



Probate Courts

Requirements Under the Indian Child Welfare Act (ICWA)* and State law

I. Determining Application and Definitions (at every hearing) (25 U.S.C. § 1903; Prob. Code, §§ 1449(c), 1459.5(a); Welf. & Inst. Code, §§ 224.2, 224.3(a); Cal. Rules of Court, rules 7.1015(d)(2), 5.481(a))¹

- A. ICWA applies to any proceeding, including guardianships and conservatorships under the Probate Code, that grant the temporary care, custody, and control of an “Indian child” to someone other than the child’s parents or Indian custodian when the parents or Indian custodian cannot have the child returned on demand or that results in the termination of parental rights to or the adoption of an Indian child.
- B. An “Indian child” is under the age of 18, unmarried and either (1) a member of an Indian tribe or (2) eligible for membership of an Indian tribe and the biological child of a member of a tribe.
- C. An “Indian custodian” is any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the parent of such child. *Note:* Indian custodianship does not require any formal documentation.

II. Voluntary Proceedings (*Note:* If the parent or Indian custodian consents to the guardianship of an Indian child, many of the procedural and substantive provisions of ICWA do not apply. However, for consent to be valid under ICWA, it must meet ALL of the requirements stated in this provision. (25 U.S.C. § 1913(a)–(b); Prob. Code, §1500.1))

- A. The consent must be in writing.
- B. The consent cannot be taken before or within 10 days after the birth of the child.
- C. The consent must be recorded before a judge.
- D. The judge must certify that the terms and consequences of the consent were fully explained to the parents or Indian custodian in detail. The judge must further certify either that the parents or Indian custodian fully understood the explanation in English or that it was interpreted in a language that the parents or Indian custodian understood.
- E. The parents or the Indian custodian have the right to withdraw their consent at any time and, on such withdrawal of consent, all provisions of the Indian Child Welfare Act, including inter alia 25 U.S.C. § 1913(b), shall apply. (*Note:* 25 U.S.C. § 1913(b) provides that a parent or Indian custodian may withdraw consent to a foster care placement under state law at any time and, on such withdrawal, the child shall be returned to the parent or Indian custodian. Probate Code section 1500.1(b), on the other hand, states that consent to guardianship of an Indian child may be withdrawn for any reason at any time **before the issuance of letters of guardianship** and the child shall be returned to the parent. Probate Code section 1459(d) states that where this code, other state law, or federal law provides a higher standard of protection, the court shall apply the higher state or federal standard.)

*All citations in this chart are to the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.; California Probate Code, California Welfare and Institutions Code, and California Rules of Court.

¹ Prob. Code, § 1459(b) and Cal. Rules of Court, rule 7.1015(d)(7), incorporate various provisions of the Welf. & Inst. Code and juvenile rules of court into probate proceedings.

III. Investigation and Inquiry (Welf. & Inst. Code, § 224.2; Prob. Code, § 1459.5(b); Cal. Rules of Court, rule 7.1015(d))

