity.

The parties do not dispute that these issues are properly presented to the court by way of motion to quash and or dismiss. (*Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1144; *Great W. Casinos, Inc v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4<sup>th</sup> 1407, 1414.) There is no dispute that the Blue

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Lake Rancheria is a federally recognized Indian tribe entitled to sovereign immunity. The United States Supreme Court has long "recognized Indian tribes as 'distinct, independent political communities,' [citation], qualified to exercise many of the powers and prerogatives of self-government." (*Plains Commerce Bank v. Long Family Land & Cattle Co.* (2008) 554 U.S. 316, 327 [171 L.Ed.2d 457, 471].) Indeed, the high court has recognized that tribal sovereign immunity extends to entities beyond the tribe itself. (*Inyo County v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony* (2003) 538 U.S. 701, 705, fn. 1.) Sovereign immunity is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation.' " (*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1182.) "Rather, it presents a pure jurisdictional question." (Ibid.)

The parties' burdens upon the motion are not disputed. "Where the motion to dismiss is based on a claim of ... sovereign immunity, which provides protection from suit and not merely a defense to liability, however, the court must engage in sufficient pretrial factual and legal determinations to "'satisfy itself of its authority to hear the case' before trial." ... ' ... [W]hen a defendant challenges personal jurisdiction, the burden shifts to the plaintiff to prove the necessary jurisdictional criteria are met by competent evidence in affidavits and authenticated documentary evidence; allegations in an unverified complaint are inadequate." (*Brown v. Garcia* (2017) 17 Cal.App.5th 1198, 1204.) The lack of jurisdiction can be shown through the plaintiff's own pleadings. (*Trudgeon v. Fantasy Springs Casino* (1999) 71 Cal.App.4th 632, 644; *Brown*, supra, at p. 1203-1205.)

This motion requires a lengthy summarization of the allegations of Acres' complaint, and the alleged roles of the moving defendants in relation to those allegations.

This tort action arises from a previous civil case filed by the Blue Lake Casino & Hotel (a tribally owned entity of Blue Lake Rancheria, a federally recognized Indian tribe) against Acres Bonusing, Inc. ("ABI"), and Plaintiff James Acres ("Acres").

The prior civil case was filed in the Blue Lake Rancheria Tribal Court - Case Number C-15-1215IJM. That Tribal Court case ("*Blue Lake v. Acres*") alleged four causes of action against ABI (breach of contract, tortious breach of the implied covenant of good faith and fair dealing, unjust enrichment, and money had and received). The case alleged one cause of action against Acres (fraudulent inducement). The *Blue Lake v. Acres* Tribal Court action arose from a contract between Blue Lake Casino & Hotel and ABI related to ABI's development, service and maintenance of online gambling software referred to as the iSlot System. Acres alleges that he was not a party to the iSlot Agreement at issue in *Blue Lake v. Acres*. (Complaint "Com." ¶49.)

Acres alleges in this action that The Blue Lake Rancheria ("Tribe") is a federally recognized Indian Tribe in Humboldt County, California, and is organized under the Constitution of the Blue Lake Rancheria. Tribe comprises approximately sixty members and approximately ninety acres of land. (Com. ¶8.) Tribe is not named in the present action.

Under Tribe's constitution, the Blue Lake Business Council is the executive political arm of the Tribe. The Blue Lake Business Council is not currently named as a Defendant to this action. (Com. ¶9.)

The Tribal Court of the Blue Lake Rancheria ("Tribal Court") was established by the Blue Lake Business Council through its enactment of Ordinance No. 07-01, and under "its inherent sovereign authority to establish and operate its own judicial system." The Blue Lake Tribal Court is not currently named as a Defendant to this action. (Com. ¶10.)

The Blue Lake Casino & Hotel ("Blue Lake Casino") is an economic enterprise owned and operated by Tribe. According to a gaming ordinance enacted by the Blue Lake Business Council, profits from gaming at the casino are deposited directly into Tribe's general treasury. Blue Lake Casino was the plaintiff of the alleged wrongful civil proceeding against Mr. Acres in the Blue Lake Tribal Court. However, Blue Lake Casino is also not currently named as a Defendant to this action. (Com. ¶11.)

The named defendants in the present action were not parties to the *Blue Lake v. Acres* action. Instead, they are alleged to have had some other collateral involvement in the prosecution of *Blue Lake v. Acres* against Acres in the Tribal Court. The alleged involvement of the many defendants, including the moving defendants, is important to analyze the immunity question raised in this motion.

Lester Marston ("Judge Marston") is alleged to have served as the Chief Judge of Blue Lake Tribal Court, and originally presided over *Blue Lake v. Acres* in the Tribal Court. (Com. ¶15.)

Arla Ramsey ("Ramsey") is alleged to have been the CEO of Blue Lake Casino during *Blue Lake v. Acres*. Ms. Ramsey also served as Blue Lake's Tribal Administrator, as a judge of Blue Lake's Tribal Court, and as the vice-chair of Blue Lake Business Council. In her role as Tribal Administrator, Ms. Ramsey was responsible for the day to day business affairs of the Tribal Government, and supervised the work of Clerk Anita Huff. (Com. ¶12.)

Anita Huff ("Huff") is alleged to have been the Clerk of the Blue Lake Tribal Court during *Blue Lake v. Acres*. While acting as Tribal Court Clerk, Clerk Huff was also employed by Tribe in various other roles, like "Grants and Contracts Manager." (Com. ¶14.) During *Blue Lake v. Acres*, most of the orders issued by Blue Lake Tribal Court were served on the parties by Clerk Huff. (Com. ¶120.)

Thomas Frank ("Frank") is alleged to have held various executive roles for Tribe over the past 15 years, including as a Blue Lake Casino executive (until 2009) and as Director of Business Development for Tribe (from 2010 until at least 2015). (Com. ¶13.) During *Blue Lake v. Acres*, Frank verified Blue Lake Casino's discovery responses to Mr. Acres, and made several sworn declarations in the action. (Com. ¶119.)

David Rapport ("Rapport") allegedly provided attorney services to Tribe in partnership with Judge Marston. Rapport has done so since at least 1983. (Com. ¶17.)

Rapport & Marston is alleged to be a law firm consisting of Judge Marston and Rapport. (Com. ¶16.) This is repeatedly disputed in their motion papers.

Darcy Vaughn (Vaughn) is alleged to be an associate judge of the Blue Lake Tribal Court, and a licensed California attorney associated with Rapport and Marston. (Com. ¶20.) Vaughn performed legal services for Tribe, and also provided legal service to Judge Marston in his role as judge in *Blue Lake v. Acres*. (Com. ¶123.)

Ashley Burrell (Burrell) is alleged to be an associate judge of the Blue Lake Tribal Court, and a licensed California attorney associated with Rapport and Marston. (Com. ¶18.) Burrell performed legal services for Tribe, and also provided legal service to Judge Marston in his role as judge in *Blue Lake v. Acres*. (Com. ¶122.)

Cooper DeMarse (DeMarse) is alleged to be an associate judge of the Blue Lake Tribal Court, and a licensed California attorney associated with Rapport and Marston. (Com. ¶19.) DeMarse performed legal services for Tribe, and also provided legal service to Judge Marston in his role as judge in *Blue Lake v. Acres*. (Com. ¶125.)

Kostan Lathouris (Lathouris) is alleged to be an attorney licensed in Nevada and associated with Rapport and Marston. (Com. ¶21.) Lathouris performed legal services for Tribe, and also provided legal service to Judge Marston in his role as judge in *Blue Lake v. Acres*. (Com. ¶124.)

Boutin Jones Inc. ("Boutin") is a law firm located in Sacramento, California. Boutin attorneys filed the initial complaint in *Blue Lake v. Acres* and prosecuted the case for over a year against Acres. Boutin also represented Blue Lake Casino in other federal actions initiated by Mr. Acres in which he sought to enjoin *Blue Lake v. Acres*. (Com. ¶22.)

Michael Chase ("Chase") is alleged to be Vice-President and a shareholder attorney at Boutin. It is alleged that Chase personally appeared on behalf of Blue Lake Casino in the two federal actions commenced by Acres in his effort to enjoin *Blue Lake v. Acres*. Acres refers to these federal actions as *Acres v. Blue Lake I* and *Acres v. Blue Lake II*. (Com. ¶23.)

Daniel Stouder (Stouder) is alleged to be Vice-President and a shareholder attorney at Boutin. Stouder was an attorney of record representing Blue Lake Casino in *Blue Lake v. Acres*, and *Acres v. Blue Lake I and II*, and personally appeared in federal court on Blue Lake Casino's behalf in *Acres v. Blue Lake II*. (Com. ¶24.)

Amy O'Neill (O'Neill) is alleged to have been an attorney at Boutin, and was an attorney of record representing Blue Lake Casino in *Blue Lake v. Acres*. It is alleged that she personally appeared in Blue Lake Tribal Court on Blue Lake Casino's behalf. O'Neill was also an attorney of record for Blue Lake Casino in *Acres v. Blue Lake I and Acres v. Blue Lake II*. (Com. ¶25.)

Janssen Malloy LLP ("Janssen Malloy") is alleged to be a law firm located in Humboldt County, California. In February of 2017, it is alleged that Janssen Malloy replaced Boutin as attorneys representing Blue Lake Casino in *Blue Lake v. Acres* and *Acres v. Blue Lake II*. (Com. ¶26.)

Megan Yarnall (Yarnall) is alleged to be a partner at Janssen Malloy. She was an attorney of record for Blue Lake Casino in both *Blue Lake v. Acres* and in *Acres v. Blue Lake II*, and personally appeared on behalf of Blue Lake Casino in both actions. (Com. ¶27.)

Amelia Burroughs (Burroughs) is alleged to be an attorney (and perhaps partner) at Janssen Malloy, and attorney of record for Blue Lake Casino in *Blue Lake v. Acres*. (Com. ¶28.)

The Court need not recite at length here the detailed gravamen of Acres' complaints about Judge Marston's alleged disqualifying conflicts of interest in serving as the trial judge in *Blue Lake v. Acres* while also serving as the Tribe's lawyer in other legal matters. It will suffice to summarize Acres' position that Judge Marston had several disqualifying conflicts and connections with Tribe while he acted as judge in Tribe's lawsuit against Acres in *Blue Lake v. Acres*. Acres also alleges that Judge Marston had improper connections with the attorneys representing, or associated with the attorneys representing, Blue Lake Casino in *Blue Lake v. Acres*. And, Acres alleges that the cause of action prosecuted by Blue Lake Casino against him for fraudulent inducement in *Blue Lake v. Acres* was prosecuted without probable cause and with malice, and that the ultimate decision in *Blue Lake v. Acres* in his favor bears that out.

Acres alleges that the conflicting interests between Judge Marston, the Tribe, and the attorney defendants was "part of a pattern of despicable behavior, rife with malice, oppression and fraud in which [Tribe], its entities, and agents, wrongfully each used civil proceedings in Blue Lake Tribal Court for their own individual benefit," which "was continuous from at least January 2013 until at least December 2016." (Com. ¶ 129.)

In light of the foregoing, Acres' Verified Complaint states seven separately pled causes of action:

First Cause of Action [Wrongful Use of Civil Proceedings ("Malicious Prosecution")] Ramsey, Frank, Boutin, Janssen Malloy, and defendant attorneys Stouder, O'Neill, Burroughs and Yarnall committed the tort of malicious prosecution by filing and prosecuting the Tribal Court action *Blue Lake v. Acres* against Acres.

Second Cause of Action [Aiding and Abetting Malicious Prosecution] Judge Marston, Clerk Huff, and attorneys Rapport, Rapport & Marston, DeMarse, Vaughn, Burrell, Lathouris, and Chase aided and abetted the commission of the tort of malicious prosecution against Acres.

Third Cause of Action [Conspiracy to Commit Malicious Prosecution] Rapport & Marston, Judge Marston, David Rapport, Clerk Huff, and defendant attorneys Burrell, Demarse, Vaughn, Lathouris and Chase conspired with Ramsey, Frank, Boutin, Janssen Malloy, Stouder, O'Neill, Burroughs and Yarnall to commit the tort of malicious prosecution by filing and prosecuting the Tribal Court action *Blue Lake v. Acres* against Acres. (Com.¶ 153.)

Fourth Cause of Action [Breach of Fiduciary Duty] Judge Marston had and breached a fiduciary duty to Acres by failing to disclose Judge Marston's performance of legal work for the Tribe in other matters while sitting as Tribal Judge, and a duty to recuse himself from presiding over *Blue Lake v. Acres* sooner than he did.

Fifth Cause of Action [Aiding and Abetting Breach of Fiduciary Duty] Judge Marston, Ramsey, Frank, Clerk Huff, Rapport & Marston, Boutin, Rapport, Burrell, DeMarse, Vaughn, Lathouris, Chase, Stouder and O'Neill, aided and abetted Judge Marston's alleged breach of his alleged fiduciary duty to Acres by assisting and encouraging Judge Marston's alleged breach of his alleged fiduciary duty to Acres.

Sixth Cause of Action [Constructive Fraud] Judge Marston committed constructive fraud against Acres by failing to disclose that Judge Marston had received compensation from the Tribe for legal work unrelated to Acres that Judge Marston performed in a capacity other than as the Tribal Court Judge.

Seventh Cause of Action [Aiding and Abetting Constructive Fraud] Ramsey, Frank, Clerk Huff, Rapport & Marston, Rapport, Burrell, DeMarse, Vaughn, Lathouris, Boutin, Chase, Stouder, and O'Neill aided and abetted Judge Marston's alleged commission of constructive fraud against Acres.

Thus, Janssen Malloy, Yarnall and Burroughs are named only in the First Cause of Action (Malicious Prosecution).

Boutin, Daniel Stouder, and Amy O'Neill are named in the First Cause of Action (Malicious Prosecution), Fifth Cause of Action (Aiding and Abetting Judge Marston's Breach of Fiduciary Duty), and Seventh Cause of Action (Aiding and Abetting Judge Marston's Constructive Fraud).

Chase is individually named in the Second Cause of Action (Aiding and Abetting Malicious Prosecution), Third Cause of Action (Conspiracy to Commit Malicious Prosecution), Fifth Cause of Action (Aiding and Abetting Judge Marston's Breach of Fiduciary Duty), and Seventh Cause of Action (Aiding and Abetting Judge Marston's Constructive Fraud).

It is important to note that Acres only alleges that the *Blue Lake v. Acres* action was maliciously prosecuted against him, and is the sole basis of the First, Second and Third Causes of Action. (Com. ¶¶ 132, 133, 134, 135.) The Court makes this initial observation to distinguish the attorneys' alleged conduct and actions in *Blue Lake v. Acres* from any acts they may have performed in defending the Tribe in Acres' subsequent federal actions. Thus, as to the malicious prosecution and vicarious fiduciary claims, the moving defendants' conduct was contained to providing legal representation to Blue Lake Casino in prosecuting the fraud action in the Tribal Court against Acres in *Blue Lake v. Acres*.

The parties' core dispute is whether, in committing the alleged tortious conduct, the Tribe's attorneys were functioning as the Tribe's officers or agents in a manner implicating the Tribe's sovereignty, or instead the defendant attorneys acted merely as the Tribe's employees engaged in essentially personal pursuits for their own personal benefit not involving the Tribe's sovereignty.

On this key issue, the parties cite *Great W. Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407; *Trudgeon v. Fantasy Springs Casino, supra*, 71 Cal.App.4th 632, 643; *Brown v. Garcia* (2017) 17 Cal.App.5th 1198; *Lewis v. Clarke* 137 S. Ct. 1285 (2017); and *People ex rel. Owen v. Miami Nations Enterprises* (2016) 2 Cal. 5th 222. They also discuss two federal court opinions *J.W. Gaming Dew, LLC v. James* (N.D. Cal. Oct. 5, 2018) Case No. 3:18-cv-02669-WHO and *Williams & Cochrane v. Quechan Tribe of the Fort Yuma Indian Reservation* (S.D. Cal. Jun. 7, 2018) Case No. 3:17-cv-01436-GPC-MDD.

As the moving defendants note, *J.W. Gaming* has been appealed to the Ninth Circuit, so this court has not considered that opinion in its analysis. Nevertheless, the court's brief review of the facts in that case did not reveal that the tribe's attorneys were defendants or that the district court considered whether the tribe's attorneys were entitled to tribal sovereign immunity as represented by Acres' argument.

The Court's review of the remaining cited authorities and other cases discussed below persuades it that the moving defendant attorneys are entitled to the Tribe's sovereign immunity or an extension of that immunity, with respect to the torts alleged against them in this action.

The clear starting point is the United States Supreme Court's fairly recent opinion in *Lewis v. Clarke*, 581 U.S. \_\_\_, 137 S. Ct. 1285, 197 L.Ed.2d 631 (2017). In that case, a tribal employee was sued for negligence when he allegedly caused a motor-vehicle accident on an interstate highway not on tribal lands. (137 S. Ct. at 1291.) The employee was shuttling customers for the tribe. The tribe argued that sovereign immunity barred the suit because the driver was a tribal employee driving on tribal business and because the tribe's decision to indemnify its employees meant that a judgment would affect the tribe's finances. (*Id.*) The United States Supreme Court disagreed holding that a tribal employee sued in his personal capacity, based on his personal actions not occurring on tribal property, could not invoke sovereign immunity - even when acting in the scope of his employment. (*Id.*) The Court found that the particular suit would "not require action by the sovereign or disturb the sovereign's property," even if the tribe chose to indemnify the employee. (*Id.*)

*Lewis* addressed in part whether the sovereign immunity of an Indian tribe bars "individual-capacity damages" against tribal employees for torts committed by them within the scope of their employment.

Justice Sotomayor's short analysis of this question starts with a tangential observation that the Court's prior cases on sovereign immunity establish that courts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars a suit against state and federal employees or entities. (137 S.Ct. at 1291.) *Lewis* indicated that a court should not extend sovereign immunity for tribal employees beyond what common-law sovereign immunity principles would recognize for either state or federal employees. (*Id.* at 1293.)

The distinction between individual- and official-capacity suits thus was the paramount question in the *Lewis* analysis bounded by general rules of the scope of analogous sovereign immunity exercised by state and federal entities. "The identity of the real party in interest dictates what immunities may be available. Defendants in an official-capacity action may assert sovereign immunity." (137 S. Ct. at 1292.)

"An officer in an individual-capacity action, on the other hand, may be able to assert personal immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances. But sovereign immunity 'does not erect a barrier against suits to impose individual and personal liability.'" (137 S. Ct. at 1292.)

*Lewis* observed that "[i]n an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself." (137 S. Ct. at 1292) In comparison, "Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law." (*Id.*)

Acknowledging the analogous "general rules" of state and federal sovereign immunity, and the operative distinction between "personal capacity claims" and "official capacity claims," *Lewis* then turned to the facts of the negligence action before it. The Court found the case to be "a negligence action arising from a tort committed by [the employee] on an interstate highway within the State of Connecticut. The suit [was] brought against a tribal employee operating a vehicle within the scope of his employment but on state lands, and the judgment [would] not operate against the Tribe." Based upon those specific facts, *Lewis* found that the suit was not against the employee in his official capacity. To the contrary, *Lewis* held that the case was simply a suit against the employee to recover for his personal actions, which would **not require action by the sovereign** or disturb the sovereign's property.

There are obvious distinctions between the negligence case against the driver in *Lewis* and the malicious prosecution action stated here against the Janssen and Boutin defendants. First, the alleged tort in *Lewis* occurred entirely on state land in pursuit of the tribe's commercial activities, while the malicious prosecution claim here occurred entirely on tribal land within the context of a Tribal Court judicial proceeding. Second, the tribe's driver in *Lewis* did not claim to be an "official" of the tribe acting as the tribe's necessary fiduciary agent, while the Tribe's attorneys in this matter were the official fiduciary representatives of the Tribe in the Tribal Court. Third, the negligence action against the driver in *Lewis* would not be expected to require the appearance of the Tribe (or tribal officials) as witnesses or necessary parties in the action, while the malicious prosecution claim would most likely require action by the Tribe in the lawsuit and could involve efforts to invade the privileged interactions between the Tribe and its legal counsel regarding the decision-making process underlying the prosecution of Acres in the Tribal Court.

But these obvious distinctions do not clearly dictate a finding that Acres' malicious prosecution and vicarious tort claims constitute "official-capacity claims" or are instead "personal-capacity suits" under the brief analysis in *Lewis*.

*Lewis* looked to the general rules of state and federal governmental immunity to guide the Court's consideration of the appropriate scope of tribal sovereign immunity and to assess whether the claim was official or personal. In that respect, this court has also considered the appropriate and available scope of sovereign immunity in California relating to similar tort claims.

Specifically, and analogously, Government Code section 821.6 provides a broad immunity "for injury caused by [a public employee] instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." The statute "is given an 'expansive interpretation' in order to best further the rationale of the immunity, that is, to allow the free exercise of the prosecutor's discretion and to protect public officers from harassment in the performance of their duties. [Citations.]" (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1292.) It extends not merely to the institution of proceedings, but to "[a]cts taken during an investigation prior to the institution of a judicial proceeding . . ." (*County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 229.) If the public employee is immune, the public entity by which he or she was employed is likewise immune, unless otherwise provided by statute. (Gov. Code, § 815.2, subd. (b).) In short, the State of California enjoys sovereignty immunity from malicious prosecution claims because its officers and attorneys are statutorily entitled to such immunity.

In addition to the malicious prosecution claim, Acres also alleges that some of the moving defendants committed other torts by conspiring with or aiding Judge Marston to breach a fiduciary duty owed by him to Acres in the Tribal Court action. These claims implicate other related immunities that emanate from sovereign immunity -- namely judicial immunity and quasi-judicial immunity. "It is well established judges

are granted immunity from civil suit in the exercise of their judicial functions. (*Frost v. Geernaert* (1988) 200 Cal. App. 3d 1104, 1107-1108, citing *Tagliavia v. County of Los Angeles* (1980) 112 Cal. App. 3d 759, 761; *Oppenheimer v. Ashburn* (1959) 173 Cal. App. 2d 624, 629.) This rule applies even where the judge's acts are alleged to have been done maliciously and corruptly. (*Tagliavia, supra*, at p. 761.) The rule is based on "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself." (*Tagliavia, supra*, 112 Cal. App. 3d at p. 762.) Judicial immunity is a principle of common law **which is necessary for the welfare of the state and the peace and happiness of society**. (*Tagliavia, supra*, at pp. 762-763; *Singer v. Bogen* (1957) 147 Cal. App. 2d 515, 523-524.) Judicial immunity from a civil action for monetary damages is absolute. (*Howard v. Drapkin* (1990) 222 Cal. App. 3d 843, 851; *Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585-586.) "The justification for [judicial immunity] is that it is impossible to know whether [a person's claim against an official] is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.' ...Thus, the protection must be absolute, even to the malicious or corrupt judge. The effect of judicial immunity is that the action against the judicial officer must be dismissed." (*Howard v. Drapkin* (1990) 222 Cal. App. 3d 843, 852.)

Further, under the related concept of "quasi-judicial immunity," California courts have also extended a form of judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity. In determining whether a person is acting in a quasi-judicial fashion, the courts look at "the nature of the duty performed [to determine] whether it is a judicial act -- not the name or classification of the officer who performs it, and many who are properly classified as executive officers are invested with limited judicial powers." (*Pearson v. Reed* (1985) 6 Cal.App.2d 277, 286-287.) The immunity has been extended to nonjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process against damage claims arising from their performance of duties in connection with the judicial process. (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585-586.)

But this survey of absolute state immunities for malicious prosecution and judicial acts as recommended in *Lewis* also does not dictate a conclusion that Acres' malicious prosecution and vicarious claims constitute "official-capacity claims" or "personal-capacity suits" under *Lewis*. Existing California case authorities do provide guidance.

In *Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, the Second District held that tribal sovereign immunity extended to the tribe's outside legal counsel (characterized as "non-Indian law firm and general counsel") in order to protect the tribal defendants' interests and ensure adequate legal counsel for the tribe. The plaintiff in that case filed suit against a tribe, the tribal council, individual tribal council members, the tribe's general counsel, an attorney and her private law firm regarding the tribe's cancellation of a contract. The plaintiff alleged that when the tribe realized the profit potential of the contract, its council, and the individual members of the tribal council and tribe, acting through their general counsel, decided to concoct a fraudulent scheme to cancel the contract and oust the plaintiff from the lucrative business. The plaintiff alleged claims for bad faith breach of contract, fraud, breach of fiduciary duty, constructive fraud, conversion, interference with business relations, abuse of process, civil violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 et seq. (RICO)), money had and received, imposition of a constructive trust, accounting and dissolution of partnership.

The trial court granted the defendants' motions to quash and dismissed the action based upon tribal sovereign immunity. The Second District affirmed finding in relevant part that the non-Indian law firm and general counsel were protected by tribal sovereign immunity from liability predicated upon their actions taken or opinions given in rendering related legal services to the tribe to the same extent of immunity entitled to the tribe, tribal council, and tribe members.

In this regard, *Great W. Casinos, Inc.* opined as follows: "In providing legal representation-- even advising, counseling and conspiring with the tribe to wrongfully terminate the management contract -- counsel were similarly immune from liability for those professional services. (See *Davis v. Littell, supra*, 398 F.2d 83, 85 [attorney who advised tribal council regarding the competence and integrity of an

employee is immune from liability for defamation under the executive privilege[.]) Citing federal case law, *Great W. Casinos, Inc.* stated with approval that "[t]ribes need to be able to hire agents, including counsel, to assist in the process of regulating gaming. As any government with aspects of sovereignty, a tribe must be able to expect loyalty and candor from its agents. If the tribe's relationship with its attorney, or attorney advice to it, could be explored in litigation in an unrestricted fashion, its ability to receive the candid advice essential to a thorough licensing process would be compromised. The purpose of Congress in requiring background checks could be thwarted if retained counsel were inhibited in discussing with the tribe what is learned during licensing investigations, for example. Some causes of action could have a direct effect on the tribe's efforts to conduct its licensing process even where the tribe is not a party." (*Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, supra, 74 Cal.App.4th at 1423-1424 citing *Gaming Corp. of America v. Dorsey & Whitney* (8<sup>th</sup> Cir. 1996) 88 F.3d 536, 550.)

Applying this rationale, *Great W. Casinos, Inc.* held that "[a]s a sovereign the Morongo Band 'enjoys sufficient independent status and control over its own laws and internal relationships to be able to accord absolute privilege to its officers within the areas of tribal control.' (*Davis v. Littell*, supra, 398 F.2d at p. 84.) Moreover, as a sovereign the Morongo Band had the '[right] to look beyond its own membership for capable legal officers, and to contract for their services.' (*Id.* at p. 85.) In performing their function counsel must be free to express legal opinions and give advice unimpeded by fear their relationship with the tribe will be exposed to examination and potential liability for the advice and opinions given. Refusing to recognize an extension of a tribe's sovereign immunity to cover general counsel's advice to the tribe could not only jeopardize the tribe's interests but could also adversely influence counsel's representation of the tribe in the future. For these reasons counsel in allegedly advising the tribe to wrongfully terminate the management contract are similarly covered by the tribe's sovereign immunity." (*Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, supra, 74 Cal.App.4th at 1423-1424.)

*Great W. Casinos, Inc.*'s analysis regarding the extension of tribal sovereign immunity to the tribe's legal counsel was relied upon by the United States District Court for the Southern District of New York in *Catskill Dev., LLC v. Park Place Entm't Corp.* (U.S.D.C. S.D.N.Y. 2002) 206 F.R.D. 78. In that case, the District Court addressed in part whether a tribe's non-member attorneys were protected by the tribe's sovereign immunity against subpoenas issued to the attorneys demanding information about the tribe's business and the attorneys' work on behalf of the tribe in a civil action where neither the tribe nor the attorneys were parties.

The District Court held that the attorneys were entitled to sovereign immunity against the subpoenas, reasoning as follows: "As a general proposition, a tribe's attorney, when acting as a representative of the tribe and within the scope of his authority, is cloaked in the immunity of the tribe just as a tribal official is cloaked in that immunity. *Id.* at p.91; See, e.g., *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 550 (8<sup>th</sup> Cir. 1996); *Stock West Corp. v. Taylor*, 942 F.2d 655, 664-65 (9<sup>th</sup> Cir. 1991), modified on rehearing, 964 F.2d 912 (9<sup>th</sup> Cir. 1992) (en banc) (tribal attorneys may qualify as a "tribal official" if their actions are "clearly tied to their roles in the internal governance of the tribe"); *Davis v. Littell*, 398 F.2d 83, 84-85 (9<sup>th</sup> Cir. 1968), cert. denied, 393 U.S. 1018, 21 L. Ed. 2d 562, 89 S. Ct. 621 (1969); *Great Western Casinos, Inc. v. Morongo Band of Mission Indians*, 74 Cal. App. 4th 1407, 1423-24, 88 Cal. Rptr. 2d 828 (Cal. Dist. Ct. App.), review denied, 1999 Cal. LEXIS 9092 (Dec. 21, 1999), cert. denied, 531 U.S. 812, 148 L. Ed. 2d 15, 121 S. Ct. 45 (2000); *Diver v. Peterson*, 524 N.W.2d 288, 292 (Minn. Ct. App. 1994), review denied (Minn Feb. 14, 1995); *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 7-8, 480 P.2d 654, 657-58 (1971)." (*Catskill Dev., LLC*, 206 F.R.D. at pp. 91-92.) The court found that "Tribal attorneys possess sovereign immunity only to the extent that a tribal official possesses sovereign immunity...." (*Id.*)

"Although Indian tribes enjoy broad sovereign immunity from lawsuits, the immunity of Indian tribal officials ... is more limited." (*Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1157.) When tribal officials "act 'in their official capacity and within their scope of authority,'" they are protected by sovereign immunity because their acts are the acts of the sovereign. (*Turner v. Martire* (2000) 82 Cal.App.4th 1042, 1046.) On the other hand, when "an officer of a sovereign acts beyond his or her delegated authority, his or her actions 'are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the



sovereign has forbidden," and therefore sovereign immunity does not apply. (*Turner*, at p. 1055; see *Trudgeon*, supra, 71 Cal.App.4th at p. 644.) A tribal official's commission of a tort is not per se an act in excess of authority, and therefore is not necessarily unprotected by immunity. "[I]f the actions of an officer do not conflict with the terms of his valid statutory authority, then they are actions of the sovereign, whether or not they are tortious under general law ... ." [Citation.]" (*Boisclair*, supra, 51 Cal.3d at p. 1157; see *Turner*, supra, 82 Cal.App.4th at p. 1055; *Trudgeon*, supra, 71 Cal.App.4th at p. 644.) Accordingly, to determine whether a tribal official is entitled to the protection of sovereign immunity for a tortious act, courts must determine whether the official (1) committed the act in his or her official capacity and (2) within the scope of his or her official authority. (*Boisclair*, at pp. 1157-1158; *Turner*, at p. 1046; *Great Western Casinos, Inc. v. Morongo Band of Mission Indians*, supra, 74 Cal.App.4th at p. 1421; *Trudgeon*, at pp. 643-644.) "A tribal official also may forfeit immunity where he or she acts out of personal interest rather than for the benefit of the tribe." (*Turner*, at p. 1055.)

The parties also cite *Brown v. Garcia* (2017) 17 Cal. App. 5th 1198 for consideration on the issue. *Brown* involved a defamation action by plaintiff tribe members against other defendant tribe members. Specifically, the defendant tribe members published an "Order of Disenrollment" (the Order) that accused the plaintiffs of multiple violations of tribal, state and federal laws. The Order stated, "[i]f you are found guilty by the General Council of these offenses against the Tribe, you may be punished by: a. DISENROLLMENT - loss of membership." On the defendant's motion to quash the defamation action based upon sovereign immunity, the trial court ruled the lawsuit was barred by sovereign immunity finding that the alleged defamatory statements were made pursuant to the defendants' lawful authority as tribal officials. The First District affirmed.

The plaintiffs' in *Brown* made arguments very similar to Acres' arguments on this motion. Specifically, the *Brown* plaintiffs argued that sovereign immunity was inapplicable because they were suing defendants only in their individual capacities and sought relief only from them as individuals, not from the Tribe. The plaintiffs denied that their action would require the court to adjudicate an intra-tribal dispute or insert itself in tribal law, custom, practice or tradition. Instead, the plaintiffs represented that they were "simply asking that the Defendants, in their individual capacities, be held accountable for their defamation of fellow Californians."

Looking to Ninth Circuit authorities, and rejecting the plaintiffs' contentions, *Brown* observed that "sovereign immunity will nonetheless apply in appropriate circumstances even though the complaint names and seeks damages only from individual defendants." Citing *Pistor v. Garcia* (9th Cir. 2015) 791 F.3d 1104, *Brown* noted that: "In any suit against tribal officers, we must be sensitive to whether 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the [sovereign] from acting, or to compel it to act.'"

In affirming that the defendants were entitled to tribal sovereign immunity against the defamation claims, *Brown* accepted that the plaintiffs' suit did not ask the court to take any actions regarding their disenrollment from the tribe, and only sought to assess liability for torts the tribal officials allegedly committed in effectuating that disenrollment. However, *Brown* also found that "[n]otwithstanding plaintiffs' assertion that their action is 'purely about harmful publications' and 'does not require a court to interfere with any membership or governance decisions,' entertaining the suit would require the court to adjudicate the propriety of the manner in which tribal officials carried out an inherently tribal function."

Acres argues that *Great W. Casinos, Inc. v. Morongo Band of Mission Indians* is overruled by *Lewis* to the extent it "disagrees with *Lewis*," and that *Brown v. Garcia* (2017) 17 Cal.App.5th 1198 is inapt because it only involved inter-tribal governance and membership issues. The Court disagrees with both contentions.

First, *Great W. Casinos, Inc.*'s extension of tribal sovereign immunity to the tribe's legal counsel protecting them from liability predicated upon their actions taken or opinions given in rendering legal services to the tribe does not "disagree" with the "official-capacity" "personal-capacity" dichotomy identified in *Lewis*. The finding in *Great W. Casinos, Inc.* that the tribe's legal counsel functioned as tribal officials does not run afoul of *Lewis*. And, nothing in the facts of *Great W. Casinos, Inc.* prevented a finding that the relief sought by the plaintiffs there was only nominally against the attorneys as individuals

and was instead an action against the tribes attorneys as tribal officials acting in their tribal office, and thus was an action against the sovereign tribe itself.

Second, the nuanced holding in *Brown* is not inapt here. *Brown* was fully aware of *Lewis*. *Brown* was presented with a circumstance where the plaintiffs pled facially "personal-capacity suits" for defamation against the defendants, but the court looked beyond the facade of the action to determine whether the claims against the tribal officials would compel the state court to adjudicate the propriety of the manner in which the tribal officials carried out inherently tribal functions. The circumstances in *Brown* are echoed in the instant matter. As the moving defendants argue, "[i]f this Court were to wade in and decide what actions are or are not permissible in Tribal Court it necessarily asserts control of that Court. Is this Court, as Plaintiff contends, supposed to rule on what pleadings are appropriate in Tribal Court or how an action in Tribal Court must be plead? ... Is it to determine when, in Tribal Court, an attorney has misused the Tribal Court's judicial process ... or whether the Tribal Court correctly followed its own procedures?" (MPA, p. 7:25-8:3.) These are not insignificant or immaterial questions in the malicious prosecution action, since the case involves alleged malicious prosecution *only in the Tribal Court*. It is inescapable that this state court would be compelled to adjudicate the propriety of the manner in which the tribal attorneys, as tribal officials, carried out inherently tribal functions in the Tribal Court. *Brown* supports an extension of sovereign immunity to the tribe's attorneys in this action.

The court does not find *People ex rel. Owen v. Miami Nations Enterprises* (2016) 2 Cal. 5th 222, to be instructive on this motion. *Acres* cites *Miami Nations* for the proposition that the law firm defendants, as opposed to the individual attorneys, may only have sovereign immunity if the law firms qualify as an "arm of the tribe." The Court does not find that this is an "arm of the tribe" case as to the law firms, and that to the extent the individual tribal attorneys have sovereign immunity for their representation of the tribe, so too would their law firms for any liability allegedly caused by the attorney's individual professional acts.

In light of the foregoing, the Court finds that in the prosecution of the Tribal Court action, the moving defendant attorneys were functioning as the Tribe's officials or agents solely within the Tribal Court's jurisdiction. The moving defendants are clearly not analogous to the negligent employee in *Lewis v. Clarke*. There is no evidence that the moving defendants acted in their individual capacities for their own private purposes and benefit, or outside the scope of their legal agency, authority and fiduciary duty to the Tribe as tribal officials. Allowing the action to proceed against the Tribe's attorneys would undoubtedly require the Tribe to act, and would entangle this court in questions of Tribal Court practice and law that would directly impinge the Tribe's sovereignty. Extending sovereign immunity to the tribe's attorneys for their acts in the Tribal Court action is supported by *Great W. Casinos, Inc.* and *Brown*, and is not in conflict with *Lewis*. Further, extending sovereign immunity to the tribe's legal counsel would be commensurate with the scope of state sovereign immunity under analogous circumstances.

This minute order is immediately effective. A formal order and further notice of this ruling are not required.

## COURT RULING

The matter was argued and submitted. The matter was taken under submission.

Having taken the matter under submission on 2/5/2019, the Court now rules as follows:

**SUBMITTED MATTER RULING:**

The Court affirmed the tentative ruling.

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# 2017 ICWA Compliance Task Force Report

 [ICWAComplianceTaskForceFinalReport2017.pdf](#)

**ASSEMBLY BILL**

**No. 685**

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**Introduced by Assembly Members Reyes and Ramos  
(Principal coauthor: Assembly Member Waldron)**

February 15, 2019

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An act to add Section 6214.4 to the Business and Professions Code, and to amend Sections 317 and 395 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as introduced, Reyes. Juveniles: Indian tribes: counsel.

Existing federal law, the Indian Child Welfare Act of 1978, governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of their parent or guardian. Existing provisions of state law govern child custody proceedings, adoption proceedings, and dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the federal Indian Child Welfare Act of 1978 applies if the subject of these proceedings is or may be an Indian child, and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded to the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

Existing law requires an attorney or law firm that receives or disburses trust funds to establish and maintain an Interest on Lawyers' Trust Account (IOLTA) and to deposit in the account all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time, the interest and dividend earnings on which are to be paid to the State Bar of California to be used to fund qualified legal

services projects that provide free civil legal services to indigent persons and qualified support centers that provide legal training, legal technical assistance, or advocacy support to qualified legal services projects, as specified.

This bill would require the State Bar of California to administer grants to qualified legal services projects and qualified support centers for the purpose of providing legal services to Indian tribes in child welfare matters under the federal Indian Child Welfare Act of 1978. The bill would prohibit the grants from being awarded until an appropriation of not less than \$1,000,000 to the State Bar of California in the annual Budget Act is expressly identified for those purposes.

Existing law prescribes the circumstances upon which the court appoints counsel for a child or nonminor dependent in dependency proceedings. Existing law authorizes the court to appoint a district attorney, public defender, or other member of the bar, as specified. Existing law requires appointed counsel to have a caseload and training that ensures adequate representation of the child or nonminor dependent. Existing law requires the Judicial Council to adopt training requirements that include instruction on, among other things, cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

This bill would require the adoption of training requirements that include instruction on the federal Indian Child Welfare Act of 1978 and cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care.

Existing law prescribes the circumstances upon which the court appoints counsel for a child in any appellate proceeding, as specified.

This bill would require the court of appeal to appoint separate counsel for a child's Indian tribe, at the request of the tribe, in any appellate proceeding involving an Indian child.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6214.4 is added to the Business and
- 2 Professions Code, to read:
- 3 6214.4. (a) The State Bar of California shall administer grants
- 4 to qualified legal services projects and qualified support centers

1 in accordance with this article for the purpose of providing legal  
2 services to Indian tribes in child welfare matters under the federal  
3 Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

4 (b) Grants shall be provided only to qualified legal services  
5 projects and qualified support centers that have experience handling  
6 child welfare matters under the federal Indian Child Welfare Act  
7 of 1978 (25 U.S.C. Sec. 1901 et seq.) or providing legal services  
8 to Indian tribes.

9 (c) Grants under this section shall be awarded only upon an  
10 appropriation of not less than one million dollars (\$1,000,000) to  
11 the State Bar of California in the annual Budget Act that is  
12 expressly identified for the purposes of this section.

13 SEC. 2. Section 317 of the Welfare and Institutions Code is  
14 amended to read:

15 317. (a) (1) When it appears to the court that a parent or  
16 guardian of the child desires counsel but is presently financially  
17 unable to afford and cannot for that reason employ counsel, the  
18 court may appoint counsel as provided in this section.

19 (2) When it appears to the court that a parent or Indian custodian  
20 in an Indian child custody proceeding desires counsel but is  
21 presently unable to afford and cannot for that reason employ  
22 counsel, the provisions of Section 1912(b) of Title 25 of the United  
23 States Code and Section 23.13 of Title 25 of the Code of Federal  
24 Regulations shall apply.

25 (b) When it appears to the court that a parent or guardian of the  
26 child is presently financially unable to afford and cannot for that  
27 reason employ counsel, and the child has been placed in  
28 out-of-home care, or the petitioning agency is recommending that  
29 the child be placed in out-of-home care, the court shall appoint  
30 counsel for the parent or guardian, unless the court finds that the  
31 parent or guardian has made a knowing and intelligent waiver of  
32 counsel as provided in this section.

33 (c) (1) If a child or nonminor dependent is not represented by  
34 counsel, the court shall appoint counsel for the child or nonminor  
35 dependent, unless the court finds that the child or nonminor  
36 dependent would not benefit from the appointment of counsel. The  
37 court shall state on the record its reasons for that finding.

38 (2) A primary responsibility of counsel appointed to represent  
39 a child or nonminor dependent pursuant to this section shall be to

1 advocate for the protection, safety, and physical and emotional  
 2 well-being of the child or nonminor dependent.

3 (3) Counsel may be a district attorney, public defender, or other  
 4 member of the bar, provided that ~~he or she~~ *the attorney* does not  
 5 represent another party or county agency whose interests conflict  
 6 with the child’s or nonminor dependent’s interests. The fact that  
 7 the district attorney represents the child or nonminor dependent  
 8 in a proceeding pursuant to Section 300 as well as conducts a  
 9 criminal investigation or files a criminal complaint or information  
 10 arising from the same or reasonably related set of facts as the  
 11 proceeding pursuant to Section 300 is not in and of itself a conflict  
 12 of interest.

13 (4) The court may fix the compensation for the services of  
 14 appointed counsel.

15 (5) (A) The appointed counsel shall have a caseload and training  
 16 that ensures adequate representation of the child or nonminor  
 17 dependent. The Judicial Council shall promulgate rules of court  
 18 that establish caseload standards, training requirements, and  
 19 guidelines for appointed counsel for ~~children~~ *children*, and shall  
 20 adopt rules as required by Section 326.5 no later than July 1, 2001.

21 (B) The training requirements imposed pursuant to subparagraph  
 22 (A) shall include instruction on ~~both~~ of the following:

23 (i) Cultural competency and sensitivity relating to, and best  
 24 practices for, providing adequate care to lesbian, gay, bisexual,  
 25 and transgender youth in out-of-home care.

26 (ii) *The federal Indian Child Welfare Act of 1978 (25 U.S.C.*  
 27 *Sec. 1901 et seq.) and cultural competency and sensitivity relating*  
 28 *to, and best practices for, providing adequate care to Indian*  
 29 *children in out-of-home care.*

30 ~~(ii)~~

31 (iii) The information described in subdivision (d) of Section  
 32 16501.4.

33 (d) Counsel shall represent the parent, guardian, child, or  
 34 nonminor dependent at the detention hearing and at all subsequent  
 35 proceedings before the juvenile court. Counsel shall continue to  
 36 represent the parent, guardian, child, or nonminor dependent unless  
 37 relieved by the court upon the substitution of other counsel or for  
 38 cause. The representation shall include representing the parent,  
 39 guardian, or the child in termination proceedings and in those  
 40 proceedings relating to the institution or setting aside of a legal



1 guardianship. On and after January 1, 2012, in the case of a  
2 nonminor dependent, as described in subdivision (v) of Section  
3 11400, no representation by counsel shall be provided for a parent,  
4 unless the parent is receiving court-ordered family reunification  
5 services.

6 (e) (1) Counsel shall be charged in general with the  
7 representation of the child's interests. To that end, counsel shall  
8 make or cause to have made any further investigations that ~~he or~~  
9 ~~she~~ *counsel* deems in good faith to be reasonably necessary to  
10 ascertain the facts, including the interviewing of witnesses, and  
11 shall examine and cross-examine witnesses in both the adjudicatory  
12 and dispositional hearings. Counsel may also introduce and  
13 examine ~~his or her~~ *their* own witnesses, make recommendations  
14 to the court concerning the child's welfare, and participate further  
15 in the proceedings to the degree necessary to adequately represent  
16 the child. When counsel is appointed to represent a nonminor  
17 dependent, counsel is charged with representing the wishes of the  
18 nonminor dependent except when advocating for those wishes  
19 conflicts with the protection or safety of the nonminor dependent.  
20 If the court finds that a nonminor dependent is not competent to  
21 direct counsel, the court shall appoint a guardian ad litem for the  
22 nonminor dependent.

23 (2) If the child is four years of age or older, counsel shall  
24 interview the child to determine the child's wishes and assess the  
25 child's well-being, and shall advise the court of the child's wishes.  
26 Counsel shall not advocate for the return of the child if, to the best  
27 of ~~his or her~~ *counsel's* knowledge, return of the child conflicts  
28 with the protection and safety of the child.

29 (3) Counsel shall investigate the interests of the child beyond  
30 the scope of the juvenile proceeding, and report to the court other  
31 interests of the child that may need to be protected by the institution  
32 of other administrative or judicial proceedings. Counsel  
33 representing a child in a dependency proceeding is not required to  
34 assume the responsibilities of a social worker, and is not expected  
35 to provide nonlegal services to the child.

36 (4) (A) At least once every year, if the list of educational  
37 liaisons is available on the ~~Internet Web site~~ *internet website* for  
38 the State Department of Education, both of the following shall  
39 apply:

1 (i) Counsel shall provide ~~his or her~~ *their* contact information to  
2 the educational liaison, as described in subdivision (c) of Section  
3 48853.5 of the Education Code, of each local educational agency  
4 serving counsel's foster child clients in the county of jurisdiction.

5 (ii) If counsel is part of a firm or organization representing foster  
6 children, the firm or organization may provide its contact  
7 information in lieu of contact information for the individual  
8 counsel. The firm or organization may designate a person or  
9 persons within the firm or organization to receive communications  
10 from educational liaisons.

11 (B) The child's caregiver or other person holding the right to  
12 make educational decisions for the child may provide the contact  
13 information of the child's attorney to the child's local educational  
14 agency.

15 (C) Counsel for the child and counsel's agent may, but are not  
16 required to, disclose to an individual who is being assessed for the  
17 possibility of placement pursuant to Section 361.3 the fact that the  
18 child is in custody, the alleged reasons that the child is in custody,  
19 and the projected likely date for the child's return home, placement  
20 for adoption, or legal guardianship. Nothing in this paragraph shall  
21 be construed to prohibit counsel from making other disclosures  
22 pursuant to this subdivision, as appropriate.

23 (5) Nothing in this subdivision shall be construed to permit  
24 counsel to violate a child's attorney-client privilege.

25 (6) The changes made to this subdivision during the 2011–12  
26 Regular Session of the Legislature by the act adding subparagraph  
27 (C) of paragraph (4) and paragraph (5) are declaratory of existing  
28 law.

29 (7) The court shall take whatever appropriate action is necessary  
30 to fully protect the interests of the child.

31 (f) Either the child or counsel for the child, with the informed  
32 consent of the child if the child is found by the court to be of  
33 sufficient age and maturity to consent, which shall be presumed,  
34 subject to rebuttal by clear and convincing evidence, if the child  
35 is over 12 years of age, may invoke the psychotherapist-client  
36 privilege, physician-patient privilege, and clergyman-penitent  
37 privilege. If the child invokes the privilege, counsel may not waive  
38 it, but if counsel invokes the privilege, the child may waive it.  
39 Counsel shall be the holder of these privileges if the child is found  
40 by the court not to be of sufficient age and maturity to consent.

1 For the sole purpose of fulfilling ~~his or her~~ *their* obligation to  
2 provide legal representation of the child, counsel shall have access  
3 to all records with regard to the child maintained by a health care  
4 facility, as defined in Section 1545 of the Penal Code, health care  
5 providers, as defined in Section 6146 of the Business and  
6 Professions Code, a physician and surgeon or other health  
7 practitioner, as defined in former Section 11165.8 of the Penal  
8 Code, as that section read on January 1, 2000, or a child care  
9 custodian, as defined in former Section 11165.7 of the Penal Code,  
10 as that section read on January 1, 2000. Notwithstanding any other  
11 law, counsel shall be given access to all records relevant to the  
12 case that are maintained by state or local public agencies. All  
13 information requested from a child protective agency regarding a  
14 child who is in protective custody, or from a child's guardian ad  
15 litem, shall be provided to the child's counsel within 30 days of  
16 the request.

17 (g) In a county of the third class, if counsel is to be provided to  
18 a child at the county's expense other than by counsel for the  
19 agency, the court shall first use the services of the public defender  
20 before appointing private counsel. Nothing in this subdivision shall  
21 be construed to require the appointment of the public defender in  
22 any case in which the public defender has a conflict of interest. In  
23 the interest of justice, a court may depart from that portion of the  
24 procedure requiring appointment of the public defender after  
25 making a finding of good cause and stating the reasons therefor  
26 on the record.

27 (h) In a county of the third class, if counsel is to be appointed  
28 to provide legal counsel for a parent or guardian at the county's  
29 expense, the court shall first use the services of the alternate public  
30 defender before appointing private counsel. Nothing in this  
31 subdivision shall be construed to require the appointment of the  
32 alternate public defender in any case in which the public defender  
33 has a conflict of interest. In the interest of justice, a court may  
34 depart from that portion of the procedure requiring appointment  
35 of the alternate public defender after making a finding of good  
36 cause and stating the reasons therefor on the record.

37 SEC. 3. Section 395 of the Welfare and Institutions Code is  
38 amended to read:

39 395. (a) (1) A judgment in a proceeding under Section 300  
40 may be appealed in the same manner as any final judgment, and

1 any subsequent order may be appealed as an order after judgment.  
2 However, that order or judgment shall not be stayed by the appeal,  
3 unless, pending the appeal, suitable provision is made for the  
4 maintenance, care, and custody of the person alleged or found to  
5 come within the provisions of Section 300, and unless the provision  
6 is approved by an order of the juvenile court. The appeal shall  
7 have precedence over all other cases in the court to which the  
8 appeal is taken.

9 (2) A judgment or subsequent order entered by a referee shall  
10 become appealable whenever proceedings pursuant to Section 252,  
11 253, or 254 have become completed or, if proceedings pursuant  
12 to Section 252, 253, or 254 are not initiated, when the time for  
13 initiating the proceedings has expired.

14 (3) An appellant unable to afford counsel, shall be provided a  
15 free copy of the transcript in any appeal.

16 (4) The record shall be prepared and transmitted immediately  
17 after filing of the notice of appeal, without advance payment of  
18 fees. If the appellant is able to afford counsel, the county may seek  
19 reimbursement for the cost of the transcripts under subdivision (d)  
20 of Section 68511.3 of the Government Code as though the appellant  
21 had been granted permission to proceed in forma pauperis.

22 (b) (1) In any appellate proceeding in which the child is an  
23 appellant, the court of appeal shall appoint separate counsel for  
24 the child. If the child is not an appellant, the court of appeal shall  
25 appoint separate counsel for the child if the court of appeal  
26 determines, after considering the recommendation of the trial  
27 counsel or guardian ad litem appointed for the child pursuant to  
28 subdivision (e) of Section 317, Section 326.5, and California Rule  
29 of Court 1448, that appointment of counsel would benefit the child.  
30 In order to assist the court of appeal in making its determination  
31 under this subdivision, the trial counsel or guardian ad litem shall  
32 make a recommendation to the court of appeal that separate counsel  
33 be appointed in any case in which the trial counsel or guardian ad  
34 litem determines that, for the purposes of the appeal, the child's  
35 best interests cannot be protected without the appointment of  
36 separate counsel, and shall set forth the reasons why the  
37 appointment is in the child's best interests. The court of appeal  
38 shall consider that recommendation when determining whether  
39 the child would benefit from the appointment of counsel. The  
40 Judicial Council shall implement this provision by adopting a rule

1 of court on or before July 1, 2007, to set forth the procedures by  
2 which the trial counsel or guardian ad litem may participate in an  
3 appeal, as well as the factors to be considered by the trial counsel  
4 or guardian ad litem in making a recommendation to the court of  
5 appeal, including, but not limited to, the extent to which there  
6 exists a potential conflict between the interests of the child and  
7 the interests of any respondent.

8 (2) The Judicial Council shall report to the Legislature on or  
9 before July 1, 2008, information regarding the status of appellate  
10 representation of dependent children, the results of implementing  
11 this subdivision, any recommendations regarding the representation  
12 of dependent children in appellate proceedings made by the  
13 California Judicial Council's Blue Ribbon Commission on Children  
14 in Foster Care, any actions taken, including rules of court proposed  
15 or adopted, in response to those recommendations or taken in order  
16 to comply with the Child Abuse Prevention and Treatment Act,  
17 as well as any recommendations for legislative change that are  
18 deemed necessary to protect the best interests of dependent children  
19 in appellate proceedings or ensure compliance with the Child  
20 Abuse Prevention and Treatment Act.

21 (c) *In any appellate proceeding involving an Indian child, upon*  
22 *the request of the child's Indian tribe, the court of appeal shall*  
23 *appoint separate counsel for the child's Indian tribe.*

AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 686**

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**Introduced by Assembly Members Waldron and Ramos  
(Principal coauthor: Assembly Member Reyes)**

February 15, 2019

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An act to amend Sections 224.2, ~~16122~~, ~~10553.12~~, and 16519.5 of the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 686, as amended, Waldron. Indian children.

Existing federal law, the Indian Child Welfare Act of 1978 (ICWA), governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of the child's parent or guardian. Existing law specifies that the state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with ICWA. Existing law requires a court in all Indian child custody proceedings to, among other things, comply with ICWA.

This bill would require the Judicial Council to establish a rule of court that would authorize the use of telephonic or other remote access by an Indian child's tribe in proceedings where ICWA apply. The bill would prohibit the charging of a fee for the telephonic or remote access.

~~Existing law provides that the intent of the Legislature is to provide children or nonminor dependents who would otherwise remain in long-term foster care with permanent adoptive homes, and to encourage private adoption agencies to continue placing these children. From any funds appropriated for this purpose, existing law requires the state to compensate private adoption agencies for the costs of adoption with~~

~~respect to children or nonminor dependents eligible for Adoption Assistance Program benefits, at specified rates.~~

~~This bill would authorize an Indian tribe or tribal organization to be reimbursed under these provisions in cases where ICWA applies, and would provide that those entities are not subject to the applicable state licensing requirements in order to be eligible for that compensation.~~

~~Existing law authorizes a county to place a child with a resource family applicant who has successfully completed the home environment assessment, including a criminal background check.~~

~~This bill would authorize an Indian child's tribe to conduct the approval process under these provisions, as specified, and would require any placement under these provisions, if the approval process is not conducted by the Indian child's tribe, to be conducted in accordance with ICWA and other applicable provisions.~~

*Existing law requires counties to implement the resource family approval process and authorizes a federally recognized tribe to approve a home for the purpose of foster or adoptive placement of an Indian child pursuant to ICWA. Existing law generally makes a resource family eligible to provide foster care for any child in out-of-home placement, but authorizes a county to approve a resource family to care for a specific child.*

*This bill would require, when the tribe does not exercise its right to approve a home for a specific child, the county to apply prevailing social and cultural standards of the Indian community when approving a resource family for that child. The bill would require the State Department of Social Services to issue all-county letters or similar instruction to provide guidance regarding consistent implementation of that provision. The bill would also clarify that tribal home approvals that comply with specific requirements are not subject to resource family approval requirements. By requiring counties to provide a higher level of service when approving resource families, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 224.2 of the Welfare and Institutions  
2 Code is amended to read:

3 224.2. (a) The court, county welfare department, and the  
4 probation department have an affirmative and continuing duty to  
5 inquire whether a child for whom a petition under Section 300,  
6 601, or 602 may be or has been filed, is or may be an Indian child.  
7 The duty to inquire begins with the initial contact, including, but  
8 not limited to, asking the party reporting child abuse or neglect  
9 whether the party has any information that the child may be an  
10 Indian child.

11 (b) If a child is placed into the temporary custody of a county  
12 welfare department pursuant to Section 306 or county probation  
13 department pursuant to Section 307, the county welfare department  
14 or county probation department has a duty to inquire whether that  
15 child is an Indian child. Inquiry includes, but is not limited to,  
16 asking the child, parents, legal guardian, Indian custodian, extended  
17 family members, others who have an interest in the child, and the  
18 party reporting child abuse or neglect, whether the child is, or may  
19 be, an Indian child and where the child, the parents, or Indian  
20 custodian is domiciled.

21 (c) At the first appearance in court of each party, the court shall  
22 ask each participant present in the hearing whether the participant  
23 knows or has reason to know that the child is an Indian child. The  
24 court shall instruct the parties to inform the court if they  
25 subsequently receive information that provides reason to know the  
26 child is an Indian child.

27 (d) There is reason to know a child involved in a proceeding is  
28 an Indian child under any of the following circumstances:

29 (1) A person having an interest in the child, including the child,  
30 an officer of the court, a tribe, an Indian organization, a public or  
31 private agency, or a member of the child's extended family informs  
32 the court that the child is an Indian child.

33 (2) The residence or domicile of the child, the child's parents,  
34 or Indian custodian is on a reservation or in an Alaska Native  
35 village.

36 (3) Any participant in the proceeding, officer of the court, Indian  
37 tribe, Indian organization, or agency informs the court that it has  
38 discovered information indicating that the child is an Indian child.



1 (4) The child who is the subject of the proceeding gives the  
2 court reason to know that the child is an Indian child.

3 (5) The court is informed that the child is or has been a ward of  
4 a tribal court.

5 (6) The court is informed that either parent or the child possess  
6 an identification card indicating membership or citizenship in an  
7 Indian tribe.

8 (e) If the court, social worker, or probation officer has reason  
9 to believe that an Indian child is involved in a proceeding, the  
10 court, social worker, or probation officer shall make further inquiry  
11 regarding the possible Indian status of the child, and shall make  
12 that inquiry as soon as practicable. Further inquiry includes, but  
13 is not limited to, all of the following:

14 (1) Interviewing the parents, Indian custodian, and extended  
15 family members to gather the information required in paragraph  
16 (5) of subdivision (a) of Section 224.3.

17 (2) Contacting the Bureau of Indian Affairs and the State  
18 Department of Social Services for assistance in identifying the  
19 names and contact information of the tribes in which the child may  
20 be a member, or eligible for membership in, and contacting the  
21 tribes and any other person that may reasonably be expected to  
22 have information regarding the child's membership status or  
23 eligibility.

24 (3) Contacting the tribe or tribes and any other person that may  
25 reasonably be expected to have information regarding the child's  
26 membership, citizenship status, or eligibility. Contact with a tribe  
27 shall, at a minimum, include telephone, facsimile, or electronic  
28 mail contact to each tribe's designated agent for receipt of notices  
29 under the federal Indian Child Welfare Act of 1978 (25 U.S.C.  
30 Sec. 1901 et seq.). Contact with a tribe shall include sharing  
31 information identified by the tribe as necessary for the tribe to  
32 make a membership or eligibility determination, as well as  
33 information on the current status of the child and the case.

34 (f) If there is reason to know, as set forth in subdivision (d), that  
35 the child is an Indian child, the party seeking foster care placement  
36 shall provide notice in accordance with paragraph (5) of  
37 subdivision (a) of Section 224.3.

38 (g) If there is reason to know the child is an Indian child, but  
39 the court does not have sufficient evidence to determine that the  
40 child is or is not an Indian child, the court shall confirm, by way

1 of a report, declaration, or testimony included in the record that  
2 the agency or other party used due diligence to identify and work  
3 with all of the tribes of which there is reason to know the child  
4 may be a member, or eligible for membership, to verify whether  
5 the child is in fact a member or whether a biological parent is a  
6 member and the child is eligible for membership.