- A. **Initial investigation.** Before filing a petition, the petitioner must inquire of the child (if old enough), the parents, the Indian custodian, or others whether the child is or may be an Indian child and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition. (Prob. Code, § 1459.5(b); Cal. Rules of Court, rule 7.1015(c)(2).)
- B. **Inquiry of parents.** The parents and/or Indian custodian or other guardian of the child must, if possible, complete the *Parental Notification of Indian Status* (form ICWA-020). If the parents are available, this can be done before the first hearing. If not done before the first hearing and these people appear at the hearing, the court should order the parents, Indian custodian, or guardian to complete form ICWA-020 at that time. If form ICWA-020 is not yet completed and the parents and/or Indian custodian or guardian do not appear at the first hearing, the court will order the petitioners to use reasonable diligence to find the parents, Indian custodian, or guardian; advise them that the court has ordered them to complete form ICWA-020; and have them complete the form.
- C. If, after the use of reasonable diligence, the petitioner is not able to have the parents, Indian custodian, or guardian complete form ICWA-020 and a court investigator is appointed, the court investigator should make every effort to have the parents, Indian custodian, or guardian complete form ICWA-020. (Welf. & Inst. Code, § 224.2; Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.481(a)(1), 7.1015(c).)
- D. **Affirmative and continuing duty to inquire.** The court, court-connected investigator, and petitioners all have an affirmative and continuing duty to inquire whether a child is or may be an Indian child. Inquiry is not a one-time occurrence. Ongoing efforts should be made to determine the child's Indian status by asking relatives and others who may reasonably have information as they become available. (Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.481(a)(3), 7.1015(c).)
- E. **Concealing or falsifying facts concerning Indian status and sanctions.** Any person who falsifies or conceals a material fact concerning whether the child is an Indian child or counsels a party to do so is subject to sanctions by the court. (Welf. & Inst. Code, § 224.3(e); Prob. Code, § 1460.2(f).)
- F. **Further inquiry.** If, as a result of this inquiry or from any other source, any of the persons with a duty to inquire has "reason to believe" that the child is an Indian child, he or she must make further inquiry to learn about the child's Indian heritage. In particular, he or she must (1) ask family members, (2) contact the Bureau of Indian Affairs (BIA), and (3) contact the tribe and anyone else who might reasonably have information about the child's heritage. (Welf. & Inst. Code, § 224.2(3); Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.481(a)(4), 7.1015(c)(5)–(6).)
- G. **How do I believe or know? Tips to help figure out if you have reason to believe or 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 suggesting that the child may be an Indian child then you have "reason to believe";
 2. If the child, the child's parents, or an Indian custodian live in a predominantly Indian community, have a tribal identification card or the child has ever been the ward of a tribal court, you have; or
 3. 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 then you have "reason to know" the child is an Indian child. (Welf. & Inst. Code, § 224.2(d);

IV. ICWA Notice Requirements (25 U.S.C. § 1912(a); 25 C.F.R. § 23.11; Welf. & Inst. Code, §§ 224.2, 224.3; Prob. Code, §§ 1459.5(b), 1460.2; Cal. Rules of Court, rules 5.481(b), 7.1015(c))

- A. If you have "reason to know" (as described in section III F above) that the child is an Indian child, you must complete *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) and send it to the child's parents or guardians, the Indian custodian (if any), the tribe or tribes, the Sacramento office of the BIA, and/or the Secretary of the Interior as early as possible. (25 U.S.C. § 1912(a); Prob. Code, § 1460.2; Cal. Rules of

Court, rules 5.481(b), 7.1015 (e).) It is the responsibility of the petitioner or his or her attorney to gather the necessary information and to complete form ICWA-030. (Cal. Rules of Court, rule 7.1015(c)(2).) If the petitioner is represented by an attorney, it is the attorney's responsibility to serve form ICWA-030 in the prescribed manner. (Cal. Rules of Court, rule 7.1015(e).) If the petitioner is not represented by an attorney, it is the court clerk's responsibility to serve form ICWA-030. (Cal. Rules of Court, rule 7.1015(e).)