7 (h) A determination by an Indian tribe that a child is or is not a  
8 member of, or eligible for membership in, that tribe, or testimony  
9 attesting to that status by a person authorized by the tribe to provide  
10 that determination, shall be conclusive. Information that the child  
11 is not enrolled, or is not eligible for enrollment in, the tribe is not  
12 determinative of the child's membership status unless the tribe  
13 also confirms in writing that enrollment is a prerequisite for  
14 membership under tribal law or custom.

15 (i) (1) When there is reason to know that the child is an Indian  
16 child, the court shall treat the child as an Indian child unless and  
17 until the court determines on the record and after review of the  
18 report of due diligence as described in subdivision (g), and a review  
19 of the copies of notice, return receipts, and tribal responses required  
20 pursuant to Section 224.3, that the child does not meet the  
21 definition of an Indian child as used in Section 224.1 and the  
22 federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et  
23 seq.).

24 (2) If the court makes a finding that proper and adequate further  
25 inquiry and due diligence as required in this section have been  
26 conducted and there is no reason to know whether the child is an  
27 Indian child, the court may make a finding that the federal Indian  
28 Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) does not  
29 apply to the proceedings, subject to reversal based on sufficiency  
30 of the evidence. The court shall reverse its determination if it  
31 subsequently receives information providing reason to believe that  
32 the child is an Indian child and order the social worker or probation  
33 officer to conduct further inquiry pursuant to Section 224.3.

34 (j) Notwithstanding a determination that the federal Indian Child  
35 Welfare Act of 1978 does not apply to the proceedings, if the court,  
36 social worker, or probation officer subsequently receives any  
37 information required by Section 224.3 that was not previously  
38 available or included in the notice issued under Section 224.3, the  
39 party seeking placement shall provide the additional information

1 to any tribes entitled to notice under Section 224.3 and to the  
2 Secretary of the Interior's designated agent.

3 (k) The Judicial Council, by July 1, 2021, shall adopt rules of  
4 court to allow for telephonic or other remote appearance options  
5 by an Indian child's tribe in proceedings where the federal Indian  
6 Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) may  
7 apply. Telephonic or other computerized remote access for court  
8 appearances established under this subdivision shall not be subject  
9 to fees.

10 ~~SEC. 2. Section 16122 of the Welfare and Institutions Code is~~  
11 ~~amended to read:~~

12 ~~16122. (a) It is the intent of the Legislature in enacting this~~  
13 ~~chapter to provide children or nonminor dependents who would~~  
14 ~~otherwise remain in long-term foster care with permanent adoptive~~  
15 ~~homes. It is also the intent of this Legislature to encourage private~~  
16 ~~adoption agencies to continue placing these children, and in so~~  
17 ~~doing, to achieve a substantial savings to the state in foster care~~  
18 ~~costs.~~

19 ~~(b) (1) From any funds appropriated for this purpose, the state~~  
20 ~~shall compensate private adoption agencies licensed pursuant to~~  
21 ~~Chapter 3 (commencing with Section 1500) of Division 2 of the~~  
22 ~~Health and Safety Code for costs of placing for adoption children~~  
23 ~~or nonminor dependents eligible for Adoption Assistance Program~~  
24 ~~benefits pursuant to Section 16120.~~

25 ~~(2) These agencies shall be compensated for otherwise~~  
26 ~~unreimbursed costs for the placement of these children in an~~  
27 ~~amount not to exceed a total of three thousand five hundred dollars~~  
28 ~~(\$3,500) per child adopted. Half of the compensation shall be paid~~  
29 ~~at the time the adoptive placement agreement is signed. The~~  
30 ~~remainder shall be paid at the time the adoption petition is granted~~  
31 ~~by the court. Requests for compensation shall conform to claims~~  
32 ~~procedures established by the department. This section shall not~~  
33 ~~be construed to authorize reimbursement to private agencies for~~  
34 ~~intereountry adoption services.~~

35 ~~(c) Nothing in this section shall be construed to prevent funds~~  
36 ~~appropriated pursuant to this chapter from being used to~~  
37 ~~compensate the unreimbursed costs for an Indian child's tribe or~~  
38 ~~tribal organization to be compensated for the placement of Indian~~  
39 ~~children where the federal Indian Child Welfare Act of 1978 (25~~  
40 ~~U.S.C. Sec. 1901 et seq.) applies to their juvenile dependency case.~~

1 ~~An Indian tribe or tribal organization shall not be subject to state~~  
2 ~~licensing requirements in order to be eligible for compensation~~  
3 ~~under this section.~~

4 ~~(d) Effective July 1, 1999, the maximum amount of~~  
5 ~~reimbursement pursuant to subdivision (b) shall be five thousand~~  
6 ~~dollars (\$5,000).~~

7 ~~(e) Effective February 1, 2008, the maximum amount of~~  
8 ~~reimbursement pursuant to subdivision (b) shall be ten thousand~~  
9 ~~dollars (\$10,000). This rate increase shall apply only to those cases~~  
10 ~~for which the adoptive home study approval occurred on or after~~  
11 ~~July 1, 2007.~~

12 *SEC. 2. Section 10553.12 of the Welfare and Institutions Code*  
13 *is amended to read:*

14 10553.12. (a) Notwithstanding any other law, a federally  
15 recognized tribe is authorized, but not required, to approve a home  
16 for the purpose of foster or adoptive placement of an Indian child  
17 pursuant to the federal Indian Child Welfare Act (25 U.S.C. Sec.  
18 1915).

19 (b) An Indian child, as defined by subdivisions (a) and (b) of  
20 Section 224, that has been removed pursuant to Section 361, from  
21 the custody of ~~his or her~~ *their* parents or Indian custodian may be  
22 placed in a tribally approved home pursuant to Section 1915 of  
23 the federal Indian Child Welfare Act.

24 (c) To facilitate the availability of tribally approved homes that  
25 have been fully approved in accord with federal law, including  
26 completion of required background checks, a tribal agency may  
27 request from the Department of Justice federal and state summary  
28 criminal history information regarding a prospective foster parent  
29 or adoptive parent, an adult who resides or is employed in the  
30 home of an applicant, a person who has a familial or intimate  
31 relationship with a person living in the home of an applicant, or  
32 an employee of the child welfare agency who may have contact  
33 with children, in accord with subdivision (m) of Section 11105 of  
34 the Penal Code and Child Abuse Central Index Information  
35 pursuant to paragraph (8) of subdivision (b) of Section 11170 of  
36 the Penal Code.

37 (d) As used in this section, a “tribal agency” means an entity  
38 designated by a federally recognized tribe as authorized to approve  
39 homes consistent with the federal Indian Child Welfare Act for  
40 the purpose of placement of Indian children, into foster or adoptive

1 care, including the authority to conduct criminal record and child  
2 abuse background checks of, and grant exemptions to, individuals  
3 who are prospective foster parents or adoptive parents, an adult  
4 who resides or is employed in the home of an applicant for  
5 approval, a person who has a familial or intimate relationship with  
6 a person living in the home of an applicant, or an employee of the  
7 tribal agency who may have contact with children.

8 (e) A county social worker may place an Indian child in a tribally  
9 approved home without having to conduct a separate background  
10 check, upon certification by the tribal agency of the following:

11 (1) The tribal agency has completed a criminal record  
12 background check in accord with the standards set forth in Section  
13 1522 of the Health and Safety Code, and a Child Abuse Central  
14 Index Check pursuant to Section 1522.1 of the Health and Safety  
15 Code, with respect to each of the individuals described in  
16 subdivision (c).

17 (2) The tribal agency has agreed to report to a county child  
18 welfare agency responsible for a child placed in the tribally  
19 approved home, within 24 hours of notification to the tribal agency  
20 by the Department of Justice, of a subsequent state or federal arrest  
21 or disposition notification provided pursuant to Section 11105.2  
22 of the Penal Code involving an individual associated with the  
23 tribally approved home where an Indian child is placed.

24 (3) If the tribal agency in its certification states that the  
25 individual was granted a criminal record exemption, the  
26 certification shall specify that the exemption was evaluated in  
27 accord with the standards and limitations set forth in paragraph  
28 (1) of subdivision (g) of Section 1522 of the Health and Safety  
29 Code and was not granted to an individual ineligible for an  
30 exemption under that provision.

31 (f) *Tribal home approvals conducted in compliance with this*  
32 *section are not subject to resource family approval requirements.*

33 SEC. 3. Section 16519.5 of the Welfare and Institutions Code  
34 is amended to read:

35 16519.5. (a) The State Department of Social Services, in  
36 consultation with county child welfare agencies, foster parent  
37 associations, and other interested community parties, shall  
38 implement a unified, family friendly, and child-centered resource  
39 family approval process to replace the existing multiple processes  
40 for licensing foster family homes, certifying foster homes by

1 licensed foster family agencies, approving relatives and nonrelative  
2 extended family members as foster care providers, and approving  
3 guardians and adoptive families.

4 (b) (1) Counties shall be selected to participate on a voluntary  
5 basis as early implementation counties for the purpose of  
6 participating in the initial development of the approval process.  
7 Early implementation counties shall be selected according to  
8 criteria developed by the department in consultation with the  
9 County Welfare Directors Association of California. In selecting  
10 the five early implementation counties, the department shall  
11 promote diversity among the participating counties in terms of  
12 size and geographic location.

13 (2) Additional counties may participate in the early  
14 implementation of the program upon authorization by the  
15 department.

16 (3) The State Department of Social Services shall be responsible  
17 for all of the following:

18 (A) Selecting early implementation counties, based on criteria  
19 established by the department in consultation with the County  
20 Welfare Directors Association of California.

21 (B) Establishing timeframes for participating counties to submit  
22 an implementation plan, enter into terms and conditions for early  
23 implementation participation in the program, train appropriate  
24 staff, and accept applications from resource families.

25 (C) Entering into terms and conditions for early implementation  
26 participation in the program by counties.

27 (4) Counties participating in the early implementation of the  
28 program shall be responsible for all of the following:

29 (A) Submitting an implementation plan.

30 (B) Entering into terms and conditions for early implementation  
31 participation in the program.

32 (C) Consulting with the county probation department in the  
33 development of the implementation plan.

34 (D) Training appropriate staff.

35 (E) Accepting applications from resource families within the  
36 timeframes established by the department.

37 (5) (A) Approved relatives and nonrelative extended family  
38 members, licensed foster family homes, or approved adoptive  
39 homes that have completed the license or approval process prior  
40 to statewide implementation of the program shall not be considered

1 part of the program. The otherwise applicable assessment and  
2 oversight processes shall continue to be administered for families  
3 and facilities not included in the program.

4 (B) Upon implementation of the program in a county, that  
5 county shall not accept new applications for the licensure of foster  
6 family homes, the approval of relative and nonrelative extended  
7 family members, or the approval of prospective guardians and  
8 adoptive homes.

9 (6) The department may waive regulations that pose a barrier  
10 to the early implementation and operation of this program. The  
11 waiver of any regulations by the department pursuant to this section  
12 shall apply to only those counties or foster family agencies  
13 participating in the early implementation of the program and only  
14 for the duration of the program.

15 (7) This subdivision shall become inoperative on January 1,  
16 2017.

17 (c) (1) For purposes of this article, “resource family” means an  
18 individual or family that has successfully met both the home  
19 environment assessment standards and the permanency assessment  
20 criteria adopted pursuant to subdivision (d) necessary for providing  
21 care for a child placed by a public or private child placement  
22 agency by court order, or voluntarily placed by a parent or legal  
23 guardian. A resource family shall demonstrate all of the following:

24 (A) An understanding of the safety, permanence, and well-being  
25 needs of children who have been victims of child abuse and neglect,  
26 and the capacity and willingness to meet those needs, including  
27 the need for protection, and the willingness to make use of support  
28 resources offered by the agency, or a support structure in place,  
29 or both.

30 (B) An understanding of children’s needs and development,  
31 effective parenting skills or knowledge about parenting, and the  
32 capacity to act as a reasonable, prudent parent in day-to-day  
33 decisionmaking.

34 (C) An understanding of their role as a resource family and the  
35 capacity to work cooperatively with the agency and other service  
36 providers in implementing the child’s case plan.

37 (D) The financial ability within the household to ensure the  
38 stability and financial security of the family. An applicant who  
39 will rely on the funding described in subdivision (I) to meet  
40 additional household expenses incurred due to the placement of a

1 child shall not, for this reason, be denied approval as a resource  
2 family.

3 (E) An ability and willingness to provide a family setting that  
4 promotes normal childhood experiences that serves the needs of  
5 the child.

6 (2) For purposes of this article, and unless otherwise specified,  
7 references to a “child” shall include a “nonminor dependent” and  
8 “nonminor former dependent or ward,” as defined in subdivision  
9 (v) and paragraph (1) of subdivision (aa) of Section 11400.

10 (3) There is no fundamental right to approval as a resource  
11 family. Emergency placement of a child pursuant to Section 309  
12 or 361.45, or placement with a resource family applicant pursuant  
13 to subdivision (e), does not entitle an applicant approval as a  
14 resource family.

15 (4) (A) A resource family shall be considered eligible to provide  
16 foster care for children in out-of-home placement and shall be  
17 considered approved for adoption and guardianship.

18 (B) (i) Notwithstanding subparagraph (A), a county may  
19 approve a resource family to care for a specific child, as specified  
20 in the written directives or regulations adopted pursuant to this  
21 section.

22 ~~(i) If the child is an Indian child, at the option of the Indian  
23 child’s tribe, the Indian child’s tribe shall conduct the placement  
24 approval, including the home evaluation and the criminal  
25 background check, or both. In that case, the applicable resource  
26 family standards shall not apply to the tribe.~~

27 ~~(ii) If the child is an Indian child and the Indian child’s tribe is  
28 not conducting the home evaluation, approval shall be conducted  
29 for the specific Indian child. That approval shall be in accordance  
30 with Section 361.31 and the federal Indian Child Welfare Act of  
31 1978 (25 U.S.C. Sec. 1901 et seq.), applying the standards of the  
32 Indian community.~~

33 ~~(ii) In the case of an Indian child for whom the child’s tribe is  
34 not exercising its right to approve a home, the county shall apply  
35 the prevailing social and cultural standards of the Indian  
36 community to resource family approval for that child, as required  
37 by subdivision (f) of the Section 361.31 and the federal Indian  
38 Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). The  
39 department shall, notwithstanding the rulemaking provisions of  
40 the Administrative Procedure Act (Chapter 3.5 (commencing with~~



1 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
2 *Code) through all-county letters or other similar instruction,*  
3 *provide guidance to counties regarding consistent implementation*  
4 *of this clause.*

5 (5) For purposes of this article, “resource family approval”  
6 means that the applicant or resource family successfully meets the  
7 home environment assessment and permanency assessment  
8 standards. This approval is in lieu of a foster family home license  
9 issued pursuant to Chapter 3 (commencing with Section 1500) of  
10 Division 2 of the Health and Safety Code, a certificate of approval  
11 issued by a licensed foster family agency, as described in  
12 subdivision (b) of Section 1506 of the Health and Safety Code,  
13 relative or nonrelative extended family member approval,  
14 guardianship approval, and the adoption home study approval.

15 (6) Approval of a resource family does not guarantee an initial,  
16 continued, or adoptive placement of a child with a resource family  
17 or with a relative or nonrelative extended family member. Approval  
18 of a resource family does not guarantee the establishment of a legal  
19 guardianship of a child with a resource family.

20 (7) (A) Notwithstanding paragraphs (1) to (6), inclusive, the  
21 county shall, consistent with Sections 1520.3 and 1558.1 of the  
22 Health and Safety Code, cease any further review of an application  
23 if the applicant has had a previous application denial by the  
24 department or a county within the preceding year, or if the applicant  
25 has had a previous rescission, revocation, or exemption denial or  
26 exemption rescission by the department or a county within the  
27 preceding two years.

28 (B) Notwithstanding subparagraph (A), the county may continue  
29 to review an application if it has determined that the reasons for  
30 the previous denial, rescission, or revocation were due to  
31 circumstances and conditions that either have been corrected or  
32 are no longer in existence. If an individual was excluded from a  
33 resource family home or facility licensed by the department, the  
34 county shall cease review of the individual’s application unless  
35 the excluded individual has been reinstated pursuant to subdivision  
36 (g) of Section 16519.6 of this code or pursuant to Section 1569.53,  
37 subdivision (h) of Section 1558, subdivision (h) of Section 1569.58,  
38 or subdivision (h) of Section 1596.8897, of the Health and Safety  
39 Code.

1 (C) (i) The county may cease any further review of an  
2 application if, after written notice to the applicant, the applicant  
3 fails to complete an application without good faith effort and within  
4 30 days of the date of the notice, as specified in the written  
5 directives or regulations adopted pursuant to this section.

6 (ii) Clause (i) does not apply if a child is placed with the  
7 applicant pursuant to Section 309 or 361.45, or paragraph (1) of  
8 subdivision (e) of Section 16519.5.

9 (D) The cessation of an application review pursuant to this  
10 paragraph shall not constitute a denial of the application for  
11 purposes of this section or any other law.

12 (E) For purposes of this section, the date of a previous denial,  
13 rescission, revocation, exemption denial or exemption rescission,  
14 or exclusion shall be either of the following:

15 (i) The effective date of a final decision or order upholding a  
16 notice of action or exclusion order.

17 (ii) The date on the notice of the decision to deny, rescind,  
18 revoke, or exclude if the notice was not appealed or otherwise  
19 constitutes a final decision.

20 (8) A resource family shall meet the approval standards set forth  
21 in this section, comply with the written directives or regulations  
22 adopted pursuant to this section, and comply with other applicable  
23 laws in order to maintain approval.

24 (9) A resource family may be approved by a county child  
25 welfare department or a probation department pursuant to this  
26 section or by a foster family agency pursuant to Section 1517 of  
27 the Health and Safety Code.

28 (10) A resource family shall not be licensed to operate a  
29 residential facility, as defined in Section 1502 of the Health and  
30 Safety Code, a residential care facility for the elderly, as defined  
31 in Section 1569.2 of the Health and Safety Code, or a residential  
32 care facility for persons with chronic life-threatening illnesses, as  
33 defined in Section 1568.01 of the Health and Safety Code, on the  
34 same premises used as the residence of the resource family.

35 (11) (A) An applicant who withdraws an application prior to  
36 its approval or denial may resubmit the application within 12  
37 months of the withdrawal.

38 (B) Nothing in this paragraph shall preclude a county from  
39 requiring an applicant to complete an application activity, even if  
40 that activity was previously completed.

1 (d) (1) The department shall adopt standards pertaining to the  
2 home environment and permanency assessments of a resource  
3 family.

4 (2) Resource family home environment assessment standards  
5 shall include, but not be limited to, all of the following:

6 (A) (i) (I) A criminal record clearance of each applicant and  
7 all adults residing in, or regularly present in, the home, and not  
8 exempted from fingerprinting, as set forth in subdivision (b) of  
9 Section 1522 of the Health and Safety Code, pursuant to Section  
10 8712 of the Family Code, utilizing a check of the Child Abuse  
11 Central Index pursuant to Section 1522.1 of the Health and Safety  
12 Code, and receipt of a fingerprint-based state and federal criminal  
13 offender record information search response. The criminal history  
14 information shall include subsequent notifications pursuant to  
15 Section 11105.2 of the Penal Code.

16 (II) Consideration of any substantiated allegations of child abuse  
17 or neglect against the applicant and any other adult residing in, or  
18 regularly present in, the home pursuant to Section 1522.1 of the  
19 Health and Safety Code.

20 (III) If the criminal records check indicates that the person has  
21 been convicted of an offense described in subparagraph (A) of  
22 paragraph (2) of subdivision (g) of Section 1522 of the Health and  
23 Safety Code, home approval shall be denied. If the criminal records  
24 check indicates that the person has been convicted of an offense  
25 described in subparagraph (B) or (C) of paragraph (2) of  
26 subdivision (g) of Section 1522 of the Health and Safety Code,  
27 the home shall not be approved unless a criminal records exemption  
28 has been granted pursuant to subclause (IV).

29 (IV) If the resource family parent, applicant, or any other person  
30 specified in subclause (I) has been convicted of a crime other than  
31 a minor traffic violation or arrested for an offense specified in  
32 subdivision (e) of Section 1522 of the Health and Safety Code,  
33 except for the civil penalty language, the criminal background  
34 check provisions specified in subdivisions (d) through (f) of Section  
35 1522 of the Health and Safety Code shall apply. Exemptions from  
36 the criminal records clearance requirements set forth in this section  
37 may be granted by the department or the county, if that county has  
38 been granted permission by the department to issue criminal  
39 records exemptions pursuant to Section 361.4, using the exemption

1 criteria currently used for foster care licensing, as specified in  
2 subdivision (g) of Section 1522 of the Health and Safety Code.

3 (V) If it is determined, on the basis of the fingerprint images  
4 and related information submitted to the Department of Justice,  
5 that subsequent to obtaining a criminal record clearance or  
6 exemption from disqualification, the person has been convicted  
7 of, or is awaiting trial for, a sex offense against a minor, or has  
8 been convicted for an offense specified in Section 243.4, 273a,  
9 273ab, 273d, 273g, or 368 of the Penal Code, or a felony, the  
10 department or county shall notify the resource family to act  
11 immediately to remove or bar the person from entering the resource  
12 family's home. The department or county, as applicable, may  
13 subsequently grant an exemption from disqualification pursuant  
14 to subdivision (g) of Section 1522 of the Health and Safety Code.  
15 If the conviction or arrest was for another crime, the resource  
16 family shall, upon notification by the department or county, act  
17 immediately to either remove or bar the person from entering the  
18 resource family's home, or require the person to seek an exemption  
19 from disqualification pursuant to subdivision (g) of Section 1522  
20 of the Health and Safety Code. The department or county, as  
21 applicable, shall determine if the person shall be allowed to remain  
22 in the home until a decision on the exemption from disqualification  
23 is rendered.

24 (ii) For public foster family agencies approving resource  
25 families, the criminal records clearance process set forth in clause  
26 (i) shall be utilized.

27 (iii) For private foster family agencies approving resource  
28 families, the criminal records clearance process set forth in clause  
29 (i) shall be utilized, but the Department of Justice shall disseminate  
30 a fitness determination resulting from the federal criminal offender  
31 record information search.

32 (B) A home and grounds evaluation to ensure the health and  
33 safety of children.

34 (C) In addition to the foregoing requirements, the resource  
35 family home environment assessment standards shall also require  
36 the following:

37 (i) That the applicant demonstrates an understanding of the  
38 rights of children in care and the applicant's responsibility to  
39 safeguard those rights.

1 (ii) That the total number of children residing in the home of a  
2 resource family shall be no more than the total number of children  
3 the resource family can properly care for, regardless of status, and  
4 shall not exceed six children, unless exceptional circumstances  
5 that are documented in the foster child's case file exist to permit  
6 a resource family to care for more children, including, but not  
7 limited to, the need to place siblings together.

8 (iii) That the applicant understands the applicant's  
9 responsibilities with respect to acting as a reasonable and prudent  
10 parent, and maintaining the least restrictive environment that serves  
11 the needs of the child.

12 (3) The resource family permanency assessment standards shall  
13 include, but not be limited to, all of the following:

14 (A) Caregiver training, as described in subdivisions (g) and (h).

15 (B) A family evaluation, which shall include, but not be limited  
16 to, interviews of an applicant to assess the applicant's personal  
17 history, family dynamic, and need for support or resources, and a  
18 risk assessment.

19 (i) When the applicant is a relative or nonrelative extended  
20 family member to an identified child, the family evaluation shall  
21 consider the nature of the relationship between the relative or  
22 nonrelative extended family member and the child. The relative  
23 or nonrelative extended family member's expressed desire to only  
24 care for a specific child or children shall not be a reason to deny  
25 the approval.

26 (ii) A caregiver risk assessment shall include, but not be limited  
27 to, physical and mental health, alcohol and other substance use  
28 and abuse, family and domestic violence, and the factors listed in  
29 paragraph (1) of subdivision (c).

30 (iii) A county may review and discuss data contained in the  
31 statewide child welfare database with an applicant for purposes of  
32 conducting a family evaluation, as specified in the written  
33 directives or regulations adopted pursuant to this section.

34 (C) Completion of any other activities that relate to the ability  
35 of an applicant or a resource family to achieve permanency with  
36 a child.

37 (4) (A) For a child placed on an emergency basis with a family  
38 that has successfully completed the home environmental  
39 assessment, the permanency assessment shall be completed within

1 90 days of the application to become a resource family, unless  
2 good cause exists based upon the needs of the child.

3 (B) If additional time is needed to complete the permanency  
4 assessment, the county shall document the extenuating  
5 circumstances for the delay and generate a timeframe for the  
6 completion of the permanency assessment.

7 (C) The county shall report to the department, on a quarterly  
8 basis, the number of families with emergency placements whose  
9 permanency assessment goes beyond 90 days and summarize the  
10 reasons for these delays.

11 (e) (1) A county may place a child with a resource family  
12 applicant who has successfully completed the home environment  
13 assessment prior to completion of a permanency assessment only  
14 if a compelling reason for the placement exists based on the needs  
15 of the child.

16 (A) The permanency assessment and the written report described  
17 in paragraph (5) of subdivision (g) shall be completed within 90  
18 days of the child's placement in the home, unless good cause exists.

19 (B) If additional time is needed to comply with subparagraph  
20 (A), the county shall document the extenuating circumstances for  
21 the delay and generate a timeframe for the completion of the  
22 permanency assessment.

23 (C) The county shall report to the department, on a quarterly  
24 basis, the number of applicants for whom the requirements of  
25 subparagraph (A) exceed 90 days and summarize the reasons for  
26 these delays.

27 (2) The home environment, permanency assessments, and the  
28 written report described in paragraph (5) of subdivision (g) shall  
29 be completed within 90 days of a child's placement with a relative  
30 or nonrelative extended family member pursuant to Section 309  
31 or 361.45, unless good cause exists.

32 (3) For any placement made pursuant to this subdivision,  
33 AFDC-FC funding shall not be available until approval of the  
34 resource family has been completed.

35 (4) Any child placed pursuant to this subdivision shall be  
36 afforded all the rights set forth in Section 16001.9.

37 (5) This section shall not limit the county's authority to inspect  
38 the home of a resource family applicant as often as necessary to  
39 ensure the quality of care provided.

1 (6) This subdivision does not limit the county's obligation under  
2 law to assess and give placement consideration to relatives and  
3 nonrelative extended family members and to place a child pursuant  
4 to Section 309, 361.3, or 361.45.

5 (f) The State Department of Social Services shall be responsible  
6 for all of the following:

7 (1) (A) Until regulations are adopted, administering the program  
8 through the issuance of written directives that shall have the same  
9 force and effect as regulations. Any directive affecting Article 1  
10 (commencing with Section 700) of Chapter 7 of Division 1 of Title  
11 11 of the California Code of Regulations shall be approved by the  
12 Department of Justice. The directives shall be exempt from the  
13 rulemaking provisions of the Administrative Procedure Act  
14 (Chapter 3.5 (commencing with Section 11340)) of Part 1 of  
15 Division 3 of Title 2 of the Government Code.

16 (B) Adopting, amending, or repealing, in accordance with  
17 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division  
18 3 of Title 2 of the Government Code, any reasonable rules,  
19 regulations, and standards that may be necessary or proper to carry  
20 out the purposes and intent of this article and to enable the  
21 department to exercise the powers and perform the duties conferred  
22 upon it by this section, consistent with the laws of this state.

23 (2) Approving and requiring the use of a single standard for  
24 resource family approval.

25 (3) Adopting and requiring the use of standardized  
26 documentation for the home environment and permanency  
27 assessments of resource families.

28 (4) Adopting core competencies for county staff to participate  
29 in the assessment and evaluation of an applicant or resource family.

30 (5) Requiring counties to monitor county-approved resource  
31 families, including, but not limited to, both of the following:

32 (A) Investigating complaints regarding resource families.

33 (B) Developing and monitoring resource family corrective action  
34 plans to correct identified deficiencies and to rescind resource  
35 family approval if compliance with corrective action plans is not  
36 achieved.

37 (6) Ongoing oversight and monitoring of county systems and  
38 operations including all of the following:

39 (A) Reviewing the county's implementation plan and  
40 implementation of the program.

1 (B) Reviewing an adequate number of county-approved resource  
2 families in each county to ensure that approval standards are being  
3 properly applied. The review shall include case file documentation  
4 and may include onsite inspection of individual resource families.  
5 The review shall occur on an annual basis and more frequently if  
6 the department becomes aware that a county is experiencing a  
7 disproportionate number of complaints against individual resource  
8 family homes.

9 (C) Reviewing county reports of serious complaints and  
10 incidents involving resource families, as determined necessary by  
11 the department. The department may conduct an independent  
12 review of the complaint or incident and change the findings  
13 depending on the results of its investigation.

14 (D) Investigating unresolved complaints against counties.

15 (E) Requiring corrective action of counties that are not in full  
16 compliance with this section.

17 (7) Updating the Legislature on the early implementation phase  
18 of the program, including the status of implementation, successes,  
19 and challenges during the early implementation phase, and relevant  
20 available data, including resource family satisfaction.

21 (8) Excluding a resource family parent, applicant, or other  
22 individual from presence in any resource family home, consistent  
23 with the established standard for any of the reasons specified in  
24 Section 16519.61.

25 (9) Implementing due process procedures, including, but not  
26 limited to, all of the following:

27 (A) Providing a statewide fair hearing process for application  
28 denials, rescissions of approval, exclusion actions, or criminal  
29 record exemption denials or rescissions by a county or the  
30 department.

31 (B) Providing an excluded individual with due process pursuant  
32 to Section 16519.6.

33 (C) Amending the department's applicable state hearing  
34 procedures and regulations or using the Administrative Procedure  
35 Act, when applicable, as necessary for the administration of the  
36 program.

37 (g) Counties shall be responsible for all of the following:

38 (1) Submitting an implementation plan and consulting with the  
39 county probation department in the development of the  
40 implementation plan.



- 1 (2) Complying with the written directives or regulations adopted  
2 pursuant to this section.
- 3 (3) Implementing the requirements for resource family approval  
4 and utilizing standardized documentation established by the  
5 department.
- 6 (4) Training appropriate staff, including ensuring staff have the  
7 education and experience or core competencies necessary to  
8 participate in the assessment and evaluation of an applicant or  
9 resource family.
- 10 (5) (A) Taking the following actions, as applicable, for any of  
11 the reasons specified in Section 16519.61:
- 12 (i) (I) Approving or denying resource family applications,  
13 including preparing a written report that evaluates an applicant's  
14 capacity to foster, adopt, and provide legal guardianship of a child  
15 based on all of the information gathered through the resource  
16 family application and assessment processes.
- 17 (II) The applicant's preference to provide a specific level of  
18 permanency, including adoption, guardianship, or, in the case of  
19 a relative, placement with a fit and willing relative, shall not be a  
20 basis to deny an application.
- 21 (ii) Rescinding approvals of resource families.
- 22 (iii) When applicable, referring a case to the department for an  
23 action to exclude a resource family parent, applicant, or other  
24 individual from presence in any resource family home, consistent  
25 with the established standard.
- 26 (iv) Issuing a temporary suspension order that suspends the  
27 resource family approval prior to a hearing when, in the opinion  
28 of the county, urgent action is needed to protect a child from  
29 physical or mental abuse, abandonment, or any other substantial  
30 threat to health or safety. The county shall serve the resource family  
31 with the temporary suspension order and a copy of available  
32 discovery in the possession of the county, including, but not limited  
33 to, affidavits, declarations, names of witnesses, and other evidence  
34 upon which the county relied in issuing the temporary suspension  
35 order. The temporary suspension order shall be served upon the  
36 resource family with a notice of action, and if the matter is to be  
37 heard before the Office of Administrative Hearings, an accusation.  
38 The temporary suspension order shall list the effective date on the  
39 order.
- 40 (v) Granting, denying, or rescinding criminal record exemptions.

1 (B) Providing a resource family parent, applicant, or individual  
2 who is the subject of a criminal record exemption denial or  
3 rescission with due process pursuant to Section 16519.6.

4 (C) Notifying the department of any decisions denying an  
5 application for resource family approval, rescinding the approval  
6 of a resource family, or denying or rescinding a criminal record  
7 exemption and, if applicable, notifying the department of the results  
8 of an administrative action.

9 (6) (A) Updating resource family approval annually and as  
10 necessary to address any changes that have occurred in the resource  
11 family's circumstances, including, but not limited to, moving to  
12 a new home location or commencing operation of a family day  
13 care home, as defined in Section 1596.78 of the Health and Safety  
14 Code.

15 (B) A county shall conduct an announced inspection of a  
16 resource family home during the annual update, and as necessary  
17 to address any changes specified in subparagraph (A), in order to  
18 ensure that the resource family is conforming to all applicable laws  
19 and the written directives or regulations adopted pursuant to this  
20 section.

21 (7) Monitoring resource families through all of the following:

22 (A) Ensuring that social workers who identify a condition in  
23 the home that may not meet the approval standards set forth in  
24 subdivision (d) while in the course of a routine visit to children  
25 placed with a resource family take appropriate action as needed.

26 (B) Requiring resource families to meet the approval standards  
27 set forth in this section and to comply with the written directives  
28 or regulations adopted pursuant to this section, other applicable  
29 laws, and corrective action plans as necessary to correct identified  
30 deficiencies. If corrective action is not completed, as specified in  
31 the plan, the county may rescind the resource family approval.

32 (C) Requiring resource families to report to the county child  
33 welfare agency any incidents consistent with the reporting  
34 requirements for licensed foster family homes.

35 (D) Inspecting resource family homes as often as necessary to  
36 ensure the quality of care provided.

37 (8) (A) Investigating all complaints against a resource family  
38 and taking action as necessary, including, but not limited to,  
39 investigating any incidents reported about a resource family

1 indicating that the approval standard is not being maintained and  
 2 inspecting the resource family home.

3 (B) The child’s social worker shall not conduct the investigation  
 4 into the complaint received concerning a family providing services  
 5 pursuant to the standards required by subdivision (d). To the extent  
 6 that adequate resources are available, complaints shall be  
 7 investigated by a worker who did not conduct the home  
 8 environment assessment or family evaluation or prepare the written  
 9 report determining approval of the resource family.

10 (C) Upon conclusion of the complaint investigation, the final  
 11 disposition shall be reviewed and approved by a supervising staff  
 12 member.

13 (D) The department shall be notified of any serious incidents  
 14 or serious complaints or any incident that falls within the definition  
 15 of Section 11165.5 of the Penal Code. If those incidents or  
 16 complaints result in an investigation, the department shall also be  
 17 notified as to the status and disposition of that investigation.

18 (9) Performing corrective action as required by the department.

19 (10) Assessing county performance in related areas of the  
 20 California Child and Family Services Review System, and  
 21 remedying problems identified.

22 (11) Submitting information and data that the department  
 23 determines is necessary to study, monitor, and prepare the update  
 24 specified in paragraph (7) of subdivision (f).

25 (12) Ensuring resource family applicants and resource families  
 26 have the necessary knowledge, skills, and abilities to support  
 27 children in foster care by completing caregiver training. The  
 28 training should include a curriculum that supports the role of a  
 29 resource family in parenting vulnerable children and should be  
 30 ongoing in order to provide resource families with information on  
 31 trauma-informed practices and requirements and other topics within  
 32 the foster care system.

33 (13) Ensuring that a resource family applicant completes a  
 34 minimum of 12 hours of preapproval caregiver training. The  
 35 training shall include, but not be limited to, all of the following  
 36 courses:

37 (A) An overview of the child protective and probation systems.

38 (B) The effects of trauma, including grief and loss, and child  
 39 abuse and neglect, on child development and behavior, and

1 methods to behaviorally support children impacted by that trauma  
2 or child abuse and neglect.

3 (C) Positive discipline and the importance of self-esteem.

4 (D) Health issues in foster care.

5 (E) Accessing services and supports to address education needs,  
6 physical, mental, and behavioral health, and substance use  
7 disorders, including culturally relevant services.

8 (F) The rights of a child in foster care and the resource family's  
9 responsibility to safeguard those rights, including the right to have  
10 fair and equal access to all available services, placement, care,  
11 treatment, and benefits, and to not be subjected to discrimination  
12 or harassment on the basis of actual or perceived race, ethnic group  
13 identification, ancestry, national origin, color, religion, sex, sexual  
14 orientation, gender identity, mental or physical disability, or HIV  
15 status.

16 (G) Cultural needs of children, including instruction on cultural  
17 competency and sensitivity, and related best practices for providing  
18 adequate care for children or youth across diverse ethnic and racial  
19 backgrounds, as well as children or youth identifying as lesbian,  
20 gay, bisexual, or transgender.

21 (H) Basic instruction on existing laws and procedures regarding  
22 the safety of foster youth at school.

23 (I) Permanence, well-being, and education needs of children.

24 (J) Child and adolescent development, including sexual  
25 orientation, gender identity, and expression.

26 (K) The role of resource families, including working  
27 cooperatively with the child welfare or probation agency, the  
28 child's family, and other service providers implementing the case  
29 plan.

30 (L) The role of a resource family on the child and family team  
31 as defined in paragraph (4) of subdivision (a) of Section 16501.

32 (M) A resource family's responsibility to act as a reasonable  
33 and prudent parent, as described in subdivision (c) of Section  
34 1522.44 of the Health and Safety Code, and to provide a family  
35 setting that promotes normal childhood experiences and that serves  
36 the needs of the child.

37 (N) An overview of the specialized training identified in  
38 subdivision (h).

39 (O) The information described in subdivision (i) of Section  
40 16521.5. The program may use the curriculum created pursuant

1 to subdivision (h), and described in subdivision (i), of Section  
2 16521.5.

3 (14) Ensuring resource families complete a minimum of eight  
4 hours of caregiver training annually, a portion of which shall be  
5 from subparagraph (M) of paragraph (13) and from one or more  
6 of the other topics listed in paragraph (13).

7 (h) In addition to any training required by this section, a county  
8 may require a resource family or applicant to receive relevant  
9 specialized training for the purpose of preparing the resource family  
10 to meet the needs of a particular child in care. This training may  
11 include, but is not limited to, the following:

12 (1) Understanding how to use best practices for providing care  
13 and supervision to commercially sexually exploited children.

14 (2) Understanding how to use best practices for providing care  
15 and supervision to lesbian, gay, bisexual, and transgender children.

16 (3) Understanding the requirements and best practices regarding  
17 psychotropic medications, including, but not limited to, court  
18 authorization, benefits, uses, side effects, interactions, assistance  
19 with self-administration, misuse, documentation, storage, and  
20 metabolic monitoring of children prescribed psychotropic  
21 medications.

22 (4) Understanding the federal Indian Child Welfare Act (25  
23 U.S.C. Sec. 1901 et seq.), its historical significance, the rights of  
24 children covered by the act, and the best interests of Indian  
25 children, including the role of the caregiver in supporting culturally  
26 appropriate, child-centered practices that respect Native American  
27 history, culture, retention of tribal membership, and connection to  
28 the tribal community and traditions.

29 (5) Understanding how to use best practices for providing care  
30 and supervision to nonminor dependents.

31 (6) Understanding how to use best practices for providing care  
32 and supervision to children with special health care needs.

33 (7) Understanding the different permanency options and the  
34 services and benefits associated with the options.

35 (i) This section shall not preclude a county from requiring  
36 training in excess of the requirements in this section.

37 (j) (1) Resource families who move home locations shall retain  
38 their resource family status pending the outcome of the update  
39 conducted pursuant to paragraph (6) of subdivision (g).

1 (2) (A) If a resource family moves from one county to another  
2 county, the department, or the county to which a resource family  
3 has moved, shall submit a written request to the Department of  
4 Justice to transfer the individual's subsequent arrest notification,  
5 as specified in subdivision (h) of Section 1522 of the Health and  
6 Safety Code.

7 (B) A request to transfer a subsequent arrest notification shall  
8 contain all prescribed data elements and format protocols pursuant  
9 to a written agreement between the department and the Department  
10 of Justice.

11 (3) Subject to the requirements in paragraph (1), the resource  
12 family shall continue to be approved for guardianship and adoption.  
13 This subdivision shall not limit a county, foster family agency, or  
14 adoption agency from determining that the family is not approved  
15 for guardianship or adoption based on changes in the family's  
16 circumstances or family evaluation.

17 (k) Implementation of the program shall be contingent upon the  
18 continued availability of federal Social Security Act Title IV-E  
19 (42 U.S.C. Sec. 670) funds for costs associated with placement of  
20 children with resource families assessed and approved pursuant  
21 to the program.

22 (l) A child placed with a resource family is eligible for the  
23 resource family basic rate, pursuant to Sections 11253.45, 11460,  
24 11461, and 11463, and subdivision (l) of Section 11461.3, at the  
25 child's assessed level of care.

26 (m) Sharing ratios for nonfederal expenditures for all costs  
27 associated with activities related to the approval of relatives and  
28 nonrelative extended family members shall be in accordance with  
29 Section 10101.

30 (n) The Department of Justice shall charge fees sufficient to  
31 cover the cost of initial or subsequent criminal offender record  
32 information and Child Abuse Central Index searches, processing,  
33 or responses, as specified in this section.

34 (o) Except as provided, resource families shall be exempt from  
35 both of the following:

36 (1) Licensure requirements established pursuant to the California  
37 Community Care Facilities Act (Chapter 3 (commencing with  
38 Section 1500) of Division 2 of the Health and Safety Code) and  
39 all regulations promulgated to implement the act.

1 (2) Relative and nonrelative extended family member approval  
2 requirements as those approval requirements existed prior to  
3 January 1, 2017.

4 (p) (1) Early implementation counties shall be authorized to  
5 continue through December 31, 2016. The program shall be  
6 implemented by each county on or before January 1, 2017.

7 (2) (A) (i) On and after January 1, 2017, a county to which the  
8 department has delegated its licensing authority pursuant to Section  
9 1511 of the Health and Safety Code shall approve resource families  
10 in lieu of licensing foster family homes.

11 (ii) Notwithstanding clause (i), the existing licensure and  
12 oversight processes shall continue to be administered for foster  
13 family homes licensed prior to January 1, 2017, or as specified in  
14 subparagraph (C), until the license is revoked or forfeited by  
15 operation of law pursuant to Section 1517.1 of the Health and  
16 Safety Code.

17 (B) (i) On and after January 1, 2017, a county shall approve  
18 resource families in lieu of approving relative and nonrelative  
19 extended family members.

20 (ii) Notwithstanding clause (i), the existing approval and  
21 oversight processes shall continue to be administered for relatives  
22 and nonrelative extended family members approved prior to  
23 January 1, 2017, or as specified in subparagraph (C), until the  
24 approval is revoked or forfeited by operation of law pursuant to  
25 this section.

26 (C) Notwithstanding subparagraph (D), a county shall approve  
27 or deny all applications for foster family home licenses and requests  
28 for relative or nonrelative extended family member approvals  
29 received on or before December 31, 2016, in accordance with  
30 Chapter 3 (commencing with Section 1500) of Division 2 of the  
31 Health and Safety Code or provisions providing for the approval  
32 of relatives or nonrelative extended family members, as applicable.

33 (D) On and after January 1, 2017, a county shall not accept  
34 applications for foster family home licenses or requests to approve  
35 relatives or nonrelative extended family members.

36 (3) No later than July 1, 2019, each county shall provide the  
37 following information to all licensed foster family homes and  
38 approved relatives and nonrelative extended family members  
39 licensed or approved by the county:

1 (A) A detailed description of the resource family approval  
2 program.

3 (B) Notification that, in order to care for a foster child, resource  
4 family approval is required by December 31, 2020.

5 (C) Notification that a foster family home license and an  
6 approval of a relative or nonrelative extended family member shall  
7 be forfeited by operation of law, as specified in paragraph (8).

8 (4) The following shall apply to all licensed foster family homes  
9 and approved relative and nonrelative extended family members:

10 (A) A licensed foster family home or an approved relative or  
11 nonrelative extended family member with an approved adoptive  
12 home study completed prior to January 1, 2018, shall be deemed  
13 to be a resource family.

14 (B) A licensed foster family home or an approved relative or  
15 nonrelative extended family member who had a child in placement  
16 at any time between January 1, 2017, and December 31, 2017,  
17 inclusive, may be approved as a resource family on the date of  
18 successful completion of a family evaluation.

19 (C) A licensed foster family home that provided  
20 county-authorized respite services at any time between January 1,  
21 2017, and December 31, 2017, inclusive, may be approved as a  
22 resource family on the date of successful completion of a family  
23 evaluation.

24 (5) A county may provide supportive services to all licensed  
25 foster family homes, relatives, and nonrelative extended family  
26 members with a child in placement to assist with the resource  
27 family transition and to minimize placement disruptions.

28 (6) (A) In order to approve a licensed foster family home or  
29 approved relative or nonrelative extended family member as a  
30 resource family pursuant to paragraph (4), a county shall submit  
31 a written request to the Department of Justice to transfer any  
32 subsequent arrest and Child Abuse Central Index notifications, as  
33 specified in subdivision (h) of Section 1522 of the Health and  
34 Safety Code.

35 (B) A request to transfer a subsequent arrest notification shall  
36 contain all prescribed data elements and format protocols pursuant  
37 to a written agreement between the department and the Department  
38 of Justice.

39 (7) An individual who is a member of a resource family  
40 approved pursuant to subparagraph (B) or (C) of paragraph (4)



1 shall be fingerprinted pursuant to Section 8712 of the Family Code  
2 upon filing an application for adoption.

3 (8) All foster family licenses and approvals of relatives and  
4 nonrelative extended family members shall be forfeited by  
5 operation of law on December 31, 2020, except as provided in this  
6 paragraph or Section 1524 of the Health and Safety Code:

7 (A) All licensed foster family homes that did not have a child  
8 in placement or did not provide county-authorized respite services  
9 at any time between January 1, 2017, and December 31, 2017,  
10 inclusive, shall forfeit the license by operation of law on January  
11 1, 2018.

12 (B) For foster family home licensees and approved relatives or  
13 nonrelative extended family members who have a pending resource  
14 family application on December 31, 2020, the foster family home  
15 license or relative and nonrelative extended family member  
16 approval shall be forfeited by operation of law upon approval as  
17 a resource family. If approval is denied, forfeiture by operation of  
18 law shall occur on the date of completion of any proceedings  
19 required by law to ensure due process.

20 (C) A foster family home license shall be forfeited by operation  
21 of law, pursuant to Section 1517.1 of the Health and Safety Code,  
22 upon approval as a resource family.

23 (D) Approval as a relative or nonrelative extended family  
24 member shall be forfeited by operation of law upon approval as a  
25 resource family.

26 (q) On and after January 1, 2017, all licensed foster family  
27 agencies shall approve resource families in lieu of certifying foster  
28 homes, as set forth in Section 1517 of the Health and Safety Code.

29 (r) The department may establish participation conditions, and  
30 select and authorize foster family agencies that voluntarily submit  
31 implementation plans and revised plans of operation in accordance  
32 with requirements established by the department, to approve  
33 resource families in lieu of certifying foster homes.

34 (1) Notwithstanding any other law, a participating foster family  
35 agency shall require resource families to meet and maintain the  
36 resource family approval standards and requirements set forth in  
37 this chapter and in the written directives adopted consistent with  
38 the chapter prior to approval and in order to maintain approval.

1 (2) A participating foster family agency shall implement the  
2 resource family approval program pursuant to Section 1517 of the  
3 Health and Safety Code.

4 (3) This section shall not be construed to limit the authority of  
5 the department to inspect, evaluate, or investigate a complaint or  
6 incident, or initiate a disciplinary action against a foster family  
7 agency pursuant to Article 5 (commencing with Section 1550) of  
8 Chapter 3 of Division 2 of the Health and Safety Code, or to take  
9 any action it may deem necessary for the health and safety of  
10 children placed with the foster family agency.

11 (4) The department may adjust the foster family agency  
12 AFDC-FC rate pursuant to Section 11463 for implementation of  
13 this subdivision.

14 (5) This subdivision shall become inoperative on January 1,  
15 2017.

16 (s) The department or a county is authorized to obtain any arrest  
17 or conviction records or reports from any court or law enforcement  
18 agency as necessary to the performance of its duties, as provided  
19 in this section or subdivision (e) of Section 1522 of the Health and  
20 Safety Code.

21 (t) A resource family approved pursuant to this section shall  
22 forfeit its approval concurrent with resource family approval by a  
23 foster family agency.

24 *SEC. 4. To the extent that this act has an overall effect of*  
25 *increasing the costs already borne by a local agency for programs*  
26 *or levels of service mandated by the 2011 Realignment Legislation*  
27 *within the meaning of Section 36 of Article XIII of the California*  
28 *Constitution, it shall apply to local agencies only to the extent that*  
29 *the state provides annual funding for the cost increase. Any new*  
30 *program or higher level of service provided by a local agency*  
31 *pursuant to this act above the level for which funding has been*  
32 *provided shall not require a subvention of funds by the state or*  
33 *otherwise be subject to Section 6 of Article XIII B of the California*  
34 *Constitution.*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 10, 2019

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

*Committee or other entity submitting the proposal:*

Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee: Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 and 5.485; renumber rules 5.486 and 5.487; adopt forms ICWA-070, ICWA-080, and ICWA-90; revise forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207 [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 19, 2018

Project description from annual agenda: Item 1n on the Family and Juvenile Law Advisory Committee Annual Agenda: Legislative Changes from the 2017-2018 Legislative Session. Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration: n. AB 3176 (Waldron) Indian children (Ch. 833, Statutes of 2018) Updates the Indian Child Welfare Act provisions in the Welfare and Institutions Code in order to comply with recent Federal Bureau of Indian Affairs regulations.

From the Tribal Court–State Court Forum annual agenda approved by the Executive and Planning Committee on March 13, 2019: Item 1: Implement Assembly Bill 3176 Indian Children (Waldron; Stats. 2018, ch. 833) Project Summary: AB 3176 Indian Children, amends provisions of the Welfare and Institutions Code to conform California law to the requirements of the federal Indian Child Welfare Act Regulations and Guidelines adopted in 2016. The legislation directs the Judicial Council to enact rules and forms necessary to implement the legislation.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR19-\_\_

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Title

Indian Child Welfare Act (ICWA):  
Implementation of AB 3176 for Indian  
Children

Proposed Rules, Forms, Standards, or Statutes  
Adopt Cal. Rules of Court, rule 5.484; amend  
rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668,  
5.674, 5.676, 5.678, 5.690, and 5.725; amend  
and renumber rules 5.484 and 5.485, renumber  
5.486 and 5.487; adopt forms ICWA-070,  
ICWA-080, and ICWA-90; revise forms  
ICWA-005-INFO, ICWA-010(A), ICWA-  
020, ICWA-030, ICWA-040, ICWA-060, JV-  
100, JV-110, JV-320, JV-405, JV-410, JV-  
412, JV-415, JV-418, JV-421, JV-430, JV-  
432, JV-433, JV-435, JV-437, JV-438, JV-  
440, JV-442, JV-443, JV-455, JV-457, and  
JV-600

Proposed by

Tribal Court–State Court Forum  
Hon. Abby Abinanti, Cochair  
Hon. Suzanne N. Kingsbury, Cochair

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

Action Requested

Review and submit comments by Monday  
June 10, 2019

Proposed Effective Date

January 1, 2020

Contact

Ann Gilmour, Attorney, Center for Families,  
Children and the Courts, 415-865-4207  
ann.gilmour@jud.ca.gov

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### Executive Summary and Origin

The Tribal Court–State Court Forum (forum) and the Family and Juvenile Law Advisory Committee recommend adopting a new rule of court, amending several other California Rules of Court, and revising several forms for Indian Child Welfare Act (ICWA) and juvenile court

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

dependency proceedings to comply with statutory changes in Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833) as well as changes to governing federal regulations and guidelines. The proposal also addresses technical amendments and corrections, and responds to several appellate court decisions regarding ICWA rules and forms.<sup>1</sup>

## Background

The federal Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.) was enacted in 1978 and establishes minimum federal standards that apply in all state court proceedings involving an Indian child where the child could be involuntarily placed in the custody of a nonparent, or where the parental rights of a parent could be terminated. In 2006, California enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) to substantially incorporate provisions of ICWA into the California Family Code, Probate Code, and Welfare and Institutions Code. Following enactment of SB 678, the Judicial Council adopted implementing rules of court and forms.<sup>2</sup> Those rules and forms have not been comprehensively amended or revised since that time. Some of the rules and forms have been updated, but only when necessary to comply with legislative changes or appellate court decisions. Other nonurgent suggestions for corrections or improvements to the rules and forms have been noted, following the practice that these nonurgent issues can be addressed when the rules and forms are being amended or revised.

In 2016, the federal government for the first time since 1979 finalized comprehensive regulations and issued updated guidelines implementing ICWA.<sup>3</sup> In some areas, the regulations and guidelines were inconsistent with existing California law and practice. In addition, in 2017, the California ICWA Compliance Task Force presented its report to Attorney General Xavier Becerra.<sup>4</sup> The report identified various concerns from tribes and tribal representatives about how ICWA was being interpreted and applied in California.

On September 27, 2018, Governor Brown signed AB 3176–Indian Children,<sup>5</sup> to (1) address issues identified in the California ICWA Compliance Task Force Report, and (2) conform California law to the requirements of the new federal ICWA regulations and guidelines. The bill makes important revisions to California law including clarifying “... the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child’s possible status as an Indian child...” and revising “...the various notice requirements that are mandated during an Indian child custody proceeding, including a proceeding for an emergency removal of an Indian child from the custody of his or her parents or Indian custodian.” The bill directs the Judicial Council to adopt any forms or rules of court necessary to implement these provisions.

While the new federal ICWA regulations and guidelines apply to all proceedings governed by ICWA, including those that may arise under the California Family and Probate codes, AB 3176

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<sup>1</sup> *In re. E.H.* (2018) 26 Cal.App.5th 1058; *In re. J.Y.* (2018) 30 Cal.App.5th 712.

<sup>2</sup> That rules and forms proposal was adopted by the Judicial Council at a meeting on October 26, 2007. The proposal was item A27 in Volume 1 of the materials and is available [here](#).

<sup>3</sup> The regulations are available at [25 C.F.R. § 23](#), and the guidelines are available [here](#).

<sup>4</sup> The report is available [here](#).

<sup>5</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB3176](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176)

only amends the California Welfare and Institutions Code. In some instances, those provisions of the Welfare and Institutions Code are incorporated by reference in the Family and Probate codes. To avoid multiple rules amendments and forms revisions, this proposal includes changes to ICWA rules and forms that apply to all case types governed by ICWA required by the federal regulations and guidelines as well as revisions to juvenile rules and forms that are specifically required by AB 3176. The proposal also encompasses amendments to rules and revisions to forms required by appellate decisions and suggested by commentators since the rules and forms were last amended or revised.

Finally, while the identified rules and forms were being amended or revised, they were examined to determine whether amendments or revisions were appropriate in order to be more gender neutral consistent with the spirit of the Gender Recognition Act—SB 179 (Atkins; Stats. 2017, ch. 853). The questions about a child’s sex found at item 1e of the JV-100, *Juvenile Dependency Petition (Version One)*, and item 1b of the JV-110, *Juvenile Dependency Petition (Version Two)* were identified as being high priority to assess whether it would be possible to change the question from “sex” to “gender” and to add instructions that gender can include nonbinary.

## **The Proposal**

The Tribal Court—State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rules 5.480 through 5.483, and rules 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 and 5.485; renumber rules 5.486 and 5.487; and adopt rule 5.484 to conform them to the statutory changes in AB 3176, and to clarify procedures and legal requirements.
2. Adopt Indian Child Welfare Act forms ICWA-70, ICWA-80, and ICWA-90; revise existing Indian Child Welfare Act and juvenile forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600.

The text of the proposed changes to the California Rules of Court are attached at pages 14–34. Proposed forms for adoption or revision are found at pages 35–138.

The proposed changes are, for the most part, required by the passage of AB 3176 and the new federal regulations and guidelines, and are urgently needed to conform to these recent changes in the law. Those that are not directly required by these legal changes are either (1) in response to specific issues and recommendations in the California ICWA Compliance Task Force Report, (2) in response to issues identified in appellate decisions, or (3) changes that make minor or technical amendments identified by practitioners and justice partners.

The federal regulations and guidelines and AB 3176 make significant changes to prior law and practice reflected in the proposal in several key areas.

The proposal will benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act and conforming California practice to the requirements of federal and state law—thus reducing confusion and appeals.

#### **Amendment to rule 5.480**

This is a minor technical amendment intended to reflect the four distinct proceedings set out in the federal and state laws to which the ICWA requirements apply. As currently drafted, the rule does not include “preadoptive placements” that are specifically discussed in ICWA.

#### **Amendment to rule 5.481**

The proposed amendments implement changes to ICWA inquiry and notice requirements made by the federal ICWA regulations and AB 3176 amendments to Welfare and Institutions Code section 224.2. The proposed amendments:

- Add in paragraph (1) extended family members and others who have an interest in the child, including a party reporting child abuse or neglect, to those who must be asked whether or not the child may be an Indian child<sup>6</sup>;
- Add to paragraph (2) a question about whether the residence or domicile of the child, parents, or Indian custodian is on a reservation or Alaska Native Village;<sup>7</sup>
- Clarify that at the first appearance all participants to a case must be asked whether they know or have reason to know the child is an Indian child, and the court must instruct them to inform the court if they subsequently receive information that provides reason to know;
- Set out the obligation to conduct further inquiry when there is “reason to believe” the child is an Indian child;<sup>8</sup>
- Amend what gives the court “reason to know” the child is an Indian child;<sup>9</sup>
- Set out the evidence that must be provided concerning efforts to work with the child’s tribe(s) to determine the child’s status when the petitioner had reason to know the child is an Indian child;
- Authorize the court to find that the child is not an Indian child if—based on the evidence of the efforts to work with the child’s tribe(s)—the court is able to conclude that there is no “reason to know” the child is an Indian child;<sup>10</sup> and

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<sup>6</sup> Welf. & Inst. Code, § 224.2(b), as amended by AB 3176.

<sup>7</sup> *Id.*

<sup>8</sup> Note that AB 3176 creates two different levels of knowledge about Indian status, with different obligations attaching to each of them. Section 224.2(e) of the Welf. & Inst. Code states that if there is “reason to believe” that an Indian child is involved, there is a duty of “further inquiry.” The specific steps of further inquiry include interviewing parents and extended family members and contacting the Bureau of Indians Affairs and potential tribes or others to gather information. Further inquiry must include sharing with tribes information identified by the tribe as necessary for the tribe to make a membership or eligibility determination. The level of information that provides “reason to believe” is not defined in the statute. “Reason to know” is defined at § 224.2(d) and essentially tracks the language in 25 C.F.R. § 23.107(c). Only when there is “reason to know” as set out in § 224.2(d) is formal ICWA notice required under § 224.2(f).

<sup>9</sup> Welf. & Inst. Code, § 224.2(d), as amended by AB 3176.

<sup>10</sup> Welf. & Inst. Code, § 224.2(i)(2).

- Clarify that notice by registered or certified mail (return receipt requested) is only required for specified hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child when it is known or there is reason to know the child is an Indian child.<sup>11</sup>

#### **Amendment to rule 5.482**

To implement the amendments to provisions governing ICWA notice in AB 3176 at section 7 (Welf. & Inst. Code, § 224.3):

- Clarify that formal ICWA notice, including the requirement to wait 10 days until after receipt of such notice, is only required for hearings, other than “emergency proceedings” that could result in an order for the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child;<sup>12</sup>
- Remove reference to the detention hearing in a dependency case, as this is now dealt with under rule 5.668; and
- Remove subdivision (c) authorizing a finding that the child is not an Indian child if proper notice has been given and no determinative response is received within 60 days, as the code provision that authorized this finding has been repealed by AB 3176.

#### **Amendment to rule 5.483**

The proposed amendments, which are required by the federal regulations and complementary changes in AB 3176 found in the amended section 305.5 of the Welfare and Institutions Code:

- Clarify that where a tribe has exclusive jurisdiction, the state court proceedings must be dismissed, rather than being transferred to the tribal court, subject only to the terms of any agreement that may have been reached between the state and the tribe under section 1919 of ICWA;
- Clarify the court’s duty to notify the tribe and tribal court of its intention to dismiss a case due to the tribe’s exclusive jurisdiction; and
- Amend what constitutes good cause to deny a request to transfer a case to tribal court when there is concurrent jurisdiction.