- B. **What to send.** Send mandatory *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), including attachments, a copy of the petition, and the child's birth certificate if it is available.
- C. **Who to provide notice to.** Notice must be sent to the child's parents, including the adoptive parents, the guardians, the Indian custodian (if any), the child's potential tribe or tribes, and either the Sacramento area director of the BIA (if you do not know the child's tribe) or the Secretary of the Interior (if you do). (See F. below.)
- D. **How to send notice.** Notice must be sent by registered or certified mail, return receipt requested, but if a tribe intervenes in the case you may thereafter send notice to it in the same manner as to other parties.
- E. **Where to send tribal notice.** When sending notices to the child's tribe or tribes, the notices must be addressed to the tribal chair or other tribal representative designated for receipt of ICWA notice. The list of designated agents for service of ICWA notice may be found at <https://www.bia.gov/bia/ois/dhs/icwa/agents-listing/>. Send notice to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the child's tribe, after which notice need only be sent to that tribe. (Welf. & Inst. Code, §§ 224.2, 224.3; Prob. Code, §§ 1459.5(b), 1460.2; Cal. Rules of Court, rules 5.481(b), 7.1015(c).)
- F. **Purpose of notice.** The purpose of notice is to let the tribes know of the involuntary child custody proceeding potentially involving an Indian child and allow the tribes to investigate to determine whether the child is a tribal member or eligible for membership and whether to participate in the proceedings. Therefore, it is important that the information you provide be complete and accurate. If it is not, your notice may be held to be inadequate. (25 U.S.C. § 1912(a); Welf. & Inst. Code, § 224.3; Cal. Rules of Court, rules 5.481(b), 7.1015(e).)
- G. **How to prove notice.** You must file **with the court** all notices, the **original** certified mail receipts, the **original** return receipts, and copies of all responses from a tribe or the BIA. *Note:* It is not sufficient for you to state that proper notice was sent.
- H. **How long to send notice?** Notice should be sent for every hearing so long as you have "reason to know" the child is an Indian child. This means you do not need to keep sending ICWA notice if all potential tribes respond that the child is not a member or eligible for membership or if the court makes a determination under Welfare and Institutions Code section 224.2(i)(2) or otherwise that ICWA does not apply.

V. Timelines and Continuances (25 U.S.C. § 1912(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3(d); Cal. Rules of Court, rules 5.482(a), 7.1015(b))

- A. No hearing can be held until at least 10 days after receipt of notice by the child's parents, Indian custodian, and tribe or tribes.
- B. On request, the parents, Indian custodian, and tribe or tribes are entitled to up to 20 additional days to prepare for a hearing.

VI. Intervention and Tribal Participation (25 U.S.C. § 1911(c); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.4; Cal. Rules of Court, rules 5.482(e), 5.534(i), and 7.1015(b))

- A. The child's parents, Indian custodian, and tribe may intervene at any point in the proceedings.
- B. The tribe may be represented by an attorney or may designate a nonattorney to act as tribal representative for the state court proceedings. In any case, the intervening tribe is entitled to all the rights of a party.
- C. If the tribe does not formally intervene as a party, it may still seek permission to exercise those rights listed in rule 5.534(i)(2) of the California Rules of Court.
- C. The tribe has a right to appear remotely at no cost. (Welf. & Inst. Code, §224.2(k).)
(Note: If the child is an Indian child, ICWA applies whether or not a tribe takes any formal steps in the proceedings.)

VII. Transfer to a Tribal Court (25 U.S.C. § 1911(b); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Cal. Rules of Court, rules 5.483, 7.1015(b))

- A. **Exclusive tribal jurisdiction and mandatory transfer.** If the child is already a ward of a tribal court or is domiciled or resides on a reservation of a tribe that exercises exclusive jurisdiction over child welfare proceedings, then the state court has no jurisdiction and the matter must be transferred to the tribal court. Currently there is only one tribe in California—the Washoe Tribe of California and Nevada—that exercises exclusive jurisdiction over child welfare proceedings. However many children in California are members of out-of-state tribes that may exercise exclusive jurisdiction. There are at least 10 tribal courts currently operating in California (and many more outside of California); therefore, Indian children in California may already be wards of tribal courts. It is important to determine the residence or domicile of an Indian child and determine whether or not the child is already a ward of a tribal court.
- B. **Concurrent Jurisdiction.** If a tribal court does not have exclusive jurisdiction, it may have concurrent jurisdiction, in which case the child’s parents, Indian custodian, or tribe may request that the matter be transferred to the tribal court. When such a request is made, the state court **must** transfer jurisdiction unless there is “good cause” not to transfer. What constitutes “good cause” and what factors the court is entitled and not entitled to consider is stated in rules 5.483(d) and 7.1015(b) of the California Rules of Court.

VIII. Right to Counsel (25 U.S.C. § 1912(b); Prob. Code, §1474)

- A. **Appointment of counsel.** Indigent parents and Indian custodians are entitled to court-appointed counsel in any involuntary child custody proceeding that could interfere with their custody of the Indian child.

IX. Duties of a Court investigator (Prob. Code, § 1513(h); Cal. Rules of Court, rules 5.481(a), 7.1015(d))

- A. **Inquiry.** Court-connected investigators share the affirmative and continuing duty to inquire whether a child subject to guardianship or conservatorship proceedings is or may be an Indian child.
- B. **Consultation with the child’s tribe.** In cases involving Indian children, the person making the investigation and report under Probate Code section 1513 is required to consult with the child’s tribe and include in the report the information provided by the tribe.

X. Active Efforts (25 U.S.C. § 1912(d); Prob. Code, § 1459.5(b) (incorporating Welf. & Inst. Code, § 361.7); Cal. Rules of Court, rules 5.485(c), 7.1015(b))

- A. In any involuntary proceeding involving an Indian child, the party seeking the order must provide evidence that “active efforts” have been made to provide remedial and rehabilitative programs and services to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
- B. Active efforts must be made in a manner consistent with the prevailing social and cultural conditions and way of life of the child’s tribe and must use the available resources of the extended family, the tribe, and other Indian services. This requirement applies to private individuals seeking guardianship of Indian children. Examples of activities that may constitute active efforts are lending money, offering housing, helping to find programs and services, driving to appointments, etc.
- C. Active efforts must include steps necessary to secure tribal membership for a child if the child is eligible for membership in a tribe. (Cal. Rules of Court, rules 5.484(c), 7.1015(b).)

XI. Evidentiary Requirements (25 USC § 1912(e); Prob. Code, § 1459.5(b); Welf & Inst. Code, §§ 361, 361.31, 361.7(c); Cal. Rules of Court, rules 5.485(a), 7.1015(b))

- A. Before an order is made for the involuntary “foster-care placement”² of an Indian child, there must be clear and convincing evidence,³ including the testimony of at least one qualified expert witness (QEW), that, taking into account the prevailing social and cultural standards of the child’s tribe, continued custody of the child with his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(e); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c); Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.484(a), 7.1015(b).)
- B. **Who can serve as a qualified expert witness?** A person knowledgeable in the prevailing social and cultural standards of the Indian child’s tribe, including that tribe’s family organization and child-rearing practices, can serve as a QEW. Likely persons include a member of the child’s tribe, an expert with substantial experience in the delivery of services to Indians (i.e., a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, historian, or elder), or another professional. (25 U.S.C. § 1912(e); Welf. & Inst. Code, § 224.6; Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.484(a), 7.1015(b).)

XII. Placement Preferences (25 U.S.C. § 1915; Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.31; Cal. Rules of Court, rules 5.485(b), 7.1015(b))

- A. **Foster-care placement preferences.** ICWA establishes a hierarchy of preferences for involuntary foster-care placement. Placements must be in the least restrictive setting that most approximates a family in which the child’s special needs, if any, may be met and which is in reasonable proximity to his or her home. In any foster-care placement, preference shall be given, in descending order, to (1) a member of the Indian child’s extended family; (2) a foster home licensed, approved, or specified by the Indian child’s tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) 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.
- B. **Tribe may alter order of placement.** The child’s tribe may by resolution adopt another order of preference. (25 U.S.C. § 1915(c); Welf. & Inst. Code, § 361.31; Prob. Code, § 1459.5(b); Cal. Rules of Court, rules 5.484(b)(4), 7.1015(b).)
- C. **Must consult with tribe on placement.** Any person involved in the placement of an Indian child must consult with the child’s tribe to secure a placement that complies with ICWA placement preferences. (Cal. Rules of Court, rules 5.482(g), 7.1015(b).)
- D. **Good cause to deviate.** Good cause may include the following considerations: the request of the parent or Indian custodian, the request of the Indian child when of sufficient age, the extraordinary physical or emotional needs of the Indian child as established by a QEW, or the unavailability of suitable families based on a documented diligent effort. The burden of establishing good cause to deviate is on the party requesting the deviation. (Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.31; Cal. Rules of Court, rules 5.484 (b), 7.1015(b).)