#### **Adoption of rule 5.484**

The new federal regulations, as set forth in 25 Code of Federal Regulations part 23.113 and implemented in AB 3176,<sup>13</sup> necessitate adoption of a new rule that will replace rule 5.484 and require that current rules 5.484 through 5.487 be renumbered. The proposed new rule addresses the specific requirements related to emergency proceedings and emergency removals of an Indian child set out in the new federal regulations at 25 Code of Federal Regulations part 23.113

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<sup>11</sup> Section 224.3(a) states that formal ICWA notice need be only for these specified hearings, rather than for every hearing, when it is known or there is reason to know the child is an Indian child.

<sup>12</sup> See amended § 224.3(a) and (d).

<sup>13</sup> See amended Welf. & Inst. Code, § 224.1(l) defining “emergency proceeding” to include an initial hearing under § 319 as well as amended § 306(c), including temporary custody by an agency as an “emergency removal,” and the requirements contained in amended § 319(b)–(e).



and implemented in AB 3176 through various amendments to the Welfare and Institutions Code. Because the requirements of 25 Code of Federal Regulations part 23.113 apply generally to all cases governed by ICWA, the proposal is to add this to the ICWA rules, in addition to making specific changes (see below) to the juvenile rules governing detentions.

The proposed rule 5.484 addresses the requirements of the federal regulations and AB 3176, including:

- Clarifying the standards and required court findings for detention of a child when it is known or there is reason to know the child is an Indian child;
- Clarifying the specific evidence that must be presented to the court to support a removal or detention when it is known or there is reason to know the child is an Indian child;
- Establishing a process for requesting a hearing to seek return of the child when there is new information indicating that the emergency situation that justified initial removal has ended; and
- Addressing the limitations on how long an emergency proceeding can last.

#### **Amendment and renumbering of former rule 5.484 to rule 5.485**

In addition to renumbering, the following changes must be made for conformity with the updated federal guidelines:

- Amendments to how the court must analyze whether there has been compliance with the placement preferences and whether there is good cause, as defined in 25 Code of Federal Regulations parts 23.130–23.132, to deviate from those preferences; and
- Amendments to the requirements and analysis of “active efforts” to reflect the definition of active efforts contained in 25 Code of Federal Regulations part 23.2 and the requirements of documenting active efforts set out in 25 Code of Federal Regulations part 23.120.

#### **Amendment and renumbering of former rule 5.485 to rule 5.486**

In addition to renumbering, the proposed amendment to former rule 5.485 addresses comments from the California Department of Social Services and other practitioners suggesting that the existing rule was not consistent with ICWA and state law. The proposed amendments include:

- The requirement that evidence must show not only that active efforts were made but also that those active efforts were unsuccessful before parental rights can be terminated, consistent with the requirements of ICWA and state law; and
- Recognition of additional circumstances set out in state law that may constitute a compelling reason to determine that termination of parental rights is not in an Indian child’s best interest.

#### **Renumbering of former rule 5.486 to rule 5.487 and former rule 5.487 to rule 5.488**

The proposal would only renumber these rules and not make any substantive amendments.

### **Amendment to rule 5.570**

After the most recent amendment to rule 5.570 in spring 2009, a commenter noted that the rule, as amended, was not consistent with the requirements of ICWA and California law, by failing to draw a distinction between the requirements for reasonable efforts generally and active efforts when the case involves an Indian child. The commenter was correct. However, the change was not made at the time because it was a substantive change that required the rule to circulate for comment.

### **Amendment to rule 5.668**

The federal regulations and AB 3176 at amended section 224.2 of the Welfare and Institutions Code require certain specific steps to be taken to determine a child's Indian status at the commencement of each "proceeding." Rule 5.668 governs the commencement of the initial hearing, and the explanation of the proceedings. It includes requirements concerning inquiry about parentage. The proposal would add to the rule the specific requirements on ICWA inquiry language that sets forth what is required at an initial hearing on a juvenile petition.

### **Amendment to rule 5.674**

This rule governs the conduct of the detention hearing and includes the findings and orders that must be made on the record. Welfare and Institutions Code section 309(a)(3), as amended by AB 3176, requires a modified detention finding on the record when the child is, or there is reason to know the child is, an Indian child. To implement this amendment to section 309(a)(3), it is proposed the rule be amended to require the court to find that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected without detention. This reflects the new requirements enacted by the new federal ICWA regulations and AB 3176.

### **Amendment to rule 5.676**

Rule 5.676 governs the requirements for the court to order a child detained. The proposed amendment adds to the requirements for detention when it is known, or there is reason to know, the child is an Indian child. These requirements are set out in Welfare and Institutions Code sections 309 and 319, as amended by AB 3176.

### **Amendment to rule 5.678**

Rule 5.678 governs the findings that must be made to support a detention order, the factors the court must consider, whether or not the agency has made appropriate efforts, and any alternatives to detention that should be considered. To comply with the requirements of AB 3176, the following amendments are proposed:

- Include the additional findings now required by Welfare and Institutions Code section 319(c)(2) and (d) to support detention if the child is, or there is reason to know that the child is, an Indian child;
- Include the requirements for active efforts findings to support detention when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code sections 306(e)(4), 319(f)(2), and 361.7;

- Include reference to the placement preferences that must be followed when an Indian child is removed, even on an emergency basis, consistent with amended section 319(h)(C) of the Welfare and Institutions Code;
- Reference the time limitations that apply to a removal when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code section 319; and
- Include a provision for a hearing to return custody of the child if the emergency that supported initial removal has ended, as required by Welfare and Institutions Code section 319.4.

#### **Amendment to rule 5.690**

This rule governs the general conduct of a disposition hearing. The proposed amendments respond to changes in Welfare and Institutions Code section 309 resulting from AB 3176: specifically, the provision mandating evidence that efforts have been made to locate extended family as that term is specifically defined for an Indian child under Welfare and Institutions Code section 224.1; and to locate placements through the tribe as discussed in amended section 309(e)(1) and (e)(1)(B) of the Welfare and Institutions Code.

#### **Amendment to rule 5.725**

This rule governs the selection of a permanent plan. The proposed amendment to this rule responds to the decision of the Court of Appeal, Third Appellate District, in *In re J.Y.* (2018) 30 Cal.App.5th 712, which holds that rule 5.725(e) is invalid as inconsistent with statute, specifically section 366.26 of the Welfare and Institutions Code, to the extent that it implies that an order of the court concerning an adoption or tribal customary adoption is final prior to the entry of the final order of adoption. The Court of Appeal held that the order only becomes final once the order of adoption has been issued.

#### **Revision to ICWA-005-INFO<sup>14</sup>**

The proposed revisions include suggestions by commentators, as well as general technical corrections and substantive changes in response to AB 3176. The main revisions are changes to the explanation of the obligations to contact a tribe and provide information in response to the changes to section 224.2(e)(3) of the Welfare and Institutions Code contained in AB 3176.

#### **Revision to ICWA-020**

The proposal is to revise the questions asked of parents to more closely follow the inquiry required in the federal regulations and section 224.2 of the Welfare and Institutions Code, as amended by AB 3176. Significantly, the proposal would remove the questions about whether the parents or child have Indian ancestry and instead focus on information about tribal membership or eligibility.

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<sup>14</sup> All changes to forms are highlighted in yellow in the attachments.

### **Revision to ICWA-030**

The proposed revisions would include a section to provide Indian ancestry information of “direct lineal ancestors,” as required by the regulations and the decision of the Court of Appeal in *In re E.H.* (2018) 26 Cal.App.5th<sup>t</sup> 1058.

### **Revision to ICWA-040**

The proposed revisions respond to comments that the form was confusing in attempting to address both designation of tribal representative and tribal intervention in one form. The proposal would have the designation of a tribal representative as a standalone form.

### **Revision to ICWA-060**

The proposed revisions reflect the changes in the federal regulations and AB 3176 as to what can be considered as good cause not to transfer a case to tribal court.

### **Adoption of ICWA-070, ICWA-080, and ICWA-090**

Section 23 of AB 3176 directs the Judicial Council to develop a rule of court and forms to implement the requirement that a party may request an ex parte hearing for return of an Indian child detained on an emergency basis as necessary to prevent imminent physical damage or harm to the child. Although AB 3176 only applies to juvenile proceedings, it is based on a provision in the new federal regulations (25 C.F.R. § 23.113) that mandates the state court have a process for a hearing on whether emergency removal or placement continues to be necessary. Therefore, it was decided to create a process and adopt forms that would apply generally to all ICWA cases, consistent with the federal regulatory requirements. The proposal would make these forms mandatory rather than optional. Because ICWA cases may involve tribes from across the state and the country, a unified consistent statewide practice is important.

### **Revisions to JV-100, JV-110, and JV-600**

The proposed revisions to these juvenile dependency and juvenile wardship petitions relate to the required ICWA inquiry and respond to comments received from judicial officers and others. As currently drafted, item 2 on the form requires the individual filing the petition to affirm that they have personally completed inquiry about the child’s Indian ancestry and completed the attached ICWA-10(A) form. It does not provide the petitioner with the option of explaining that inquiry may not yet have been possible or that inquiry may have been completed by someone other than the individual filing the petition. Commentators stated that this does not reflect the reality of many situations in which it may not have been possible for the inquiry to be completed prior to filing the petition. Further, often a petition is filed by county counsel on behalf of an agency, but inquiry will have been completed by a social worker rather than personally by the county counsel. The proposed revisions address this by adding an option for explaining that inquiry has not yet been completed, and allowing the information about inquiry to be completed on information and belief.

### **Revision to JV-320**

These revisions add specific findings when it is known or there is reason to know the case involves an Indian child. The proposed additions include:

- Findings that the evidence has included specific elements required under the regulations and AB 3176;
- Findings that the analysis and evidence required under the regulations and AB 3176 have been provided concerning the placement of an Indian child; and
- Specific findings on the nature of the active efforts provided by the agency required to support termination of parental rights for an Indian child.

The purpose of the revisions is to ensure that all ICWA requirements are considered and necessary findings and orders documented.

#### **Revision to JV-405**

This form is used following a continuance of the detention hearing in a dependency case. The proposed revisions primarily address the required ICWA inquiry and the court's findings as to whether or not there is reason to know that the child is an Indian child.

#### **Revision to JV-410**

This form documents the findings and orders required at a detention hearing. The proposed revisions include:

- Findings regarding ICWA inquiry and ICWA status;
- Findings regarding the court's jurisdiction when there is reason to know the case involves an Indian child;
- Findings regarding placement when there is reason to know the child is an Indian child; and
- Findings regarding active efforts when there is reason to know the child is an Indian child.

#### **Revisions to JV-412**

The proposed revision would add the requirement regarding ICWA notice whenever it is known, or there is reason to know that the child is an Indian child because the jurisdictional hearing is among those that AB 3176 specifies require ICWA notice.

#### **Revisions to JV-415 and JV-418**

The proposed revisions add the required active efforts finding if it is known or there is reason to know the child is an Indian child.

#### **Revision to JV-421**

The proposed revisions add the required ICWA findings and evidentiary elements with a goal of ensuring that the correct analysis is applied, and the required evidentiary elements are included, and findings and orders are made.

**Revision to JV-430**

The proposed revisions add requirements regarding active efforts when it is known or there is reason to know the child is an Indian child.

**Revision to JV-432**

The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

**Revision to JV-433**

The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

**Revision to JV-435**

The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

**Revision to JV-437**

The proposed revisions add required findings and orders regarding ICWA placement preferences.

**Revision to JV-438**

The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

**Revision to JV-440**

The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

**Revision to JV-442**

The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

**Revision to JV-443**

The proposed revisions add required findings and orders regarding compliance with ICWA placement preferences.

**Revision to JV-455**

The proposed revisions add required findings and orders regarding active efforts when it is known or there is reason to know the child is an Indian child.

**Revision to JV-457**

The proposed revisions add required findings and orders regarding active efforts and qualified expert witness testimony when it is known or there is reason to know the child is an Indian child.

The proposal will benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act and conforming California practice to the requirements of federal and state law, thus reducing confusion and appeals.

### **Alternatives Considered**

The committees considered whether rules and forms were required and concluded that they were, based upon the direction from the Legislature and the fact that the existing rules and forms were out of date and no longer consistent with the law.

### **Fiscal and Operational Impacts**

There will be fiscal and operational impacts as courts, justice partners, and litigants adjust to the new requirements and update their existing forms and practices. However, these impacts and burdens are required to comply with federal and state law and cannot be avoided. The benefits of complying with the law and avoiding appellate reversals will outweigh the potential costs.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the questions about Indian status in the proposed revision to form ICWA-020, *Parental Notification of Indian Status Form*, broad enough to ensure that Indian children are identified?
- Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 of form JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information?
- Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?
- Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## Attachments and Links

1. Cal. Rules of Court, rules 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, 5.487, 5.488, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725, at pages 14–34
2. Forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, ICWA-070, ICWA-080, ICWA-90, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600, at pages 35–138



Rule 5.484 of the California Rules of Court would be adopted, rules 5.480, 5.481, 5.482, 5.483, 5.570, 5.668, 5.674, 5.676, 5.678, and 5.690 would be amended, rules 5.484 and 5.485 would be amended and renumbered, and 5.486 and 5.487 would be renumbered, effective January 1, 2020, to read:

1 **Rule 5.480. Application**

2  
3 This chapter addressing the Indian Child Welfare Act (25 United States Code section  
4 1901 et seq.) as codified in various sections of the California Family, Probate, and  
5 Welfare and Institutions Codes, applies to most proceedings involving Indian children  
6 that may result in an involuntary foster care placement; guardianship or conservatorship  
7 placement; custody placement under Family Code section 3041; declaration freeing a  
8 child from the custody and control of one or both parents; termination of parental rights;  
9 preadoptive placement or adoptive placement. This chapter applies to:

10  
11 \* \* \*

12  
13 **Rule 5.481. Inquiry and notice**

14  
15 **(a) Inquiry**

16  
17 The court, court-connected investigator, and party seeking a foster-care placement,  
18 guardianship, conservatorship, custody placement under Family Code section 3041,  
19 declaration freeing a child from the custody or control of one or both parents,  
20 termination of parental rights, or adoption have an affirmative and continuing duty  
21 to inquire whether a child is or may be an Indian child in all proceedings identified  
22 in rule 5.480. The court, court-connected investigator, and party include the county  
23 welfare department, probation department, licensed adoption agency, adoption  
24 service provider, investigator, petitioner, appointed guardian or conservator of the  
25 person, and appointed fiduciary.

26  
27 (1) The party seeking a foster-care placement, guardianship, conservatorship,  
28 custody placement under Family Code section 3041, declaration freeing a  
29 child from the custody or control of one or both parents, termination of  
30 parental rights, or adoption must ask the child, if the child is old enough, and  
31 the parents, Indian custodian, or legal guardians, extended family members,  
32 others who have an interest in the child, and where applicable the party  
33 reporting child abuse or neglect whether the child is or may be an Indian  
34 child and whether the residence or domicile of the child, the parents, or  
35 Indian custodian is on a reservation or Alaska Native Village, and must  
36 complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and  
37 attach it to the petition unless the party is filing a subsequent petition, and  
38 there is no new information.

39  
40 (2) At the first appearance by a parent, Indian custodian, or guardian, and all  
41 other participants in any dependency case; or in juvenile wardship

1 proceedings in which the child is at risk of entering foster care or is in foster  
2 care; or at the initiation of any guardianship, conservatorship, proceeding for  
3 custody under Family Code section 3041, proceeding to terminate parental  
4 rights proceeding to declare a child free of the custody and control of one or  
5 both parents, or adoption proceeding; the court must:

6  
7 (A) Ask each participant present whether the participant knows or has  
8 reason to know that the child is an Indian child;

9  
10 (B) Instruct the parties to inform the court if they subsequently receive  
11 information that provides reason to know the child is an Indian child;  
12 and

13  
14 (C) ~~o~~Order the parent, Indian custodian, or guardian if available, to  
15 complete *Parental Notification of Indian Status* (form ICWA-020).

16  
17 (3) \* \* \*

18  
19 (4) If the social worker, probation officer, licensed adoption agency, adoption  
20 service provider, investigator, or petitioner knows or has reason to ~~know~~  
21 believe that an Indian child is or may be involved, that person or entity must  
22 make further inquiry as soon as practicable by:

23  
24 (A) Interviewing the parents, Indian custodian, and “extended family  
25 members” as defined in 25 United States Code sections 1901 and  
26 1903(2) , to gather the information listed in Welfare and Institutions  
27 Code section 224.2(a) (5), Family Code section 180(b) (5), or Probate  
28 Code section 1460.2(b) (5), ~~which is required to complete the *Notice of*~~  
29 ~~*Child Custody Proceeding for Indian Child* (form ICWA-030);~~

30  
31 (B) \* \* \*

32  
33 (C) Contacting the tribes and any other person that reasonably can be  
34 expected to have information regarding the child’s membership status  
35 or eligibility. These contacts must at a minimum include the contacts  
36 listed in Welfare and Institutions Code section 224.2 (e)(3).

37  
38 The petitioner must include in its filings a detailed description of all  
39 inquiries, further inquiries it has undertaken, and all information received  
40 pertaining to the child’s Indian status.

41  
42 ~~(5) The circumstances that may provide reason to know the child is an Indian~~  
43 ~~child include the following:~~

- 1  
2       ~~(A) — The child or a person having an interest in the child, including an~~  
3       ~~Indian tribe, an Indian organization, an officer of the court, a public or~~  
4       ~~private agency, or a member of the child’s extended family, informs or~~  
5       ~~otherwise provides information suggesting that the child is an Indian~~  
6       ~~child to the court, the county welfare agency, the probation department,~~  
7       ~~the licensed adoption agency or adoption service provider, the~~  
8       ~~investigator, the petitioner, or any appointed guardian or conservator~~  
9  
10       ~~(B) — The residence or domicile of the child, the child’s parents, or an Indian~~  
11       ~~eustodian is or was in a predominantly Indian community; or~~  
12  
13       ~~(C) — The child or the child’s family has received services or benefits from a~~  
14       ~~tribe or services that are available to Indians from tribes or the federal~~  
15       ~~government, such as the U.S. Department of Health and Human~~  
16       ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~  
17       ~~Needy Families benefits.~~

18  
19       **(b) Reason to know the child is an Indian child**

20  
21       (1)   The court has reason to know the child is an Indian child if:

- 22  
23       (A)   A person having an interest in the child, including the child, an officer  
24       of the court, a tribe, an Indian organization, a public or private agency,  
25       or a member of the child’s extended family informs the court that the  
26       child is an Indian child;  
27  
28       (B)   The residence or domicile of the child, the child’s parents, or Indian  
29       custodian is on a reservation or in an Alaska Native Village;  
30  
31       (C)   Any participant in the proceeding, officer of the court, Indian tribe,  
32       Indian organization, or agency informs the court that it has discovered  
33       information indicating that the child is an Indian child;  
34  
35       (D)   The child who is the subject of the proceeding gives the court reason to  
36       know he or she is an Indian child;  
37  
38       (E)   The court is informed that the child is or has been a ward of a tribal  
39       court; or  
40  
41       (F)   The court is informed that either parent or the child possess an  
42       identification card indicating membership or citizenship in an Indian  
43       tribe.

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(2) When there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership. Due diligence must include the further inquiry and tribal contacts discussed in (a)(4) above.

(3) Upon review of the evidence of due diligence, further inquiry, and tribal contacts, if the court concludes that the agency or other party has fulfilled its duty of due diligence, further inquiry, and tribal contacts, the court may:

(A) Find that there is no reason to know that the child is an Indian child and that the Indian Child Welfare Act does not apply. Notwithstanding this determination, if the court or a party subsequently receives information that was not previously available relevant to the child's Indian status, the court must reconsider this finding.

(B) Find that it is known or there is reason to know that the child is an Indian child, order notice in accordance with (c) below, and treat the child as an Indian child unless and until the court determines on the record that the child is not an Indian child.

**(c) Notice**

(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2 for all hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(2)–(4) \* \* \*

1  
2 **Rule 5.482. Proceedings after notice**

3  
4 **(a) Timing of proceedings**

5  
6 (1) If it is known or there is reason to know that a child is an Indian child, the  
7 court hearing that may result in a foster care placement, termination of  
8 parental rights, preadoptive placement, or adoptive placement must not  
9 proceed until at least 10 days after the parent, Indian custodian, the tribe, or  
10 the Bureau of Indian Affairs have received notice, except as stated in sections  
11 (a)(2) and (3).

12  
13 ~~(2) The detention hearing in dependency cases and in delinquency cases in which~~  
14 ~~the probation officer has assessed that the child is in foster care or it is~~  
15 ~~probable the child will be entering foster care described by rule 5.480(2) (A)~~  
16 ~~–(C) may proceed without delay, provided that:~~

17  
18 ~~(A) Notice of the detention hearing must be given as soon as possible after~~  
19 ~~the filing of the petition initiating the proceeding; and~~

20  
21 ~~(B) Proof of notice must be filed with the court within 10 days after the~~  
22 ~~filing of the petition.~~

23  
24 ~~(3) The parent, Indian custodian, or tribe must be granted a continuance, if~~  
25 ~~requested, of up to 20 days to prepare for the proceeding, except for specified~~  
26 ~~hearings in the following circumstances:~~

27  
28 ~~(A) The detention hearing in dependency cases and in delinquency cases~~  
29 ~~described by rule 5.480(2) (A) –(C);~~

30  
31 ~~(B) The jurisdiction hearing in a delinquency case described by rule~~  
32 ~~5.480(2) (A) –(C) in which the court finds the continuance would not~~  
33 ~~conform to speedy trial considerations under Welfare and Institutions~~  
34 ~~Code section 657; and~~

35  
36 ~~(C) The disposition hearing in a delinquency case described by rule~~  
37 ~~5.480(2) (A) –(C) in which the court finds good cause to deny the~~  
38 ~~continuance under Welfare and Institutions Code section 682. A good~~  
39 ~~cause reason includes when probation is recommending the release of a~~  
40 ~~detained child to his or her parent or to a less restrictive placement. The~~  
41 ~~court must follow the placement preferences under rule 5.484 when~~  
42 ~~holding the disposition hearing.~~

1 (b) Proof of notice

2  
3 \* \* \*

4  
5 ~~(e) When there is no information or response from a tribe~~

6  
7 (1) ~~If after notice has been provided as required by federal and state law and~~  
8 ~~neither the tribe nor the Bureau of Indian Affairs has provided a~~  
9 ~~determinative response within 60 days after receiving that notice, then the~~  
10 ~~court may determine that the Indian Child Welfare Act does not apply to the~~  
11 ~~proceedings, provided that the court must reverse its determination of the~~  
12 ~~inapplicability of the act and must apply it prospectively if a tribe or the~~  
13 ~~Bureau of Indian Affairs subsequently confirms that the child is an Indian~~  
14 ~~child.~~

15  
16 (2) ~~If at any time, based on the petition or other information, the court knows or~~  
17 ~~has reason to know the child is an Indian child, the court must proceed as if~~  
18 ~~the child were an Indian child.~~

19  
20 (3) ~~The court is not required to delay proceedings until a response to notice is~~  
21 ~~received.~~

22  
23 (d) Intervention

24  
25 The Indian child's tribe and Indian custodian may intervene, orally or in writing, at  
26 any point in the proceedings, ~~and~~ The tribe may, but ~~are~~ is not required to, file with  
27 the court the *Notice of Designation of Tribal Representative and Notice of*  
28 *Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to  
29 give notice of their intent to intervene.

30  
31 (e)-(f) \* \* \*

32  
33 **Rule 5.483. Dismissal and transfer of case**

34  
35 (a) ~~Mandatory transfer of case to tribal court with~~ **Dismissal when tribal court**  
36 **has exclusive jurisdiction**

37  
38 ~~The court must order transfer of a case to the tribal court of the child's tribe if:~~  
39 Subject to the terms of any agreement between the state and the tribe pursuant to 25  
40 United States Code section 1919:

41  
42 (1) If the court receives information suggesting that the Indian child is a ward of  
43 the a tribal court or is domiciled or resides within a reservation of an Indian

1           tribe that has exclusive jurisdiction over Indian child custody proceedings  
2           under section 1911 or 1918 of title 25 of the United States Code, the court  
3           must expeditiously notify the tribe and the tribal court that it intends to  
4           dismiss the case upon receiving confirmation from the tribe or tribal court  
5           that the child is a ward of the tribal court or subject to the tribe’s exclusive  
6           jurisdiction.

7  
8           (2) When the court receives confirmation that the child is already a ward of a  
9           tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the  
10           state court shall dismiss the proceeding and ensure that the tribal court is sent  
11           all information regarding the proceeding, including, but not limited to, the  
12           pleadings and any state court record. If the local agency has not already  
13           transferred physical custody of the Indian child to the child’s tribe, the state  
14           court shall order that the local agency do so forthwith and hold in abeyance  
15           any dismissal order pending confirmation that the Indian child is in the  
16           physical custody of the tribe.

17  
18           (3) This section does not preclude an emergency removal.

19  
20           **(b)–(c) \* \* \***

21  
22           **(d) Cause to deny a request to transfer to tribal court with concurrent state and**  
23           **tribal jurisdiction**

24  
25           (1) ~~One or more~~ Either of the following circumstances constitutes mandatory  
26           good cause to deny a request to transfer:

27  
28           (A) One or both of the child’s parents objects to the transfer in open court  
29           or in an admissible writing for the record; or

30  
31           ~~(B) The child’s tribe does not have a “tribal court” or any other~~  
32           ~~administrative body as defined in section 1903 of the Indian Child~~  
33           ~~Welfare Act: “a court with jurisdiction over child custody proceedings~~  
34           ~~and which is either a Court of Indian Offenses, a court established and~~  
35           ~~operated under the code or custom of an Indian tribe, or any other~~  
36           ~~administrative body of a tribe which is vested with authority over child~~  
37           ~~eustody proceedings;” or~~

38  
39           ~~(C) The tribal court of the child’s tribe declines the transfer.~~

40  
41           (2) ~~One or more of the following circumstances may constitute discretionary~~  
42           ~~good cause to deny a request to transfer~~ In assessing whether good cause to  
43           deny the transfer exists, the court must not consider:

1  
2 (A) ~~The evidence necessary to decide the case cannot be presented in the~~  
3 ~~tribal court without undue hardship to the parties or the witnesses, and~~  
4 ~~the tribal court is unable to mitigate the hardship by making~~  
5 ~~arrangements to receive and consider the evidence or testimony by use~~  
6 ~~of remote communication, by hearing the evidence or testimony at a~~  
7 ~~location convenient to the parties or witnesses, or by use of other means~~  
8 ~~permitted in the tribal court's rules of evidence or discovery;~~  
9

10 (B) ~~The proceeding was at an advanced stage when the request to transfer~~  
11 ~~was received and the petitioner did not make the request within a~~  
12 ~~reasonable time after receiving notice of the proceeding, provided the~~  
13 ~~notice complied with statutory requirements. Waiting until~~  
14 ~~reunification efforts have failed and reunification services have been~~  
15 ~~terminated before filing a request to transfer may not, by itself, be~~  
16 ~~considered an unreasonable delay;~~  
17

18 (C) ~~The Indian child is over 12 years of age and objects to the transfer; or~~  
19

20 (D) ~~The parents of a child over five years of age are not available and the~~  
21 ~~child has had little or no contact with his or her tribe or members of the~~  
22 ~~child's tribe.~~  
23

24 (A) Whether the foster care or termination-of-parental-rights proceeding is  
25 at an advanced stage if the Indian child's parent, Indian custodian, or  
26 tribe did not receive notice of the child custody proceeding until an  
27 advanced stage;  
28

29 (B) Whether there have been prior proceedings involving the child for  
30 which no petition to transfer was filed;  
31

32 (C) Whether transfer could affect the placement of the child;  
33

34 (D) The Indian child's cultural connections with the tribe or its reservation;  
35 or  
36

37 (E) Socioeconomic conditions or any negative perception of tribal or BIA  
38 social services or judicial systems.  
39

40 (3) \* \* \*

41



1 **(e) Evidentiary considerations**

2  
3 The court may not consider socioeconomic conditions and the perceived adequacy  
4 of tribal social services, tribal probation, or the tribal judicial systems in its  
5 determination that good cause exists to deny a request to transfer to tribal court  
6 with concurrent state and tribal jurisdiction.

7  
8 **(fe) Evidentiary burdens**

9 \* \* \*

10  
11 **(gf) Order on request to transfer**

12 \* \* \*

13  
14 **(hg) Advisement when transfer order granted**

15 \* \* \*

16  
17 **(ih) Proceeding after transfer**

18 \* \* \*

19  
20  
21 **Rule 5.484. Emergency proceedings involving an Indian child**

22  
23 **(a) Standards for removal**

24  
25 Whenever it is known or there is reason to know that the case involves an Indian  
26 child, the court may not order an emergency removal or placement of the child  
27 without a finding that the removal or placement is necessary to prevent imminent  
28 physical damage or harm to the child.

29  
30 Whenever it is known or there is reason to know that the case involves an Indian  
31 child, the petition requesting emergency removal or continued emergency  
32 placement of the child or its accompanying documents must contain the following:

- 33  
34 (1) A statement of the risk of imminent physical damage or harm to the child and  
35 any evidence that the emergency removal or placement continues to be  
36 necessary to prevent such imminent physical damage or harm to the child;  
37  
38 (2) The name, age, and last known address of the Indian child;  
39  
40 (3) The name and address of the child's parents and Indian custodians, if any;  
41  
42 (4) The steps taken to provide notice to the child's parents, custodians, and tribe  
43 about the emergency proceeding;

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- (5) If the child’s parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them;
- (6) The residence and the domicile of the Indian child;
- (7) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native Village, the name of the tribe affiliated with that reservation or village;
- (8) The tribal affiliation of the child and of the parents or Indian custodians;
- (9) A specific and detailed account of the circumstances that led to the emergency removal of the child;
- (10) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and
- (11) A statement of the efforts that have been taken to assist the parents or Indian custodian so the Indian child may safely be returned to their custody.

**(b) Return of Indian child when emergency situation has ended**

Whenever it is known or there is reason to know that the child is an Indian child and there has been an emergency removal of the child from parental custody, any party who asserts that there is new information indicating that the emergency situation has ended may request an ex parte hearing by filing a request in form ICWA-070 to determine whether the emergency situation has ended;

If the request provides evidence of new information establishing that the emergency placement is no longer necessary, the court shall promptly schedule a hearing. At the hearing the court shall consider whether the child’s removal and placement is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the child’s emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child, the court shall order the child returned to the physical custody of the parent or parents of Indian custodian.