² ICWA defines such placement as any action removing an Indian child from a parent or Indian custodian for placement with another, when the parent or Indian custodian cannot have the child returned on demand but when parental rights have not been terminated. (25 U.S.C. § 1903(1)(i).)

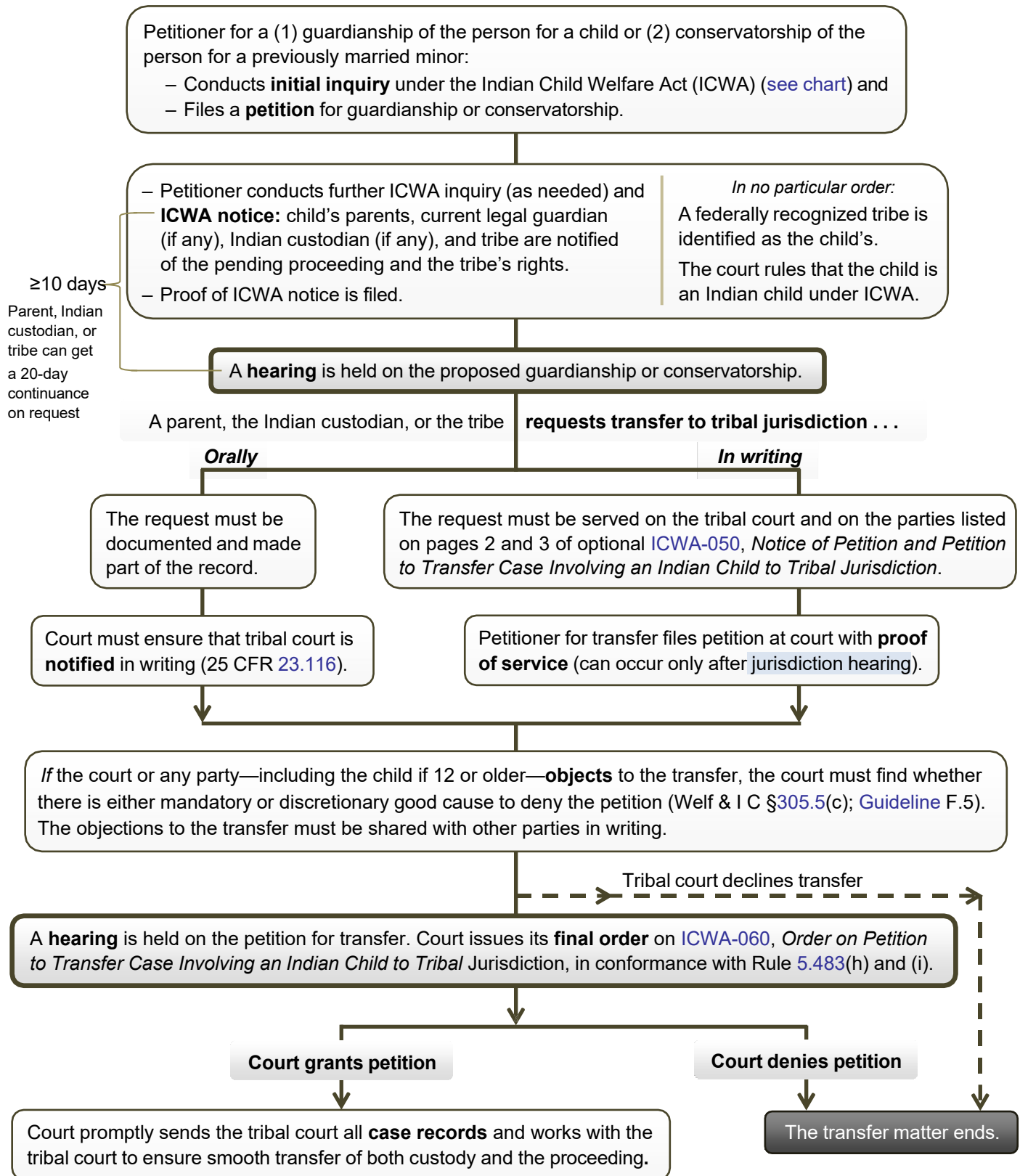
³ Note that ICWA and Senate Bill 678 mandate evidence “beyond a reasonable doubt” before an order terminating parental rights. This does not apply, however, in Probate Code proceedings because Prob. Code, § 1516.5(d) prohibits a proceeding to have a child declared free from the custody and control of one or both parents in a guardianship proceeding involving an Indian child.