**(c) Time limitation on emergency proceedings**

1 An emergency removal shall not continue for more than 30 days unless the court  
2 makes the following determinations:

- 3
- 4 (1) Restoring the child to the parent or Indian custodian would subject the child  
5 to imminent physical damage or harm;
- 6
- 7 (2) The court has been unable to transfer the proceeding to the jurisdiction of the  
8 appropriate Indian tribe; and
- 9
- 10 (3) It has not been possible to have a hearing that complies with the substantive  
11 requirements of the Indian Child Welfare Act for a foster care placement  
12 proceeding.
- 13

14 **Rule 5.4845. Placement of an Indian child**

15

16 (a) \* \* \*

17

18 (b) **Standards and preferences in placement of an Indian child**

- 19
- 20 (1) Unless the court finds good cause to deviate from them ~~the contrary~~,  
21 whenever it is known or there is reason to know the child is an Indian child,  
22 all placements of Indian children in any proceeding listed in rules 5.480 and  
23 5.484 must follow the specified placement preferences in Family Code  
24 section 177(a), Probate Code section 1459(b), and Welfare and Institutions  
25 Code section 361.31.
- 26
- 27 (2) The court must analyze the availability of placements within the placement  
28 preferences in descending order without skipping. The court may deviate  
29 from the preference order only for good cause, which may include the  
30 following considerations:
- 31
- 32 (A) The requests of the parent or Indian custodian if they attest that they  
33 have reviewed the placement options, if any, that comply with the order  
34 of preference;
- 35
- 36 (B) The requests of the Indian child, when of sufficient age and capacity to  
37 understand the decision being made;
- 38
- 39 (C) The presence of a sibling attachment that can be maintained only  
40 through a particular placement;
- 41
- 42 (D) The extraordinary physical or emotional needs of the Indian child  
43 including specialized treatment services that may be unavailable in the

1 community where families who meet the placement preferences live as  
2 established by a qualified expert witness; or

3  
4 (DE) The unavailability of suitable families within the placement preferences  
5 based on a documented diligent effort to identify families meeting the  
6 preference criteria. The standard for determining whether a placement  
7 is unavailable shall conform to the prevailing social and cultural  
8 standards of the Indian community in which the Indian child's parent or  
9 extended family resides or with which the Indian child's parent or  
10 extended family members maintain social and cultural ties.

11  
12 (3) The placement preferences shall be analyzed and considered each time there  
13 is a change in the child's placement.

14  
15 (4) The burden of establishing good cause for the court to deviate from the  
16 preference order is on the party requesting that the preference order not be  
17 followed. A placement may not depart from the preferences based on the  
18 socioeconomic status of any placement relative to another or solely on the  
19 basis of ordinary bonding or attachment that flowed from time spent in a  
20 nonpreferred placement that was made in violation of the Indian Child  
21 Welfare Act.

22  
23 (45)-(67) \* \* \*

24  
25 (c) **Active efforts**

26  
27 In addition to any other required findings to place an Indian child with someone  
28 other than a parent or Indian custodian, or to terminate parental rights, the court  
29 must find that active efforts have been made, in any proceeding listed in rule 5.480,  
30 to provide remedial services and rehabilitative programs designed to prevent the  
31 breakup of the Indian family, and must find that these efforts were unsuccessful.  
32 These active efforts must include affirmative, active, thorough, and timely efforts  
33 intended primarily to maintain or reunite the child with his or her family, must be  
34 tailored to the facts and circumstances of the case, and must be consistent with the  
35 requirements of section 224.1(f) of the Welfare and Institutions Code.

36  
37 (1) The active efforts must be documented in detail in the record.

38  
39 (2) The court must consider whether active efforts were made in a manner  
40 consistent with the prevailing social and cultural conditions and way of life of  
41 the Indian child's tribe.

1           (23) Efforts to provide services must include pursuit of any steps necessary to  
2           secure tribal membership for a child if the child is eligible for membership in  
3           a given tribe, as well as attempts to use the available resources of extended  
4           family members, the tribe, tribal and other Indian social service agencies, and  
5           individual Indian caregivers.  
6

7           **Rule 5.4856. Termination of parental rights**  
8

9           (a)   \*\*\*

10  
11           (b)   **When parental rights may not be terminated**  
12

13           The court may not terminate parental rights to an Indian child or declare a child  
14           free from the custody and control of one or both parents if the court finds a  
15           compelling reason for determining that termination of parental rights would not be  
16           in the child’s best interest. Such a reason may include:  
17

18           (1)   The child is living with a relative who is unable or unwilling to adopt the  
19           child because of circumstances that do not include an unwillingness to accept  
20           legal or financial responsibility for the child, but who is willing and capable  
21           of providing the child with a stable and permanent environment through legal  
22           guardianship, and the removal of the child from the custody of his or her  
23           relative would be detrimental to the emotional well-being of the child. For  
24           purposes of an Indian child, “relative” shall include an “extended family  
25           member,” as defined in the federal Indian Child Welfare Act of 1978 (25  
26           U.S.C. § 1903(2));  
27

28           (42) Termination of parental rights would substantially interfere with the child’s  
29           connection to his or her tribal community or the child’s tribal membership  
30           rights; or  
31

32           (23) The child’s tribe has identified guardianship, long-term foster care with a fit  
33           and willing relative, or another planned permanent living arrangement for the  
34           child.  
35

36           **Rule 5.4867. Petition to invalidate orders**  
37

38           (a)–(c) \*\*\*  
39

40           **Rule 5.4878. Adoption record keeping**  
41

42           (a)–(b) \*\*\*  
43

1 **Rule 5.570. Request to change court order (petition for modification)**

2  
3 **(a)–(d) \* \* \***

4  
5 **(e) Grounds for grant of petition (§§ 388, 778)**

6  
7 (1)–(4) \* \* \*

8  
9 (5) For a petition filed under section 388(c)(1)(A), the court may terminate  
10 reunification services during the time periods described in section 388(c)(1)  
11 only if the court finds by a preponderance of evidence that reasonable  
12 services have been offered or provided, and, by clear and convincing  
13 evidence, that the change of circumstance or new evidence described in the  
14 petition satisfies a condition in section 361.5(b) or (e). In the case of an  
15 Indian child, the court may terminate reunification services only if the court  
16 finds by clear and convincing evidence that active efforts have been made to  
17 provide remedial services and rehabilitative programs designed to prevent the  
18 breakup of the Indian family within the meaning of sections 224.1(f) and  
19 361.7 of the Welfare and Institutions Code and that these efforts have proved  
20 unsuccessful. The court may grant the petition after following the procedures  
21 in (f), (g), and (h).  
22

23 (6) For a petition filed under section 388(c)(1)(B), the court may terminate  
24 reunification services during the time periods described in section 388(c)(1)  
25 only if the court finds by a preponderance of evidence that reasonable  
26 services have been offered or provided, and, by clear and convincing  
27 evidence, that action or inaction by the parent or guardian creates a  
28 substantial likelihood that reunification will not occur. Such action or  
29 inaction includes, but is not limited to, failure to visit the child or failure to  
30 participate regularly and make substantive progress in a court-ordered  
31 treatment program. In determining whether the parent or guardian has failed  
32 to visit the child or to participate regularly or make progress in a court-  
33 ordered treatment plan, the court must consider factors including, but not  
34 limited to, the parent or guardian’s incarceration, institutionalization, or  
35 participation in a residential substance abuse treatment program. In the case  
36 of an Indian child, the court may terminate reunification services only if the  
37 court finds by clear and convincing evidence that active efforts have been  
38 made to provide remedial services and rehabilitative programs designed to  
39 prevent the breakup of the Indian family within the meaning of sections  
40 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts  
41 have proved unsuccessful. The court may grant the petition after following  
42 the procedures in (f), (g), and (h).  
43

1 (7) \* \* \*

2

3 (f)–(j) \* \* \*

4

5 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**

6

7 (a)–(b) \* \* \*

8

9 (c) **Indian Child Welfare Act inquiry (§ 224.2(c) & (g))**

10

11 (1) The court must ask each participant present at the hearing whether:

12

13 (A) The participant knows or has reason to know that the child is an Indian  
14 child;

15

16 (B) The residence or domicile of the child, the child’s parents, or Indian  
17 custodian is on a reservation or in an Alaska Native Village;

18

19 (C) The child is or has ever been a ward of a tribal court; and

20

21 (D) Either parent or the child possess an identification card indicating  
22 membership or citizenship in an Indian tribe.

23

24 (2) The court must also instruct all parties to inform the court if they  
25 subsequently receive information that provides reason to know the child is an  
26 Indian child, and order the parent(s), Indian custodian, or guardian, if  
27 available, to complete *Parental Notification of Indian Status* (form ICWA-  
28 020).

29

30 (3) If it is known, or there is reason, to know that case involves an Indian child,  
31 the court shall proceed in accordance with rules 5.481 et seq.

32

33 (ed) \* \* \*

34

35 **Rule 5.674. Conduct of hearing; admission, no contest, submission**

36

37 (a) \* \* \*

38

39 (b) **Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)**

40

41 (1) The court must read, consider, and reference any reports submitted by the  
42 social worker and any relevant evidence submitted by any party or counsel.

1 All detention findings and orders must appear in the written orders of the  
2 court.

3  
4 (2) The findings and orders that must be made on the record are:

5  
6 (A)–(B) \* \* \*

7  
8 (C) Reasonable efforts have been made to prevent removal; ~~and~~

9  
10 (D) The findings and orders required to be made on the record under  
11 section 319; and

12  
13 (E) When it is known or there is reason to know the case involves an Indian  
14 child, that detention is necessary to prevent imminent physical damage  
15 or harm to the child, and there are no reasonable means by which the  
16 child can be protected if maintained in the physical custody of his or  
17 her parent or parents or Indian custodian.

18  
19 (c)–(e) \* \* \*

20  
21 **Rule 5.676. Requirements for detention**

22  
23 (a) \* \* \*

24  
25 **(b) Additional requirements for detention of an Indian child**

26  
27 If it is known, or there is reason to know the child is an Indian child, the child may  
28 not be ordered detained unless the court also finds that detention is necessary to  
29 prevent imminent physical damage or harm to the child, and the court states the  
30 facts supporting this finding on the record.

31  
32 **(b)** \* \* \*

33  
34 **(d) Additional evidence required at a detention hearing for an Indian child**

35  
36 If it is known, or there is reason to know that the child is an Indian child, the  
37 reports relied upon must also include:

38  
39 (1) A statement of the risk of imminent physical damage or harm to the Indian  
40 child and any evidence that the emergency removal or placement continues to  
41 be necessary to prevent the imminent physical damage or harm to the child;  
42



- 1           (2) The steps taken to provide notice to the child’s parents, custodians, and tribe  
2           about the hearing pursuant to this section;  
3  
4           (3) If the child’s parents and Indian custodians are unknown, a detailed  
5           explanation of what efforts have been made to locate and contact them,  
6           including contact with the appropriate Bureau of Indian Affairs regional  
7           director;  
8  
9           (4) The residence and the domicile of the Indian child;  
10  
11          (5) If either the residence or the domicile of the Indian child is believed to be on  
12          a reservation or in an Alaska Native Village, the name of the tribe affiliated  
13          with that reservation or village;  
14  
15          (6) The tribal affiliation of the child and of the parents or Indian custodians;  
16  
17          (7) A specific and detailed account of the circumstances that caused the Indian  
18          child to be taken into temporary custody;  
19  
20          (8) If the child is believed to reside or be domiciled on a reservation in which the  
21          tribe exercises exclusive jurisdiction over child custody matters, a statement  
22          of efforts that have been made and that are being made to contact the tribe  
23          and transfer the child to the tribe’s jurisdiction; and  
24  
25          (9) A statement of the efforts that have been taken to assist the parents or Indian  
26          custodians so the Indian child may safely be returned to their custody.  
27

28 **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**  
29 **active efforts; detention alternatives**

30  
31 **(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)**  
32

33           The court must order the child released from custody unless the court makes the  
34           findings specified in section 319(b)(c), and where it is known, or there is reason to  
35           know the child is an Indian child, the additional finding specified in section 319(d).  
36

37 **(b) \* \* \***  
38

39 **(c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)**  
40

41 **(1) \* \* \***  
42  
43

1 (2) Where it is known or there is reason to know that the child is an Indian child,  
2 whether the child is released or detained at the hearing, the court must  
3 determine whether active efforts have been made to prevent or eliminate the  
4 need for removal, and that those active efforts are documented in detail in the  
5 record, and must make one of the following findings:

6  
7 (A) Active efforts have been made; or

8  
9 (B) Active efforts have not been made; and

10  
11 (C) The court orders the department to initiate or continue services in  
12 accordance with Welfare and Institutions Code section 358.

13  
14 (~~23~~) The court must also determine whether services are available that would  
15 prevent the need for further detention.

16  
17 (~~34~~) The court must not order the child detained unless the court, after inquiry  
18 regarding available services, finds that there are no reasonable services, or  
19 where it is known or there is reason to know the child is an Indian child,  
20 active efforts that would prevent or eliminate the need to detain the child or  
21 that would permit the child to return home.

22  
23 (~~45~~) If the court orders the child detained, the court must proceed under section  
24 319(~~dg~~)-(eh).

25  
26 **(d) Orders of the court (§ 319; 42 U.S.C. § 672)**

27  
28 If the court orders the child detained, the court must order that temporary care and  
29 custody of the child be vested with the county welfare department pending  
30 disposition or further order of the court and must make the other findings and  
31 orders specified in section 319(eg) and (~~fh~~)(3).

32  
33 **(e) Detention alternatives (§ 319)**

34  
35 The court may order the child detained as specified in section 319(~~fh~~).

36  
37 **(f) Additional requirements regarding detention of an Indian child (§ 319)**

38  
39 (1) If it is known, or there is reason to know the child is an Indian child, the child  
40 must be detained in a home that complies with the placement preferences in  
41 section 361.31 unless the court finds good cause exists not to follow the  
42 placement preferences.

1 (2) If it is known, or there is reason to know the child is an Indian child, the  
2 detention hearing may not be continued beyond 30 days unless the court finds  
3 all of the following:

4  
5 (A) Restoring the child to the parent, parents, or Indian custodian would  
6 subject the child to imminent physical damage or harm;

7  
8 (B) The court is unable to transfer the proceeding to the jurisdiction of the  
9 appropriate Indian tribe; and

10  
11 (C) It is not possible to initiate an Indian child custody proceeding as  
12 defined in section 224.1.

13  
14 **(g) Hearing for return of custody of Indian child after emergency removal when**  
15 **emergency has ended**

16  
17 If it is known or there is reason to know the child is an Indian child, a party may  
18 request a hearing under rule 5.484(b) for return of the child prior to disposition if  
19 the party asserts that there is new evidence that the emergency removal or  
20 placement is no longer necessary to prevent imminent physical damage or harm to  
21 the child.

22  
23 **Rule 5.690. General conduct of disposition hearing**

24  
25 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))**

26  
27 The petitioner must prepare a social study of the child. The social study must  
28 include a discussion of all matters relevant to disposition and a recommendation for  
29 disposition.

30  
31 (1) The petitioner must comply with the following when preparing the social  
32 study:

33  
34 (A) \* \* \*

35  
36 (B) If petitioner recommends removal of the child from the home, the  
37 social study must include:

38  
39 (i) A discussion of the reasonable efforts made to prevent or  
40 eliminate removal, or if it is known or there is reason to know the  
41 child is an Indian child, the active efforts to provide remedial  
42 services and rehabilitative programs designed to prevent the

1                                    breakup of the Indian family, and a recommended plan for  
2                                    reuniting the child with the family, including a plan for visitation;

3  
4                                    (ii)–(iii) \* \* \*

5  
6                                    (C) The social study must include a discussion of the social worker's efforts  
7                                    to comply with § 309(e) and rule 5.637, including but not limited to:

8  
9                                    (i)–(ii) \* \* \*

10  
11                                    (iii) The number and relationship of those relatives described by item  
12                                    (ii) who are interested in ongoing contact with the child; ~~and~~

13  
14                                    (iv) The number and relationship of those relatives described by item  
15                                    (ii) who are interested in providing placement for the child; and

16  
17                                    (v) If it is known or there is reason to know the child is an Indian  
18                                    child, efforts to locate extended family members as defined in  
19                                    section 224.1, and evidence that all individuals contacted have  
20                                    been provided with information about the option of obtaining  
21                                    approval for placement through the tribe's license or approval  
22                                    procedure.

23  
24                                    (D)–(F) \* \* \*

25  
26                                    (2) \* \* \*

27  
28                                    (b)–(c) \* \* \*

29  
30                                    **Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)**

31  
32                                    (a)–(d) \* \* \*

33  
34                                    (e) **Procedures—adoption**

35  
36                                    (1) \* \* \*

37  
38                                    (2) An order of the court terminating parental rights, ordering adoption under  
39                                    section 366.26 or, in the case of an Indian child, ordering tribal customary  
40                                    adoption under section 366.24, is conclusive and binding on the child, the  
41                                    parent, and all other persons who have been served under the provisions of  
42                                    section 294. Once a final order of adoption has issued, tThe order may not be  
43                                    set aside or modified by the court, except as provided in section 366.26(e)(3)

1                    and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a  
2                    referee.

3

4                    **(f)-(h) \* \* \***

5

## INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENTS AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship, page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

### **ICWA-010(A), *Indian Child Inquiry Attachment* or page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment***

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment* or on page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out ICWA-010(A), *Indian Child Inquiry Attachment* or  
page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment*

1. Try to find contact information for the child's parents, or other legal guardian, the child's Indian custodian (if the child is living with an Indian person other than a parent), the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents or other legal guardian, and the child's Indian custodian, and other available family members and ask them (and the child, if he or she is old enough) these questions:
  - a. Is the child a member of a tribe, and if they think he or she might be, then which tribe or tribes?
  - b. Are they members of a tribe, and if they think they might be, which tribes?
  - c. Does the child or the child's parents live in Indian country?
  - d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
  - e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out and attached to the petition form ICWA-010(A), *Indian Child Inquiry Attachment*. This does not apply to a petition for appointment of a guardian in a probate guardianship or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602.

After taking the steps listed above to find out whether the child is an Indian child, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction. You have reason to believe the child is an Indian child, if any of the people you ask these questions to answers yes to any of your questions.

Contacts with the tribe or tribes should include contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act published in the federal register by telephone, facsimile, or email and sharing with the tribe or tribes information identified by the tribe as necessary to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

### **ICWA-030, *Notice of Child Custody Proceeding for Indian Child***

Following your inquiry about the child's Indian status and contacts with the child's tribe(s) if necessary, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child* if you know or have reason to know the child is an Indian child.

Some tips to help you figure out if you have a reason to know the child is an Indian child

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
3. If the child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.

## Who do you need to notify?

If you know or have reason to know that the child is an Indian child, you must send the Notice to the following:

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tip on how to find the address for the child's tribe or tribes

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. § 23.12), a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can link to the Federal Register list, and other resources related to ICWA, on the Bureau of Indian Affairs website at <https://www.bia.gov/bia/ois/dhs/icwa>.

## Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior at 1849 C Street, N.W., Washington, D.C. 20240 and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

## Copy to the Area Director of the Bureau of Indian Affairs

If you do not know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. In order to help establish the child's tribal identity, provide as much information as possible, including the child's name, birthdate, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

## How do you send the Notice and prove to the court that you have done so?

If you have an attorney, he or she will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the Notice, but you must deliver copies of the Notice and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then do step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
  - a. Your petition;
  - b. Form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship case, form GC-210(CA), *Guardianship Petition—Child Information Attachment*; and
  - c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
  - a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A) or form GC-210(CA));
  - b. All return receipts given to you by the post office and returned from the mailing; and
  - c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

**Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or counsel a party to do so. (Welf. & Inst. Code, § 224.2(e).)**

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

1. Name of child:

2. (Check one)

I have not yet been able to complete inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry and will do it as soon as possible, and advise the court of my efforts.

I have asked or  I am advised by \_\_\_\_\_ and on information and belief confirm that they have completed inquiry by asking the child, the child's parents, and other required and available individuals about the child's Indian status. The individuals asked include:

Person questioned:

Name:

Address:

City, state, zip:

Telephone:

Date questioned:

Relationship to child:

Person questioned:

Name:

Address:

City, state, zip:

Telephone:

Date questioned:

Relationship to child:

Additional persons questioned and their information is attached.

3. This inquiry (check one):

gave me reason to believe the child is or may be an Indian child. (if yes continue to 4).

gave me no reason to believe the child is or may be an Indian child.

4.  I contacted the tribe(s) that the child may be affiliated with and worked with them to establish whether the child is a member or eligible for membership in the tribe(s). Information detailing the tribes contacted, the names of the individuals contacted, and the manner of the contacts is attached.

5. Based on inquiry and tribal contacts (check all that apply):

a.  The child is or may be a member of or eligible for membership in a tribe.

Name of tribe(s):

Location of tribe(s):

b.  The child's parents, grandparents, or great-grandparents are or were members of a tribe.

Name of tribe(s):

Location of tribe(s):

c.  The residence or domicile of the child, child's parents, or Indian custodian is on a reservation or in an Alaska Native Village.

d.  The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).

e.  The child is or has been a ward of a tribal court.

f.  Either parent or the child possess an Indian Identification card indicating membership or citizenship in an Indian tribe.

Name of tribe(s):

6. If this is a delinquency proceeding under Welfare and Institutions Code, section 601 or 602:

The child is in foster care.

It is probable the child will be entering foster care.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)



ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	
<b>PARENTAL NOTIFICATION OF INDIAN STATUS</b>	CASE NUMBER: _____

**To the parent, Indian custodian, or guardian of the above-named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.**

1. Name: \_\_\_\_\_
2. Relationship to child:     Parent     Indian custodian     Guardian     Other:
3. a.  I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_
- b.  The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_
- c.  One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_  
 Name and relationship of ancestor(s): \_\_\_\_\_
- d.  I am a resident of or am domiciled on a reservation or in an Alaska Native Village.
- e.  The child is a resident of or is domiciled on a reservation or in an Alaska Native Village.
- f.  The child is or has been a ward of a tribal court.
- g.  Either parent or the child possess an Indian identification card indicating membership or citizenship in an Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_

4. A previous form ICWA-020  has  has not been filed with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

**Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial</b> <b>Council</b>				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:					
CASE NAME:					
<b>NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD</b> (check all that apply): <input type="checkbox"/> JUVENILE <input type="checkbox"/> Dependency <input type="checkbox"/> Delinquency <input type="checkbox"/> ADOPTION <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> CUSTODY (Fam. Code, § 3041) <input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS <input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT	CASE NUMBER:  <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">HEARING DATE:</td> <td style="width:30%;">DEPT.:</td> </tr> <tr> <td style="height: 40px;"></td> <td></td> </tr> </table>	HEARING DATE:	DEPT.:		
HEARING DATE:	DEPT.:				

**NOTICE TO** (check all that apply):

- Parents or Legal Guardians     Tribes     Indian Custodians     Sacramento Area Director, BIA  
 Secretary of the Interior

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child (a separate notice must be filed for each child):

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
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2. HEARING INFORMATION

a. Date:	Time:	Dept.:	Room
Type of hearing:			

b. Address and telephone number of court     same as noted above     is (specify):

3. The child is or may be eligible for membership in the following Indian tribes (list each):

\*Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.

CASE NAME:	CASE NUMBER:
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**4. Under the Indian Child Welfare Act (ICWA) and California law:**

- a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
- b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
- c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
- d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
- e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible termination of parental rights and adoption of the child.
- f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
- h. An Indian custodian is any Indian person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

**5. INFORMATION ON THE CHILD NAMED IN 1**

- a. A copy of the petition initiating this case is attached.
- b. The child's birth certificate is  attached  unavailable
- c. A copy of the tribal registration card of  the child  the parent is attached.
- d. Biological relative information is listed below. (Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)
- e.  If the chart does not represent the gender identities of the individuals in the child's family tree, please attach an appropriate equivalent.

Biological Mother	Biological Father
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME:	CASE NUMBER:
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5. **f. INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Mother's Biological Mother (Child's Maternal Grandmother)</b>	<b>Father's Biological Mother (Child's Paternal Grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Mother's Biological Father (Child's Maternal Grandfather)</b>	<b>Father's Biological Father (Child's Paternal Grandfather)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. **g. INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Mother's Biological Grandmother (Child's Maternal Great-grandmother)</b>	<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Mother's Biological Grandfather (Child's Maternal Great-grandfather)</b>	<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. **h. INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>	<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>	<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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**5. i. INFORMATION ON THE CHILD NAMED IN 1**

*(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A")*

Information on Indian Ancestry of other Lineal Ancestors	Information on Indian Ancestry of other Lineal Ancestors
Name <i>(include maiden, married, and former names or aliases)</i> :	Name <i>(include maiden, married, and former names or aliases)</i> :
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

**5. j. INFORMATION ON THE CHILD NAMED IN 1**

*(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)*

Indian Custodian Information	Indian Custodian Information
Name <i>(include maiden, married, and former names or aliases)</i> :	Name <i>(include maiden, married, and former names or aliases)</i> :
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:





CASE NAME:	CASE NUMBER:
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9. Additional party information (list the name, mailing address, and telephone number of all parties notified):

<u>Name</u>	<u>Mailing Address</u>	<u>Telephone Number</u>
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**DECLARATION**

**(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)**

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5–9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶ \_\_\_\_\_

(SIGNATURE)

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶ \_\_\_\_\_

(SIGNATURE)

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

▶ \_\_\_\_\_

(SIGNATURE)

CASE NAME:	CASE NUMBER:
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### CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS

(To be completed by social worker or probation officer.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*):

on(*date*):

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

### DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS

(To be completed by the attorney for Petitioner if Petitioner is represented.)

- I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter.
- I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*):
- on(*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

### CERTIFICATE OF MAILING—PROBATE PROCEEDINGS

(To be completed by the clerk of the court if Petitioner is unrepresented.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*):

on(*date*):

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

**This form and all return receipts must be filed with the court.**

CASE NAME:	CASE NUMBER:
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**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS, TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED**

<p>1. <input type="checkbox"/> Parent (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>2. <input type="checkbox"/> Parent (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>3. <input type="checkbox"/> Guardian (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>4. <input type="checkbox"/> Guardian (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>5. <input type="checkbox"/> Indian Custodian (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>6. <input type="checkbox"/> Indian Custodian (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 80px; vertical-align: middle;"></span>                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>7. <input type="checkbox"/> <i>Sacramento Area Director</i>  <i>Bureau of Indian Affairs</i>                  Street address: 2800 Cottage Way                  City, state and zip code: Sacramento, CA 95825                  Telephone number:</p>	<p>8. <input type="checkbox"/> <i>Sacramento Area Director</i>  <i>Bureau of Indian Affairs</i>                  Street address: 1849 C Street, N.W.                  City, state and zip code: Washington D.C. 20240                  Telephone number:</p>
<p>9. <input type="checkbox"/> Tribe (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 100px; vertical-align: middle;"></span>                  Addressee (<i>Name</i>):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>10. <input type="checkbox"/> Tribe (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 100px; vertical-align: middle;"></span>                  Addressee (<i>Name</i>):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>11. <input type="checkbox"/> Tribe (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 100px; vertical-align: middle;"></span>                  Addressee (<i>Name</i>):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>12. <input type="checkbox"/> Tribe (<i>Name</i>): <span style="border: 1px solid black; display: inline-block; width: 150px; height: 100px; vertical-align: middle;"></span>                  Addressee (<i>Name</i>):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>

**Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.**

Additional tribes served listed on attached form ICWA-030(A)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>NOTICE OF DESIGNATION OF TRIBAL REPRESENTATIVE          IN A COURT PROCEEDING INVOLVING AN INDIAN CHILD</b>	CASE NUMBER:
	RELATED CASES ( <i>if any</i> ):

## TO ALL PARTIES:

1. I represent the (*name of tribe*): \_\_\_\_\_, which is a federally recognized Indian tribe listed in the Federal Register.
2. The above named child or children are:
  - Members of this tribe
  - Eligible for membership in this tribe and their  Mother  Father is a member of this tribe.
3. Under the Indian Child Welfare Act, the tribe designates (*specify name and title*): \_\_\_\_\_ as the tribe's representative and authorizes that person under the attached  tribal resolution  other official tribal document (e.g., letter, declaration, or other document from the office of the chairperson or president of the tribe or ICWA office) for the following purposes:
  - a.  to receive notice of hearings;
  - b.  to be present at hearings;
  - c.  to address the court;
  - d.  to examine all court documents relating to the case (*at the court's discretion, if tribe does not intervene*);
  - e.  to submit written reports and recommendations to the court;
  - f.  to request transfer of the case to the tribe's jurisdiction; and
  - g.  to intervene at any point in a proceeding when it is determined the act applies.
4. The tribe requests that notice of all proceedings be sent to the above named tribal representative at the contact information below:
 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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5. The tribe  requests  does not request an additional notice be sent to the tribal council at the contact information below:

Name:

Title:

Address:

City, state, zip code:

Telephone:

Fax:

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

 \_\_\_\_\_

(SIGNATURE)

CHILD'S NAME:	CASE NUMBER:
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**PROOF OF SERVICE**

ICWA-040, the *Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child* must be served on the other parties or attorneys for the parties. Anyone at least 18 years of age EXCEPT A PARTY in this action may personally serve or mail the notice. The person who serves the notice must fill out and sign this proof of service. ICWA-040, the *Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child* may not be filed with the court until all the parties or attorneys are served.