PETITION TO TRANSFER CASE TO TRIBAL JURISDICTION

In a Probate Guardianship or Conservatorship of a Minor

Cal Rules of Ct [5.483](#), [7.1015](#); Welf & I C [§305.5](#); Prob C [§1459.5\(b\)](#);
25 USC [§1911](#); 25 CFR [§§23.115–23.119](#); [Guidelines F.3–F.6](#)



Juvenile court—dependency.

When there are concerns about abuse or neglect of children, the court may order that:

- ◆ The parent and the child receive services;
- ◆ The child be removed from the parents' care and live in relative or foster care;
- ◆ Parental rights be terminated; or
- ◆ The child be eligible for tribal customary adoption per the laws, traditions, and customs of the tribe without termination of parental rights.

Juvenile court—delinquency.

If a child breaks the law and is charged, the case may be heard in a delinquency court. (Depending on the child's age, history, and crime, a child may be tried as an adult in criminal court.) ICWA's requirements (other than inquiry) apply only to delinquency proceedings where the child is in foster care, or at risk of entering foster care, *and*:

- ◆ The proceeding arises from acts that would not be criminal if committed by an adult;
- ◆ The court is setting or considering a hearing to terminate parental rights; or
- ◆ The court makes a finding that the foster care placement arises from conditions in the child's home.

The court can order that the child:

- ◆ Live with the parent under court supervision;
- ◆ Be placed on probation and sent to live in a relative's home, a foster home, a group home, or an institution; or
- ◆ Be confined to a youth facility by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice or, if tried and convicted as an adult, a state prison.

FOR MORE INFORMATION

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit provides educational and technical assistance to those communities in relation to the Indian Child Welfare Act.

Statewide Directory of Services for Native American Families

www.courts.ca.gov/5807.htm

To learn more about the Tribal/State Programs Unit or for assistance, call Vida Castaneda at 415-865-7874 or visit

www.courts.ca.gov/programs-tribal.htm

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The Indian Child Welfare Act for Kin Caregivers & Foster Parents

Important Information for
Kin Caregivers and Foster Parents
Caring for American
Indian/Alaska Native Children
in California

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JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law created to keep American Indian/Alaska Native (AI/AN) children connected to their cultures and communities. After learning that many AI/AN children were being needlessly removed from their homes by public and private agencies, Congress passed ICWA in 1978 to protect the best interests of Indian children and “to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets minimum federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. California has also passed laws that expand ICWA’s legal scope and requirements.

A child is “ICWA eligible” if he or she is:

- ◆ Under 18 and unmarried; *or*
- ◆ An AB 12 nonminor dependent; *and*
- ◆ A member of a tribe or eligible for membership; *and*
- ◆ A biological child of a member of a federally recognized tribe.

What are the rights of ICWA-eligible children and families?

If ICWA eligible, the child and parents have certain rights, including:

- ◆ Assistance with tribal enrollment for the child;
- ◆ Entitlement to services created for AI/AN families (if available in the family’s area);
- ◆ Placement preferences to keep the child connected to his or her tribal community; and
- ◆ Additional assistance if the tribe intervenes on behalf of the family or child.

If I am not American Indian/Alaska Native, can I still be a foster parent or kin caregiver to an AI/AN child?

Yes, but please note that:

- ◆ ICWA has certain placement preferences that legally must be followed; see www.childsworld.ca.gov/res/pdf/ICWA/ICWAFactSheet.pdf.