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served a copy of form ICWA-040 and all attachments as follows (*check either a or b below for each person served*):
  - a.  **Personal service.** I personally delivered a copy of form ICWA-040 and all attachments as follows:
 

(1) <input type="checkbox"/> Name of child's attorney ( <i>if applicable</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:	(2) Name of <input type="checkbox"/> parent ( <i>if self-represented</i> ) or <input type="checkbox"/> parent's attorney ( <i>if applicable</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:
(3) Name of Court Appointed Special Advocate ( <i>if applicable</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:	(4) Name of <input type="checkbox"/> social worker ( <i>dependency only</i> ) or <input type="checkbox"/> probation officer ( <i>delinquency only</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:
(5) Name of <input type="checkbox"/> child's caregiver or <input type="checkbox"/> Indian custodian served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:	(6) Attorney for child welfare services agency ( <i>dependency only</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:
(7) Name of <input type="checkbox"/> parent ( <i>if self-represented</i> ) or <input type="checkbox"/> parent's attorney ( <i>if applicable</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:	(8) District attorney ( <i>delinquency only</i> ) served:  (a) Address:  (b) Date of delivery: (c) Time of delivery:

CHILD'S NAME:	CASE NUMBER:
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2. b.  **Mail.** I deposited a copy of form ICWA-040 and all attachments in the United States mail, in a sealed envelope with postage fully prepaid, addressed as follows:
- (1)  Name of child's attorney (*if applicable*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (2) Name of  parent (*if self-represented*) or  parent's attorney (*if applicable*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (3) Name of Court Appointed Special Advocate (*if applicable*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (4) Name of  social worker (*dependency only*) or  probation officer (*delinquency only*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (5) Name of  child's caregiver or  Indian custodian served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (6) Attorney for child welfare services agency (*dependency only*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (7) Name of  parent (*if self-represented*) or  parent's attorney (*if applicable*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- (8) District Attorney (*delinquency only*) served:
- (a) Address:
- (b) Date of deposit:
- (c) Place of deposit:
- c.  **Attachment.** If there are additional persons to serve, attach a separate piece of paper to form ICWA-040, write the child's name and case number on the top, and list additional persons' names, mailing addresses or location of personal service, dates of delivery or deposit, times of delivery or deposit, and whether service was made personally or by mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PERSON WHO SERVED NOTICE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
<b>ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION</b>	RELATED CASES (if any):

1. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. a. Date of hearing: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- b. Persons present:
 

<input type="checkbox"/> Child	<input type="checkbox"/> Parent (name): _____	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Child's attorney	<input type="checkbox"/> Parent (name): _____	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Probation officer/social worker	<input type="checkbox"/> Guardian	<input type="checkbox"/> CASA
<input type="checkbox"/> Deputy county counsel	<input type="checkbox"/> Deputy district attorney	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Tribal representative (name): _____		
3. The court has read and considered the
  - ICWA-50, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
  - Other relevant evidence (specify): \_\_\_\_\_
4.  The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.
5. **THE COURT FINDS AND ORDERS** under  Family Code, § 177(a);  Probate Code, § 1459.5(b);  Welfare and Institutions Code, § 305.5;  25 U.S.C. § 1911(a) (Exclusive Jurisdiction)
  - a.  The request for transfer is granted and the following ordered:
    - (1) The child's case is ordered transferred to the jurisdiction of the tribe listed below:  
 Name of tribe:  
 Address:  
 City, state, zip code:  
 Telephone number:
    - (2) Physical custody of the child is transferred to a designated representative of the tribal court listed below:  
 Name:  
 Title:  
 Address:  
 City, state, zip code:  
 Telephone number:
  - b. 
    - (1) The case is being transferred from a juvenile court, and all of the findings and orders or modifications of orders that have been made in the case are attached.
    - (2) The case is being transferred from a juvenile court, and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.
    - (3) The case is being transferred from a juvenile court, and all originals contained in the court file must be transferred to the tribal court; a copy of the transfer order and findings of fact must be maintained by the transferring court.



CHILD'S NAME:	CASE NUMBER:
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5.  (4) A party that intends to seek appellate review of the transfer order is advised that the party must take an appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delay the effective date) of the transfer order will result in loss of appellate jurisdiction.
- c.  The petition to transfer is denied because one of the following circumstances exist:
- (1)  One or both of the child's parents opposes the transfer.  
Name of opposing parent:
- (2)  The tribal court or other administrative body of the child's tribe declines the transfer.
- d.  The petition to transfer is denied because good cause exists not to transfer the case.
- (1)  Name of opposing party: \_\_\_\_\_ has submitted information or evidence in writing to the court and all parties.
- (2)  Petitioner has had the opportunity to provide information or evidence in rebuttal.
- (3)  As detailed on the record, the party opposing the transfer has established that good cause not to transfer the proceeding exists.
- (4)  The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.
6.  Proof that tribe has accepted transfer is attached and jurisdiction is terminated.
7.  Hearing is set for *(date)*: \_\_\_\_\_ *(time)*: \_\_\_\_\_ *(dept.)*: \_\_\_\_\_  
to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date:

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JUDICIAL OFFICER


ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	STATE BAR NUMBER:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>REQUEST FOR EX PARTE HEARING TO RETURN PHYSICAL CUSTODY          OF AN INDIAN CHILD</b>		

1. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. Your information:
- a. I am the:
- child or youth  mother  father  legal guardian  
 Indian custodian  tribal representative or attorney  other party
- b. My name: \_\_\_\_\_
- c. My address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_
- d. My telephone number: \_\_\_\_\_
- e. *If you are an attorney:*  
 My client's name: \_\_\_\_\_  
 My client's relationship to the child or youth: \_\_\_\_\_
3. The child is or there is reason to know the child is an Indian child.
4. At a hearing on \_\_\_\_\_, the court found that detention or removal of the child from the custody of his/her parent, Indian custodian, or legal guardian was necessary to prevent imminent physical damage or harm to the child justifying an emergency removal and placement of the child.
5. There is new information showing a change in circumstances since that emergency removal, and that the child's placement is no longer necessary to prevent imminent physical damage or harm to the child. The new information showing this is:

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

 \_\_\_\_\_  
 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>ORDER ON REQUEST FOR EX PARTE HEARING TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD</b>		

1. Child's name:

Date of birth:

2. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith, the court Finds and Orders:

- a.  The request for an ex parte hearing is denied as the evidence submitted to the court does not show new information establishing that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child.
- b.  The request for an ex parte hearing is granted and is scheduled for \_\_\_\_\_ .

Date:




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 JUDICIAL OFFICER



ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	
<b>JUVENILE DEPENDENCY PETITION (VERSION ONE)</b> <b>(Welf. &amp; Inst. Code, § 300 et seq.)</b> <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	CASE NUMBER: _____ RELATED CASE ( <i>if any</i> ): _____

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code ( <i>check applicable boxes; see attachment 1a for concise statements of facts</i> ): <input type="checkbox"/> (a) <input type="checkbox"/> (b)(1) <input type="checkbox"/> (b)(2) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <input type="checkbox"/> (e) <input type="checkbox"/> (f) <input type="checkbox"/> (g) <input type="checkbox"/> (h) <input type="checkbox"/> (i) <input type="checkbox"/> (j)			
b. Child's name: _____	c. Age: _____	d. Date of birth: _____	e. Gender: _____
f. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father ( <i>check all that apply</i> ): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	g. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father ( <i>check all that apply</i> ): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		
h. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father ( <i>check all that apply</i> ): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	i. Other ( <i>state name, address, and relationship to child</i> ):  <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
j. Prior to intervention, child resided with <input type="checkbox"/> parent ( <i>name</i> ): _____ <input type="checkbox"/> parent ( <i>name</i> ): _____ <input type="checkbox"/> guardian ( <i>name</i> ): _____ <input type="checkbox"/> Indian custodian ( <i>name</i> ): _____ <input type="checkbox"/> other ( <i>state name, address, and relationship to child</i> ): _____	k. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: _____ Current place of detention ( <i>address</i> ): _____  <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other		

2. Indian Child Welfare Act Inquiry

a.  I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:
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2. b.  Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_  \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number (if different person signing than listed in caption above):

Number of pages attached: \_\_\_\_\_  Other children are listed on *Additional Children Attachment* (form JV-101(A))

## — NOTICE —

### TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

### TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>JUVENILE DEPENDENCY PETITION (VERSION TWO)</b> <b>(Welf. &amp; Inst. Code, § 300 et seq.)</b> <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	CASE NUMBER:  RELATED CASE (if any):

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code (check applicable subdivisions for each child; see attachment 1a for concise statements of facts):	
b. <u>Child's name</u> <u>Age</u> <u>Date of birth</u> <u>Gender</u> <u>Section 300 subdivisions (check all that apply):</u>	
1. _____ 2. _____ 3. _____ 4. _____ 5. _____	<input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j <input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j <input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j <input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j <input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j
c. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	d. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged
e. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown  If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	f. Other (state name, address, and relationship to child):  <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.
g. Prior to intervention, child resided with <input type="checkbox"/> parent (name): <input type="checkbox"/> parent (name): <input type="checkbox"/> guardian (name): <input type="checkbox"/> Indian custodian (name): <input type="checkbox"/> other (state name, address, and relationship to child):	h. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: Current place of detention (address):  <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:
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## 2. Indian Child Welfare Act Inquiry

a.  I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).

b.  Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF PETITIONER)

Address and telephone number (if different person signing than listed in caption above):

Number of pages attached: \_\_\_\_\_

— NOTICE —

**TO PARENT**

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

**TO PARENTS OR OTHERS LEGALLY RESPONSIBLE  
FOR THE SUPPORT OF THE CHILD**

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.





CHILD'S NAME:	CASE NUMBER:
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8. a.  There is clear and convincing evidence that it is likely the child will be adopted.
- b.  The child is an Indian child or  there is reason to know that the child is an Indian child, and
- (1)  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and  
(Name of Witness)
- (2)  Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
- (3)  The court finds by evidence beyond a reasonable doubt that continued physical custody by the  mother  
 father  Indian Custodian  other: \_\_\_\_\_ is likely to cause serious  
emotional or physical damage to the child.

9. The parental rights of
- a.  parent (name): \_\_\_\_\_  Mother  Father
- b.  parent (name): \_\_\_\_\_  Mother  Father
- c.  alleged fathers (names): \_\_\_\_\_
- d.  unknown mother  all unknown fathers  
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**  
(If item 9 is checked, go to item 17.)

10. This case involves an Indian child. The parental rights of
- a.  parent (name): \_\_\_\_\_
- b.  parent (name): \_\_\_\_\_
- c.  Indian custodians (names): \_\_\_\_\_
- d.  alleged fathers (names): \_\_\_\_\_
- e.  unknown mother  all unknown fathers  
are modified in accordance with the tribal customary adoption order of the (specify): \_\_\_\_\_ tribe,  
dated \_\_\_\_\_ and comprising \_\_\_\_\_ pages, which is accorded full faith and credit and fully incorporated herein.  
The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary  
adoptive placement in accordance with the tribal customary adoption order.  
(If item 10 is checked, go to item 17.)

11.  The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. (If item 11 is checked, go to item 15 or 16.)

12.  Termination of parental rights would be detrimental to the child for the following reasons: (If item 12 is checked, check reasons below and go to item 15 or 16.)
- a.  The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b.  The child is 12 years of age or older and objects to termination of parental rights.
- c.  The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d.  The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either

(1) under the age of 6; or

(2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:
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12. e.  There would be substantial interference with the child's sibling relationship.
- f.  The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
  - (2) The child's tribe has identified guardianship or another permanent plan for the child.
13.  Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child (*if item 13 is checked, check reasons below and go to item 14*):
- a.  is a member of a sibling group that should stay together.
  - b.  has a diagnosed medical, physical, or mental disability.
  - c.  is 7 years of age or older.
14. a.  Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by (*date, not to exceed 180 days from the date of this order*):
- (*Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.*)
- b.  Visitation between the child and
 

<input type="checkbox"/> parent ( <i>name</i> ):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> parent ( <i>name</i> ):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> legal guardian ( <i>name</i> ):		
<input type="checkbox"/> other ( <i>name</i> ):		

 is scheduled as follows (*specify*):
  - c.  Visitation between the child and (*names*):  
is detrimental to the child's physical or emotional well-being and is terminated.
15.  The child's permanent plan is legal guardianship.
- (*Name*):  
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. (*Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.*)
- a.  Visitation between the child and
 

<input type="checkbox"/> parent ( <i>name</i> ):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> parent ( <i>name</i> ):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
<input type="checkbox"/> legal guardian ( <i>name</i> ):		
<input type="checkbox"/> other ( <i>name</i> ):		

 is scheduled as follows (*specify*):
  - b.  Visitation between the child and (*names*):  
is detrimental to the child's physical or emotional well-being and is terminated.
  - c.  Dependency       Wardship      is terminated.
  - d.  Dependency       Wardship      is terminated. The likely date for termination of the dependency or wardship is (*date*):  
(*If this item is checked, go to item 17.*)

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

CHILD'S NAME:	CASE NUMBER:
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16. a.  The child remains placed with *(name of placement)*:  
with a permanent plan of *(specify)*:
- (1)  Returning home  
 (2)  Adoption  
 (3)  Tribal customary adoption  
 (4)  Legal guardianship  
 (5)  Permanent placement with a fit and willing relative  
 (6)  Independent living with identification of a caring adult to serve as a lifelong connection

**The child's permanent plan is likely to be achieved by (date):**

*(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)*

- b.  Visitation between the child and  
 parent *(name)*:  Mother  Father  
 parent *(name)*:  Mother  Father  
 legal guardian *(name)*:  
 other *(name)*:  
 is scheduled as follows *(specify)*:

- c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

17.  The child is an Indian child. The court finds that the child's permanent plan complies with the placement preferences because:

a.  The permanent plan is something other than adoption, and *(choose one)*:

- (1)  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1 (c); or  
 (2)  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or  
 (3)  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or  
 (4)  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or  
 (5)  The child is placed in accordance with the preferences established by the tribe; or  
 (6)  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

b.  The permanent plan is adoption *(choose one)*:

- (1)  The child is placed with a member of the child's extended family; or  
 (2)  An exhaustive search was made for a placement with a member of the child's extended family, those efforts are documented in detail in the record, and the child is placed with other members of the child's tribe; or  
 (3)  An exhaustive search was made for a placement with a member of the child's extended family or other member of the child's tribe, those efforts are documented in detail in the record, and the child is placed with another Indian family; or  
 (4)  The child is placed in accordance with the preferences established by the tribe; or  
 (5)  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in detail in the record.

CHILD'S NAME:	CASE NUMBER:
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18.  The child's placement is appropriate.
19.  The child is an Indian child and the court finds that the agency has provided affirmative, active, thorough, and timely efforts to prevent the breakup of the Indian family and make it possible for the child to be returned home, and these efforts have proved unsuccessful. These efforts are documented in detail in the record.
20.  The child is, or there is reason to know the child is, an Indian and notice has been provided as required by section 224.3 of Welfare and Institutions Code and proof of such notice has been filed with the court.
21.  The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years of age or older.)*
22.  The child remains a  dependent  ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
23.  All prior orders not in conflict with this order will remain in full force and effect.
24.  Other *(specify)*:

25.  Next hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept: \_\_\_\_\_ Room: \_\_\_\_\_
- a.  Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b.  Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
- c.  Six-month postpermanency review

26. The  Parent *(name)*:  Mother  Father  
 Parent *(name)*:  Mother  Father  
 Indian custodian *(name)*:  
 Child  
 Other *(name)*:  
 have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: \_\_\_\_\_

\_\_\_\_\_  
 JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>CONTINUANCE—DEPENDENCY DETENTION HEARING</b>	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

**2. Dispositional hearing**

- |   |  |
|---|--|
| a. Date:<br>b. Department:<br>c. Judicial officer (name):<br>d. Court clerk (name): | e. Court reporter (name):<br>f. Bailiff (name):<br>g. Interpreter (name and language): |
|---|--|

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
- (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**THE COURT FINDS AND ORDERS:**

3.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
4.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

CHILD'S NAME:	CASE NUMBER:
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5.  A Court Appointed Special Advocate is appointed for the child.

6. **The court has informed and advised the**

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
- the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
  - that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
  - that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.
7. The court has considered the information contained in
- a.  the report of social worker dated:
- b.  other (*specify*):
- c.  other (*specify*):
- and based on this information finds that continuance in the home is contrary to the child's welfare pending a further determination at the continued hearing.

8.  The court grants the motion for continuance under Welfare and Institutions Code section 322 made by the

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

9.  A motion for continuance was made by the

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

and good cause exists for granting the continuance in that

- a.  notice of the date, time, and location of the hearing was not given to (*name*):
- b.  the child did not receive proper notice of his or her right to attend the hearing.
- c.  other (*specify*):

The motion for the continuance is granted.

CHILD'S NAME:	CASE NUMBER:
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10.  **Contact with the child is ordered as stated in** (check appropriate boxes and attach indicated forms):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

### 11. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (name):
- (2) alleged parent (name):
- (3) alleged parent (name):

### 12. ICWA Inquiry

On the record, the court has:

- a.  Asked each participant present at the hearing:
- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
  - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village and if yes, the name of the tribe or village;
  - Whether the child is or was ever a ward of a tribal court, and if yes the name of the tribe or village; and
  - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.
- b.  Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native Village.
- c. (1)  The court finds that there is no reason to believe or know that the child is an Indian child. ICWA does not apply; or
- (2)  The court finds that there is reason to believe that the child is an Indian child; and
- (a) The record includes evidence that the agency has complied with Welf. & Inst. Code, § 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or
- (b) The agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services and/or others.
- (3)  The court finds that there is reason to know that the child is an Indian child, and
- (a) The agency has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;
- (b) Notice has been provided as required by law; and
- (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
- (4)  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

13. The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

14. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.



CHILD'S NAME:	CASE NUMBER:
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15. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete form ICWA-020 and to submit it to the court before leaving the courthouse today.

16.  There is reason to know the child is an Indian child, and the county agency must provide notice under § 224.3 of the Welf. and Inst. Code for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

17. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

18.  **Other findings and orders:**

- a.  See attached.  
b.  (Specify):

19. **All parties are ordered to return for the continued hearing:**

Hearing date:	Time:	Dept:	Room:
---------------	-------	-------	-------

20. **All prior orders not in conflict with this order remain in full force and effect.**

21 Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 JUDGE     JUDGE PRO TEMPORE

Date: \_\_\_\_\_

\_\_\_\_\_  
 COMMISSIONER     REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER DETENTION HEARING</b> (Welf. & Inst. Code, § 319)	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

**2. Dispositional hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
- (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**3. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Other (specify):
- d.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 4. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:
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5.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
6.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
7.  A Court Appointed Special Advocate is appointed for the child.

### 8. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

### 9. ICWA Inquiry

On the record, the court has:

- a.  Asked each participant present at the hearing:
- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
  - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village and if yes, the name of the tribe or village;
  - Whether the child is or was ever a ward of a tribal court, and if yes the name of the tribe or village; and
  - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.
- b.  Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native Village.

### 10. ICWA Status

- a.  The court finds that there is no reason to believe or know that the child is an Indian child and ICWA does not apply; or
- b.  The court finds that there is reason to believe that the child may be an Indian child; and
- (1)  The agency has completed further inquiry as required by Welfare and Institutions Code section 224.2(e) and used due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status, and there is no reason to know that the child is an Indian child. ICWA does not apply; or
  - (2)  The agency is ordered to complete further inquiry as required by Welfare and Institutions Code section 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services and/or others.
- c.  The court finds that there is reason to know that the child is an Indian child, and
- (1) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;
  - (2) Notice has been provided as required by law; and
  - (3) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

CHILD'S NAME:	CASE NUMBER:
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10. d.  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

### 11. ICWA Jurisdiction

a. It is known or there is reason to know that the child is an Indian child. The court finds (*select one*):

(1)  That it has jurisdiction over the proceeding because:

(a) The court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and

(b) The court finds that the child is not already under the jurisdiction of a tribal court; or

(2)  The court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or

(3)  The court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with 25 U.S.C. § 1911.

### Advisements and waivers

#### 12. The court has informed and advised the

mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
- the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
  - that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
  - that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

13.  The  mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

CHILD'S NAME:	CASE NUMBER:
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14.  **CHILD NOT DETAINED**

- a.  Services that would prevent the need for further detention, including those set forth in item 17, are available.
- b.  The child is returned to the custody of
- |  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> mother          | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian   | <input type="checkbox"/> other ( <i>specify</i> ): |
| <input type="checkbox"/> presumed father | <input type="checkbox"/> alleged father    | <input type="checkbox"/> Indian custodian |  |

15.  **CHILD DETAINED**

- a. Services that would prevent the need for further detention are not available.
- b. A prima facie showing has been made that the child comes within Welf. & Inst. Code, § 300.
- c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND (*select at least one*):
- (1)  there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.
  - (2)  there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court.
  - (3)  the child has left a placement in which he or she was placed by the juvenile court.
  - (4)  the child has been physically abused by a person residing in the home and is unwilling to return home.
  - (5)  the child has been sexually abused by a person residing in the home and is unwilling to return home.
- d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welf. & Inst. Code, § 355 or further order of the court.
- e. The initial removal of the child from the home was necessary for the reasons stated on the record.
- f. The facts on which the court bases its decision to order the child detained are stated on the record.
- g. The child is placed in
- (1)  the approved home of a relative.
  - (2)  an emergency shelter.
  - (3)  other suitable licensed place.
  - (4)  a place exempt from licensure designated by the juvenile court.
  - (5)  the approved home of a nonrelative extended family member as defined in Welf. & Inst. Code, § 362.7.
  - (6)  the home of an extended family member as defined in Welf. & Inst. Code § 224.1, and there is reason to know the child is an Indian child.
  - (7)  a home licensed or approved by the Indian child's tribe.
- h. Services, including those set forth in item 13, are to be provided to the family as soon as possible to reunify the child with his or her family.
- i.  Reasonable efforts were made to prevent or eliminate the need for removal from the home.
- j.  Reasonable efforts were not made to prevent or eliminate the need for removal from the home.
- k.  There is a relative who is able, approved, and willing to care for the child.
- l.  A relative who is able, approved, and willing to care for the child is not available. *This is a temporary finding and does not preclude later placement with a relative under Welf. & Inst. Code, § 361.3.*

CHILD'S NAME:	CASE NUMBER:
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16.  **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

- a.  The evidence includes all of the requirements of section 319 (b).
- b.  The agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; or
- The agency has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and

The agency is ordered to initiate or continue active efforts.

- c.  For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

- d.  The child's placement complies with the placement preferences set forth in Welf. & Inst. Code, § 361.31. The child is placed:

- With a member of the child's extended family;
- With a foster home licensed, approved, or specified by the child's tribe;
- With an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- In an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

OR

- For the reasons stated on the record, the court finds that there is good cause not to follow the placement preferences.

17.  The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other (specify):
a. <input type="checkbox"/> Alcohol and drug testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Substance abuse treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Parenting education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

18.  **Contact with the child is ordered as stated in (check appropriate boxes and attach indicated forms):**

- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person (form JV-400).*
- b.  *Visitation Attachment: Sibling (form JV-401).*
- c.  *Visitation Attachment: Grandparent (form JV-402).*

19.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must complete *Your Child's Health and Education (form JV-225)* or provide the necessary information for the county agency social worker to complete the form.

21.  There is reason to know the child is an Indian child and the county agency must provide notice under § 224.3 of the Welf. and Inst. Code for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

CHILD'S NAME:	CASE NUMBER:
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22.  **Other findings and orders:**

- a.  See attached.  
 b.  (Specify):

23.  The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

24.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  Jurisdictional hearing  
 b.  Dispositional hearing  
 c.  Settlement conference  
 d.  Mediation  
 e.  Other (specify):

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE  JUDGE PRO TEMPORE

Date: \_\_\_\_\_

COMMISSIONER  REFEREE





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5.  The child is an Indian child or  there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
6.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
7.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
8.  A Court Appointed Special Advocate is appointed for the child.
9. The child's county of residence is:
10. The child's date of birth is (*specify*):

#### 11. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

#### Advisements and waivers

12. a.  The petition was read to those present at the beginning of this jurisdictional hearing.
- b.  Reading of the petition was waived by all those present at the beginning of this jurisdictional hearing.

#### 13. The court has informed and advised the

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
- the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;

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13. b. • that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

14.  On the motion of the petitioner, the following allegations are stricken:

15.  The  mother  biological father  legal guardian  child  
 presumed father  alleged father  Indian custodian  
 other (specify):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

16.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

understands the nature of the conduct alleged in the petition and the possible consequences of his or her admission, plea of no contest, or submission.

17. <input type="checkbox"/> Party	Admits	Submits	Pleads no contest	To petition as amended on (specify date):
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. <input type="checkbox"/> Alleged father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
e. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
f. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
g. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

18.  There is a factual basis for the admission.

19.  By a preponderance of the evidence, the allegations stated below are true:

- a.  as stated in the petition as originally filed.
- b.  as stated in the petition as amended on (date):
- (1)  by agreement of the parties.
- (2)  by the court to conform to proof.

CHILD'S NAME:	CASE NUMBER:
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20.  The allegations (*specify*):

as stated in the petition  as amended on (*date*): \_\_\_\_\_ are not proven and are ordered stricken.

21.  The allegations of the petition are not sustained.

22.  The petition is sustained under, and the child is a person described by, Welf. & Inst. Code, § 300 (*check all that apply*):

300(a)     300(c)     300(e)     300(g)     300(i)  
 300(b)     300(d)     300(f)     300(h)     300(j)

23.  The previous disposition has not been effective in the protection of the child.

24.  The county agency is ordered to immediately return the child to the

mother                       biological father                       legal guardian  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*): \_\_\_\_\_

25.  The child and the

mother                       biological father                       legal guardian  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*): \_\_\_\_\_

are placed under the supervision of the county agency for a minimum of six months under their voluntary agreement to informal supervision and the provision of services designed to keep the family together as stated in the family's case plan.

26.  **Contact with the child is ordered as stated in** (*check appropriate boxes and attach indicated forms*):

- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).  
b.  *Visitation Attachment: Sibling* (form JV-401).  
c.  *Visitation Attachment: Grandparent* (form JV-402).

27. **All prior orders not in conflict with this order remain in full force and effect.**

28.  **Other findings and orders:**

- a.  See attached.  
b.  (*Specify*): \_\_\_\_\_

29.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  Dispositional hearing  
b.  Settlement conference  
c.  Mediation  
d.  Other (*specify*): \_\_\_\_\_

30.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

31. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING</b> (Welf. & Inst. Code, § 361 et seq.)	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

**2. Dispositional hearing**

- |   |  |
|---|--|
| a. Date:<br>b. Department:<br>c. Judicial officer (name):<br>d. Court clerk (name): | e. Court reporter (name):<br>f. Bailiff (name):<br>g. Interpreter (name and language): |
|---|--|

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
- (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**3. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- (1)  For the purposes of establishing a guardianship, the report of the social worker includes an assessment as specified in Welf. & Inst. Code, §§ 360(a), 361.5(g).
  - (2)  In the case of an Indian child, the report of the social worker includes:
    - (a) Evidence that the agency has provided affirmative, active, thorough, and timely efforts to prevent the breakup of the Indian family and make it possible for the child to be returned home, and these efforts have proved unsuccessful;
    - (b) An assessment in consultation with the Indian child's tribe, as specified in Welf. & Inst. Code, §358.1(j), whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

CHILD'S NAME:	CASE NUMBER:
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3. b.  Report of CASA volunteer dated:  
 c.  Case plan dated:  
 d.  Other (*specify*):  
 e.  Other (*specify*):  
 f.  Testimony of qualified expert under the Indian Child Welfare Act

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

4. a.  Notice of the date, time, and location of the hearing was given as required by law.  
 b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
5. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
 b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
6.  A Court Appointed Special Advocate is appointed for the child.
7. **Parentage**  
 a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.  
 b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to  
 (1) alleged parent (*name*):  
 (2) alleged parent (*name*):  
 (3) alleged parent (*name*):

**8. ICWA Inquiry**

- a.  The court finds that the social worker/probation officer has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, \_\_\_\_\_, whether there is information indicating the child is an Indian child.
- b.  The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all participants in the proceedings, and the following relatives, \_\_\_\_\_, whether there is information indicating the child is an Indian child.
- c.  The parties were instructed to inform the court if they receive any information indicating that the child is an Indian child.
- d. (1)  The court finds that there is no reason to know that the child is an Indian child. Unless new information is received indicating that the child is an Indian child, ICWA does not apply. OR  
 (2)  The court finds that there is reason to know that the child is an Indian child; and  
 (a) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status;  
 (b) Notice has been provided as required by law; and  
 (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
- (3)  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

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**Advisements and waivers****9. The court informed and advised the**

- mother       biological father       legal guardian       child  
 presumed father       alleged father       Indian custodian  
 other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

- 10.** The  mother       biological father       legal guardian       child  
 presumed father       alleged father       Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**11.  Sibling group**

The child and the child's siblings listed below form a sibling group in which at least one child in the sibling group was under the age of three years at the time of the initial removal and all children in the sibling group were removed from parental custody at the same time.

Sibling (name):

- a.  
b.  
c.  
d.  
e.  
f.

**12. Disposition is ordered as stated in** (*check appropriate box and attach indicated form*):

- a.  *Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision (Welf. & Inst. Code, § 360(b))* (form JV-416), which is attached and incorporated by reference.
- b.  *Dispositional Attachment: In-Home Placement With Formal Supervision (Welf. & Inst. Code, § 361)* (form JV-417), which is attached and incorporated by reference.
- c.  *Dispositional Attachment: Appointment of Guardian (Welf. & Inst. Code, § 360(a))* (form JV-418), which is attached and incorporated by reference.
- d.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-420), which is attached and incorporated by reference.
- e.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-421), which is attached and incorporated by reference.

**13. The child's rights** under Welf. & Inst. Code, § 388 and the procedure for bringing a petition under Welf. & Inst. Code, § 388, including the availability of appropriate and necessary forms, was provided to the child as follows:

- a.  Child under the age of 12 years, through the child's attorney of record or guardian ad litem
- b.  Child 12 years of age or older who was present at the hearing, on the record and in writing by handing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)
- c.  Child 12 years of age or older who was present at the hearing, in writing by mailing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)

CHILD'S NAME:	CASE NUMBER:
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14.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):

- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).  
 b.  *Visitation Attachment: Sibling* (form JV-401).  
 c.  *Visitation Attachment: Grandparent* (form JV-402).

15. The child's medical, dental, mental health, and educational information required by Welfare and Institutions Code section 16010 was provided by the  mother  biological father  legal guardian  presumed father  
 alleged father  Indian custodian  other (specify):

16. **All prior orders not in conflict with this order remain in full force and effect.**

17.  **Other findings and orders:**

- a.  See attached.  
 b.  (Specify):

18.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)  
 b.  Six-month permanency hearing (Welf. & Inst. Code, § 366.21(e))  
 c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)  
 e.  Other (specify):

19.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

20. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE  JUDGE PRO TEMPORE

Date: \_\_\_\_\_

COMMISSIONER  REFEREE

#### For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:
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**DISPOSITIONAL ATTACHEMENT: APPOINTMENT OF GUARDIAN**  
(Welf. & Inst. Code, § 360(a))

1.  The child is a person described under Welf. & Inst. Code, § 300 (check all that apply):  
 300(a)    300(c)    300(e)    300(g)    300(i)  
 300(b)    300(d)    300(f)    300(h)    300(j)
  
2.  The child is adjudged a dependent of the court.
  
3. a.  Reasonable efforts    were    were not   made to prevent or eliminate the need for removal from the home; or  
 b.  The child is an Indian child and active efforts as detailed in the record    were    were not   provided to prevent the breakup of the Indian family, and these efforts have proved unsuccessful.
  
4. a.  The county agency solicited and integrated into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_.  
 b.  The county agency did not solicit and integrate into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_, and the agency is ordered to do so and submit an updated case pan within 30 days of the date of this hearing.  
 c.  The county agency did not solicit and integrate into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_, and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.
  
5. The court advised the  
 mother                       biological father                       legal guardian  
 presumed father                       Indian custodian                       other (specify): \_\_\_\_\_  
 that no reunification services will be provided as a result of the guardianship of the child established in this matter.
  
6. The    mother                       biological father                       legal guardian  
 presumed father                       Indian custodian                       other (specify): \_\_\_\_\_  
 signed a *Guardianship (Juvenile)—Consent and Waiver of Rights* (form JV-419), agreeing to the guardianship of the child, the waiver of his or her rights to family maintenance services and family reunification services, and, in the case of an Indian child, the waiver of his or her rights under the Indian Child Welfare Act. A signed form JV-419 for each individual indicated above was filed with the court.
  
7. a.  The child signed a *Guardianship (Juvenile)—Child's Consent and Waiver of Rights* (form JV-419A), agreeing to the establishment of the guardianship and the waiver of his or her rights to family maintenance services and family reunification services. The child's signed form JV-419A was filed with the court.  
 b.  The child is prevented from providing a meaningful response to the request for guardianship and a waiver of his or her rights to family maintenance services and family reunification services because of the child's  
 (1)  age.  
 (2)  physical condition.  
 (3)  emotional condition.  
 (4)  mental condition.
  
8.  The child is an Indian child, and an authorized representative of the child's tribe signed a form JV-419 stating the tribe's agreement to the guardianship of the child, the waiver of the tribe's interests in family maintenance services and family reunification services, and the waiver of the tribe's rights under the Indian Child Welfare Act.
  
9.  The establishment of a legal guardianship is in the child's best interest.
  
10.  The county agency is ordered to release the child to the legal guardian named in item 11.
  
11. The court appoints (name):  
 as the legal guardian of the child's    person    estate   and orders the clerk of the court to issue letters of guardianship.



CHILD'S NAME:	CASE NUMBER:
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**DISPOSITIONAL ATTACHMENT:  
REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT  
(Welf. & Inst. Code, §§ 361, 361.2)**

1.  The child is a person described by Welf. & Inst. Code, § 300 (check all that apply):
- |                                 |                                 |                                 |                                 |                                 |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 300(a) | <input type="checkbox"/> 300(c) | <input type="checkbox"/> 300(e) | <input type="checkbox"/> 300(g) | <input type="checkbox"/> 300(i) |
| <input type="checkbox"/> 300(b) | <input type="checkbox"/> 300(d) | <input type="checkbox"/> 300(f) | <input type="checkbox"/> 300(h) | <input type="checkbox"/> 300(j) |
- and is adjudged a dependent of the court.**

**Circumstances justifying removal from custodial parent**

2.  There is clear and convincing evidence of the circumstances stated in Welf. & Inst. Code, § 361 regarding the persons specified below (check all that apply):
- |   | 361(c)(1)                | 361(c)(2)                | 361(c)(3)                | 361(c)(4)                | 361(c)(5)                |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. <input type="checkbox"/> Mother            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. <input type="checkbox"/> Presumed father   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. <input type="checkbox"/> Biological father | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. <input type="checkbox"/> Legal guardian    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. <input type="checkbox"/> Indian custodian  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. <input type="checkbox"/> Other (specify):  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

3.  The child is an Indian child or  there is reason to know that the child is an Indian child, and
- a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and
- b.  Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
- c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> mother           | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian |
| <input type="checkbox"/> presumed father  | <input type="checkbox"/> Indian custodian  |   |
| <input type="checkbox"/> other (specify): |  |   |

4. Reasonable efforts  were  were not made to prevent or eliminate the need for removal from the home.

5.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
- a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e.  These efforts have proved unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** (check all that apply):
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> mother           | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian |
| <input type="checkbox"/> presumed father  | <input type="checkbox"/> Indian custodian  |   |
| <input type="checkbox"/> other (specify): |  |   |

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### Family finding and engagement

7. a.  The county agency has exercised due diligence to identify, locate, and contact the child's relatives.
- b.  The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.
- (1)  The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with the family or domestic violence.
- (2)  The county agency must submit a report to the court on or before (date): detailing the diligent efforts made and the results of such efforts.

### Case plan development

8. a.  The county agency solicited and integrated into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*):
- b.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*): and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
- c.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*): and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

### Custody and placement

9.  The  mother  presumed father  biological father did not reside with the child at the time the petition was filed and  does  does not desire custody of the child.
- a.  By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:  
 Mother  Presumed father  Biological father
- b.  The factual basis for the findings in this item is stated on the record.
10.  **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
- a.  in the approved home of a relative.
- b.  in the approved home of a nonrelative extended family member.
- c.  in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
- d.  with a foster family agency for placement in a foster family home.
- e.  in a suitable licensed community care facility.
11.  **Placement with the child's relative, (name):**  
has been independently considered by the court and is denied for the reasons stated on the record.
12.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):
- a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code § 224.1(c); or
- b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

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12. e.  The child is placed in accordance with the preferences established by the tribe; or  
 f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.
13.  **The child's out-of-home placement is necessary.**
14.  **The child's current placement is appropriate.**
15.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.  
 a.  The matter is continued to the date and time indicated in form JV-415, item 17 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.  
 b.  Other (*specify*):
16.  **The child is placed outside the state of California and that out-of-state placement**  
 a.  continues to be the most appropriate placement for the child and is in the best interest of the child.  
 b.  is not the most appropriate placement for the child and is not in the best interest of the child.  
 The matter is continued to the date and time indicated in form JV-415, item 17 for a  written  oral report by the county agency on the progress made toward  
 (1)  returning the child to California and locating an appropriate placement within California.  
 (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.  
 (3)  other (*specify*):

#### Reunification services

17.  **Provision of reunification services to the biological father**  will  will not benefit the child.
18.  **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.  
 a.  Participation in the program  is  is not in the child's best interest.  
 b.  The program  is  is not suitable to meet the needs of the mother and child.
19.  **The following person is incarcerated:**  
 mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 and reasonable reunification services are  
 a.  granted.  
 b.  denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.
20.  **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**  
 a. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § (*specify*):  
 361.5(b)(3)  361.5(b)(7)  361.5(b)(9)  361.5(b)(11)  361.5(b)(13)  361.5(b)(16)  
 361.5(b)(4)  361.5(b)(8)  361.5(b)(10)  361.5(b)(12)  361.5(b)(15)  361.5(b)(17)  
 and reunification services are  
 (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.  
 (2)  denied.

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20. b. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.
- c. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(2), and reunification services are  
 (1)  granted.  
 (2)  denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.
- d. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are  
 (1)  granted, because  
     (a)  reunification services are likely to prevent reabuse or neglect.  
     (b)  the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.  
 (2)  denied.
- e. The  mother  legal guardian  
 presumed father  Indian custodian  
 other person who is a legal parent of the child (*name*):  
 is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are  
 (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.  
 (2)  denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.  
 (3)  The factual basis for the findings in this item is stated on the record.
- f. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to services. Reunification services are denied.
- g. **The county agency must provide reunification services**, and the following must participate in the reunification services stated in the case plan:  
 Mother  Biological father  Legal guardian  Presumed father  
 Indian custodian  Other (*specify*):

21. **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is (*specify*):

### Efforts

22. The county agency  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

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**23. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

24.  The child does not have siblings under the court's jurisdiction.

25.  The child has siblings under the court's jurisdiction. *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

26.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

27. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

28. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

29. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on (*date*):

30.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
- a.  stated in the social worker's report.
- b.  specified here:

31.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 30:
- a.  Social worker.
- b.  Parent (*name*):
- c.  Surrogate parent (*name*):
- d.  Educational representative (*name*):
- e.  Other (*name*):

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32.  The child's education placement has changed since the date the child was physically removed from the home.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
- b.  The child is enrolled in school.
- c.  The child is attending school.
33.  **Child 14 years of age or older:**
- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
- (1)  stated on the record.
- (2)  as follows:

#### Advisements

34.  **Child under the age of three years or member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).**  
The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group:

- a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date the child entered foster care under Welf. & Inst. Code, § 366.21(e).

**Six-month hearing date:**

- b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:
- Whether the sibling group was removed from parental care as a group;
  - The closeness and strength of the sibling bond;
  - The ages of the siblings;
  - The appropriateness of maintaining the sibling group;
  - The detriment to the child if sibling ties are not maintained;
  - The likelihood of finding a permanent home for the sibling group;
  - Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
  - The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
  - The best interest of each child in the sibling group.
- c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

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35.  **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, § 366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

**Twelve-month permanency hearing date:**

36.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).
- c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(10) of the California Rules of Court to any party not present.
- e.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who had relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- f. **The likely date** by which the permanent plan will be achieved is *(specify date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	
<b>FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING</b> (Welf. & Inst. Code, § 366.21(e))	CASE NUMBER: _____

**1. Six-month status review hearing**

- |   |   |
|---|---|
| a. Date: _____<br>b. Department: _____<br>c. Judicial officer ( <i>name</i> ): _____<br>d. Court clerk ( <i>name</i> ): _____ | e. Court reporter ( <i>name</i> ): _____<br>f. Bailiff ( <i>name</i> ): _____<br>g. Interpreter ( <i>name and language</i> ): _____ |
|---|---|

h. <u>Party (<i>name</i>):</u>	<u>Present</u>	<u>Attorney (<i>name</i>):</u>	<u>Present</u>	<u>Appointed today</u>
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other ( <i>specify</i> ):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer ( <i>name</i> ):				
(2) Other ( <i>name</i> ):				
(3) Other ( <i>name</i> ):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated: \_\_\_\_\_
- b.  Report of CASA volunteer dated: \_\_\_\_\_
- c.  Case plan dated: \_\_\_\_\_
- d.  Other (*specify*): \_\_\_\_\_
- e.  Other (*specify*): \_\_\_\_\_

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.



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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

#### 6. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

#### Advisements and waivers

##### 7. The court has informed and advised the

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

#### Case plan development

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

- 11.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e.  These efforts have proved unsuccessful.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  **The child does not have siblings under the court's jurisdiction.**
- 14.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 15. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
  - b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- 16. a. The child's educational needs  are  are not being met.
  - b. The child's physical needs  are  are not being met.
  - c. The child's mental health needs  are  are not being met.
  - d. The child's developmental needs  are  are not being met.

CHILD'S NAME:	CASE NUMBER:
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17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
- stated in the social worker's report.
  - specified here: \_\_\_\_\_
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
- Social worker.
  - Parent (*name*): \_\_\_\_\_
  - Surrogate parent (*name*): \_\_\_\_\_
  - Educational representative (*name*): \_\_\_\_\_
  - Other (*name*): \_\_\_\_\_
20.  The child's education placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - The child is enrolled in school.
  - The child is attending school.
21.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows: \_\_\_\_\_
22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
  - Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
  - Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.
23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).

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24. All prior orders not in conflict with this order remain in full force and effect.

25.  Other findings and orders:

- a.  See attached.  
 b.  (Specify):

26.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)  
 b.  12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))  
 c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
 (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:
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- d.  Other (specify):

27.  The petition is dismissed. Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE     JUDGE PRO TEMPORE     COMMISSIONER     REFEREE

#### For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:
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**SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
 (Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**

3.  **The child's current placement is appropriate.**

4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

- a.  The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):

- a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
- b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6.  **The child is placed outside the state of California and that out-of-state placement**

- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made toward
  - (1)  returning the child to California and locating an appropriate placement within California.
  - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
  - (3)  Other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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**Reunification services**

7.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
- Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan, and accessing or developing the resources necessary to satisfy the case plan;
  - To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - These efforts have proved unsuccessful.

**8. For child under the age of three years at time of initial removal or a member of a sibling group**

- Having considered the relevant evidence, including the following factors
  - Whether there has been significant progress in resolving the problems that led to the removal;
  - Whether the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs has been demonstrated; and
  - Whether there has been consistent and regular contact and visitation with the child.

The court finds there is a substantial probability that the child may be returned to the

mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

within six months of the date of this hearing or within 12 months of the date the child entered foster care, whichever is sooner.

- Reasonable services have not been provided to the
 

mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

 by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has (*specify*):

**9. Reunification services are continued for the**

mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

- as previously ordered.
- as modified
  - on the record.
  - in the case plan.

10.  **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, placed with a fit and willing relative or in another planned permanent living arrangement is (*specify date*):

CHILD'S NAME:	CASE NUMBER:
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**Important individuals**

11.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

**Health**

12.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

13. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twelve-month permanency hearing date:

CHILD'S NAME:	CASE NUMBER:
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**SIX-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(e))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**

3.  **The child's current placement is appropriate.**

4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

a.  The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.

b.  Other (*specify*):

5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):

a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or

b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

e.  The child is placed in accordance with the preferences established by the tribe; or

f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6.  **The child is placed outside the state of California and that out-of-state placement**

a.  continues to be the most appropriate placement for the child and is in the best interest of the child.

b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made toward

(1)  returning the child to California and locating an appropriate placement within California.

(2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

(3)  Other (*specify*):



CHILD'S NAME:	CASE NUMBER:
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### Reunification services

7.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
- Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - These efforts have proved unsuccessful.
8.  The child is an Indian child or there is reason to know that the child is an Indian child, and:
- Qualified expert witness testimony was provided by \_\_\_\_\_; and
  - Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
  - There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other ( <i>specify</i> ): _____		
9.  **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
- The child was under the age of three years on the date of the initial removal from the home.
  - The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
    - (1)
    - (2)
    - (3)
    - (4)
    - (5)
    - (6)
  - By clear and convincing evidence the
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> Indian custodian
<input type="checkbox"/> presumed father	<input type="checkbox"/> legal guardian	
<input type="checkbox"/> other ( <i>specify</i> ): _____		

 failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
  - Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.

CHILD'S NAME:	CASE NUMBER:
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10.  **Reunification services terminated: Child of any age**

- a.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):

because the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence,

- (1)  the person's whereabouts remain unknown.  
(2)  the person has not had contact with the child for six months.

- b.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):

because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.

- c.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):

because it is determined that the person is deceased.

11. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**12.  **Child in out-of-home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.  
b.  The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.  
c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
(1)  as stated on the record.  
(2)  as follows:

**Health**

13.  The  mother                       biological father                       other (*specify*):  
 presumed father                       legal guardian  
is  unable                       unwilling                       unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Setting for selection of permanent plan**

14.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**  
b. By clear and convincing evidence reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.  
c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).

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14. d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ (Juvenile Dependency)* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):
15.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b.  The child remain in foster care with a permanent plan of (*specify*):
- (1)  Return home.
- (2)  Adoption.
- (3)  Tribal customary adoption.
- (4)  Legal guardianship.
- (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
- return home                       establish legal guardianship
- place for adoption                 place with a relative
- other (*specify*): \_\_\_\_\_
- The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER</b> <b>12-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

**1. Twelve-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:
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4. a.  The child is an Indian child or  there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

5.  A Court Appointed Special Advocate is appointed for the child.

#### 6. Parentage

a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

(1) alleged parent (*name*):

(2) alleged parent (*name*):

(3) alleged parent (*name*):

#### Advisements and waivers

##### 7. The court has informed and advised the

mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 Other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

#### Case plan development

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.

child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.

child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.

child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

- 11.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e.  These efforts have proved unsuccessful.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  **The child does not have siblings under the court's jurisdiction.**
- 14.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 15. a.  **A limitation on the right of the parents to make educational decisions for the child is not necessary.** The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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16. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*:
18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:  
 a.  Social worker.  
 b.  Parent *(name)*:  
 c.  Surrogate parent *(name)*:  
 d.  Educational representative *(name)*:  
 e.  Other *(name)*:
20.  The child's education placement has changed since the last review hearing.  
 a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.  
 b.  The child is enrolled in school.  
 c.  The child is attending school.
21.  **Child 14 years of age or older:**  
 a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.  
 b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.  
 c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services  
 (1)  stated on the record.  
 (2)  as follows:
22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:  
 a.  *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.  
 b.  *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.  
 c.  *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.



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23.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  18-month permanency hearing (Welf. & Inst. Code, § 366.22)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE    JUDGE PRO TEMPORE    COMMISSIONER    REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
(Welf. & Inst. Code, § 366.21(f))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**

3.  **The child's current placement is appropriate.**

4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

a.  The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.

b.  Other (*specify*):

5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):

a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or

b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

e.  The child is placed in accordance with the preferences established by the tribe; or

f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6.  **The child is placed outside the state of California and that out-of-state placement**

a.  continues to be the most appropriate placement for the child and is in the best interest of the child.

b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 25 for a  written  oral report by the county agency on the progress made toward

(1)  returning the child to California and locating an appropriate placement within California.

(2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

(3)  Other (*specify*):

**Reunification services**

7. a.  **There is substantial probability that the child may be returned** to the

mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

by the date set for the 18-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has

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7. a. (1) made significant progress in resolving the problems that led to the removal;  
 (2) demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the safety, protection, physical and emotional health, and special needs of the child; and  
 (3) consistently and regularly contacted and visited the child.

- b.  Reasonable services have not been provided to the  
 mother       biological father       Indian custodian  
 presumed father       legal guardian       other (*specify*):

8. Reunification services are continued for the

- mother       biological father       Indian custodian  
 presumed father       legal guardian       other (*specify*):

- a.  as previously ordered.

- b.  as modified

- (1)  on the record.  
 (2)  in the case plan.

9.  **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, or in an identified placement with a specific goal is (*specify date*):

#### Important individuals

10.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.  
 b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.  
 c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
 (1)  as stated on the record.  
 (2)  as follows:

#### Health

11.  The  mother       biological father       Indian custodian  
 presumed father       legal guardian       other (*specify*):  
 is  unable       unwilling       unavailable      to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

#### Advisement

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 18-month permanency hearing set on a date within 18 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

**Eighteen-month permanency hearing date:**

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**TWELVE-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(f))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

2. **Reunification services are terminated.**

3.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e.  These efforts have proved unsuccessful.

4.  The child is an Indian child or there is reason to know that the child is an Indian child, and

- a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and  
(Name):
- b.  Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
- c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:  
 mother                       biological father                       legal guardian  
 presumed father                       Indian custodian  
 other (specify): \_\_\_\_\_

**Placement**

5. **The child's out-of-home placement is necessary.**

6.  **The child's current placement is appropriate.**

7.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

- a.  The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (specify): \_\_\_\_\_

8.  There has been a change in the child's placement and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (choose one):

- a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
- b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

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8. c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.

9.  **The child is placed outside the state of California and that out-of-state placement**

- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child.  
The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

11.  **Child in out-of home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

**Health**

12.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian
- is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

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**Selection of permanent plan**

13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

b.  The child remains in foster care with a permanent plan of (*specify*):

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

return home

establish legal guardianship

place for adoption

place with a relative

other (*specify*): \_\_\_\_\_

**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

14.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information (*describe*): \_\_\_\_\_

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*): \_\_\_\_\_

c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*): \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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15.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
- c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:   STATE:                      ZIP CODE: FAX NO.:	FOR COURT USE ONLY   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.22)		CASE NUMBER:

**1. Eighteen-month permanency hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

	Present	Attorney (name):	Present	Appointed today
h. Party (name):				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.



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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

#### 6. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

#### Advisements and waivers

##### 7. The court has informed and advised the

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

#### Case plan development

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e.  These efforts have proved unsuccessful.

**13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

14.  **The child does not have siblings under the court's jurisdiction.**

15.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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17. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*:
19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:  
 a.  Social worker.  
 b.  Parent *(name)*:  
 c.  Surrogate parent *(name)*:  
 d.  Educational representative *(name)*:  
 e.  Other *(name)*:
21.  The child's education placement has changed since the last review hearing.  
 a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.  
 b.  The child is enrolled in school.  
 c.  The child is attending school.
22.  **Child 14 years of age or older:**  
 a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.  
 b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.  
 c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services  
 (1)  stated on the record.  
 (2)  as follows:
23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:  
 a.  *Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22) (form JV-441), which is attached and incorporated by reference.*  
 b.  *Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22) (form JV-442), which is attached and incorporated by reference.*  
 c.  *Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.22) (form JV-443), which is attached and incorporated by reference.*

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24.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

26.  **Other findings and orders:**
- a.  See attached.
- b.  (Specify):

27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE    JUDGE PRO TEMPORE    COMMISSIONER    REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.22)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**
3.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e.  These efforts have proved unsuccessful.
4.  The child is an Indian child or there is reason to know that the child is an Indian child, and
  - a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and  
*(Name):*
  - b.  Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other <i>(specify):</i> _____		

**Placement**

5. **The child's out-of-home placement is necessary.**
6.  **The child's current placement is appropriate.**
7.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other *(specify):* \_\_\_\_\_
8.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently *(choose one)*:
  - a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
  - b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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8. d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.
9.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):
10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

### Important individuals

11.  **Child in an out-of-home placement for six months or longer**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

### Health

12.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian
- is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

### Selection of permanent plan

13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_



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- 15.
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
    - (1) (name):
    - (2) (name):
9. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):



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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
5.  There has been a change in the child's placement and the child is an Indian child, or there is reason to know that the child is an Indian child. Currently (*choose one*):
- a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
- b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.
6.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

**Reunification services**

7. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
- a.  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):

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7. (1)  who is making significant and consistent progress in a substance abuse treatment program.
- (2)  who is recently discharged from incarceration, institutionalization, or the custody of the Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return.
- (3)  who was a minor parent or a nonminor dependent parent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

and

b. **There is a substantial probability that the child may be returned to the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has

- (1) consistently and regularly contacted and visited the child;
- (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
- (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and
- (a)  to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
- (b)  to complete a treatment plan postdischarge from incarceration or institutionalization.
- c. The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause pursuant to Welf. and Inst. Code section 352 to continue the 18-month status review to (*specify date*):

8. **Reunification services are continued for the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

- a.  as previously ordered.
- b.  as modified
- (1)  on the record.
- (2)  in the case plan.

9.  **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or for a child 16 years of age or older in another planned permanent living arrangement (*specify date*):

**Important individuals**

10.  **Child in out-of-home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

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**Health**

11.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. **That hearing may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twenty-four-month permanency hearing date:

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.25)	CASE NUMBER:

**1. Twenty-four-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

<u>Party (name):</u>	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

#### 6. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

#### Advisements and waivers

##### 7. The court has informed and advised the

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

#### Case plan development

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e.  These efforts have proved unsuccessful.

**13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

14.  The child does not have siblings under the court's jurisdiction.

15.  The child has siblings under the court's jurisdiction. *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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17. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*:
19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:  
 a.  Social worker.  
 b.  Parent *(name)*:  
 c.  Surrogate parent *(name)*:  
 d.  Educational representative *(name)*:  
 e.  Other *(name)*:
21.  The child's education placement has changed since the last review hearing.  
 a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.  
 b.  The child is enrolled in school.  
 c.  The child is attending school.
22.  **Child 14 years of age or older:**  
 a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.  
 b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.  
 c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services  
 (1)  stated on the record.  
 (2)  as follows:
23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:  
 a.  *Twenty-Four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.  
 b.  *Twenty-Four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.
24.  **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form)*:  
 a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).  
 b.  *Visitation Attachment: Sibling* (form JV-401).  
 c.  *Visitation Attachment: Grandparent* (form JV-402).
25. **All prior orders not in conflict with this order remain in full force and effect.**

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26.  **Other findings and orders:**

- a.  See attached.  
 b.  (Specify):

27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)  
 b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
 (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:
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- c.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)  
 d.  Other (specify):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE     JUDGE PRO TEMPORE     COMMISSIONER     REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.



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**TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.25)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to prevent the breakup of the Indian family, and these efforts have proved unsuccessful;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e.  These efforts have proved unsuccessful.
5.  The child is an Indian child or  there is reason to know that the child is an Indian child, and
  - a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and  
(Name):
  - b.  Evidence regarding the prevailing social and culture practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child :
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other (specify): _____		
6.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (choose one):
  - a.  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
  - b.  An exhaustive search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - d.  An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
  - e.  The child is placed in accordance with the preferences established by the tribe; or
  - f.  The court finds that there is good cause to depart from the placement preferences based on the reasons set out in the record.
7.  **The child's current placement is appropriate.**

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8.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-455, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

9.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-455, item 27 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

### Selection of permanent plan

10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
11.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b.  The child remains in foster care with a permanent plan of (*specify*):
- (1)  Return home.
- (2)  Adoption.
- (3)  Tribal customary adoption.
- (4)  Legal guardianship.
- (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
- return home  establish legal guardianship
- place for adoption  place with a relative
- other (*specify*): \_\_\_\_\_
- The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

12.  **For children 16 years of age or older placed in another planned permanent living arrangement:**
- a. The court asked the child where he or she wants to live and the child provided the following information (*describe*): \_\_\_\_\_
- b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*): \_\_\_\_\_
- c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*): \_\_\_\_\_

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13.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
- c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.25(b).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

### Important individuals

14.  **Child in out-of-home placement for six months or longer**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

### Health

15.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.



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2. Petitioner requests that the court find these allegations to be true.
3.  Petitioner requests a hearing to determine whether the child should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707 for the following alleged offense(s) (*specify code section(s)*):

**4. Indian Child Welfare Act Inquiry**

- a.  I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the *Indian Child Inquiry Attachment* (form ICWA-010(A)).
- b.  Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry, and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and submit it to the court as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PETITIONER)

Number of pages attached: \_\_\_\_\_

**TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE  
SUPPORT OF THE CHILD**

You and your child may be required to pay any *restitution* owed to the victim and any fines or penalties ordered by the court. In addition, if you or family members other than your child receive services or legal assistance paid for by the court or county, you may be required to pay back the cost of those services unless the court or county decides that you can't afford to pay.

**RECORD SEALING**

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms), for more information about record sealing.

Root & Rebound Upcoming Tribal Justice Webinars:

**April 22, 2019**

**10:00AM – 12:00PM**

Tribal Reentry Advocacy LiveCast and Webinar with Practicing Law Institute (PLI)  
*Registration is now open for the PLI webinar at the link [here](#) and all eligible participants are encouraged to apply for a fee waiver or discount [here](#).*

**June 17, 2019**

**12:00PM – 1:00PM**

Tribal Reentry Advocacy Webinar with the Legal Aid Association of California (LAAC)  
*Registration will open soon; in the interim, contact us at [info@rootandrebound.org](mailto:info@rootandrebound.org) to receive webinar updates.*



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## Pathways to Justice 2019



Pathways to Justice 2019 will be from Monday, June 3 to Wednesday, June 5, 2019 at the Judicial Council of California Milton Marks Conference Center in San Francisco, CA. More information will be coming soon!

### Contact

Legal Aid Association of California

Oakland, CA

Phone: (510) 893-3000

Email: [info@laaonline.org](mailto:info@laaonline.org)

Tax ID: 33-0042690

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### No legal advice

The Legal Aid Association of California is not a direct services agency, and we do not provide direct legal assistance. To find an attorney, please use [LawHelpCA.org](http://LawHelpCA.org)

### What LAAC does

**Advocates** for increased funding for legal aid and better laws for legal aid organizations and their clients.

**Trains** legal aid providers. **Creates community** for our member organizations.





*The Pala Band of Mission Indians Invites you to*

**The 26th Annual State ICWA Conference**

# **ICWA AT A CROSSROADS:**

## **Shaping The Modern Village Through Tradition And Culture**

June 19-21st, 2019

Pala Casino Resort & Spa

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# 9th Annual Healing to Wellness Court Enhancement Training

September 10-12, 2019 | Palm Springs, CA

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## SAVE THE DATE

SEPTEMBER 10-12, 2019  
Palm Springs, CA

U.S. Department of Justice approval is pending.

The Tribal Healing to Wellness Court Enhancement Training ("Enhancement Training") is a tribal-specific national training for tribal problem-solving courts. The Enhancement Training features Wellness Court best practices and innovative strategies.

Training topics will cover adult criminal, juvenile delinquency, family dependency, DWI/DUI, and veterans models.

This training is free and open to all.



[2018 Agenda](#)

[2018 Speakers](#)

## WORKSHOP APPLICATIONS

Due: April 30, 2019

TLPI is now accepting workshop applications to present at the 9th Annual Tribal Healing to Wellness Court Enhancement Training.

[2019 Workshop Applications](#)



This conference has been approved by the U.S. Department of Justice.



The Enhancement Training is offered as part of the Healing to Wellness Courts Training and Technical Assistance project--A project delivered by the Tribal Law and Policy Institute (TLPI) under a grant from the Bureau of Justice Assistance.

Visit [WellnessCourts.org](http://WellnessCourts.org) for more information about the project. And, be sure to visit [Home.TLPI.org](http://Home.TLPI.org) for more information about TLPI's many projects, services, and free publications.

# Conference Update

## California Association of Collaborative Courts Annual Conference

October 28 - 30, 2019



**- Back by Popular Demand -  
David Mee-Lee, M.D.**

### **National Assessment/Treatment Expert Faculty**

**Dr. Mee-Lee** is a board-certified psychiatrist and is certified by the American Board of Addiction Medicine (ABAM). He trains and consults both nationally and internationally. Dr. Mee-Lee is chief editor of American Society of Addiction Medicine's (ASAM) Criteria for Treatment of the Addictive, Substance-Related, and Co-Occurring Conditions and is Senior Vice President of The Change Companies. Dr. Mee-Lee has over 30 years of experience in person-centered treatment and program development for people with co-occurring mental health and substance use conditions. He is also a Senior Fellow, Justice Programs Office (JPO) of the School of Public Affairs (SPA) at American University, Washington, DC.

**Holiday Inn – Downtown Arena**  
300 J Street  
Sacramento, CA 95814

**- Rooms are limited -  
Be sure to reserve your hotel  
room for the low conference rate!**  
[bit.ly/CACCCConf2019](http://bit.ly/CACCCConf2019)



CEUs: CAADE, DFAAP/CCAPP, LCSW/LMFT, MCLE, STC, Rules of Court  
**CONFERENCE REGISTRATION COMING SOON!**

[www.CA2C.org](http://www.CA2C.org)