- ◆ A tribe may intervene at any point, may provide additional services, and may request a change in placement; see www.courts.ca.gov/documents/icwa-Tribal-Participation-factsheet.pdf.
- ◆ Each tribe is different.
- ◆ Federally recognized tribes are independent, sovereign nations.
- ◆ The unique historical trauma of Native Americans is not widely understood by non-Native people. To learn more about tribal history and California’s tribal communities, visit www.courts.ca.gov/3066.htm.

How can a foster parent or kin caregiver work with an ICWA family?

- Let the social worker, probation officer, or the court know if:
 - ◆ The child or a family member says he or she has Native American ancestry. Use this handout as a guide: www.courts.ca.gov/documents/ICWA-Familyfillable_tree.pdf.
 - ◆ You are an “Indian custodian,” that is, an Indian person caring for an Indian child. ICWA gives the Indian custodian the same rights as a parent.
- Include culturally appropriate services in the child’s ICWA case plan. To find services in your area, view the statewide directory at www.courts.ca.gov/5807.htm.
- Connect the child to his or her tribal community through tribal events, classes, participation in ceremonies, and local inter-tribal events at tribal agencies or centers.
- Respect tribal representatives as you would any other government official.
- Learn more at www.courts.ca.gov/8075.htm#tab15022.

Will the child’s tribe know the child’s family is involved with the legal system?

Yes. If there is reason for a state or federal court to know that a family is American Indian/Alaska Native, then the tribe, parent, guardian, Indian custodian, and the Bureau of Indian Affairs must be notified by the

- ◆ Social worker in a dependency case;
- ◆ Probation officer in a delinquency case;
- ◆ Parent in a family court case; or
- ◆ Court clerk in a probate guardianship case.

What if the family doesn’t want the tribe to know about their court case?

The tribe has the right to intervene in an ICWA case whether the family agrees or not. The parents cannot waive the rights of the tribe.

What tribal resources are available?

Resources for AI/AN families in California that may not require membership in a federally recognized tribe may include:

- ◆ Health centers
- ◆ Substance abuse programs
- ◆ Title VII education programs
- ◆ Foster family agencies
- ◆ College recruiting programs
- ◆ Tribal TANF (Temporary Assistance for Needy Families) services

ICWA: The four types of court cases

Family court.

ICWA applies if custody or care of an Indian child may be given to someone other than the child’s parents or if parental rights are terminated.

Probate court.

ICWA applies to probate guardianship cases involving Indian children.

Quick Reference Sheet for Voluntary Proceedings



U.S. Department of the Interior, Bureau of Indian Affairs

Final Rule: Indian Child Custody Proceedings

25 CFR 23

Voluntary proceedings. A proceeding is “voluntary” only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to the placement for the Indian child, or if the proceeding is for voluntary termination of parental rights. The Indian Child Welfare Act (ICWA) and the regulations include provisions that apply to voluntary proceedings (highlighted by this guide).

The only voluntary placement to which ICWA does **not** apply to is a voluntary placement where the parent or Indian custodian can regain custody of the child **upon demand** – meaning simply upon verbal request, without any formalities or contingencies.

Inquiry. At the outset of the proceeding, the court will ask whether you know, or if there is a reason to know, the child is an “Indian child” under ICWA.

An “**Indian child**” is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of “reason to know” include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an “Indian child” does not consider factors outside the definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child’s blood quantum.

Pending verification. If there is a reason to know the child is an Indian child, the court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an “Indian child” under ICWA.

Due diligence to identify “Indian child’s Tribe” and verify membership/eligibility. Use 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 a member **or** a biological parent is a member and the child is eligible for membership.

Effect of a request for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an “Indian child.” If the consenting parent provides a written request for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal and the Tribe receiving information related to this inquiry must keep documents and information confidential.

Inquire as to domicile and residence. The court will look at whether the Indian child's domicile or residence is on a reservation **or** the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

Notice. ICWA and the regulations do not necessarily require notice to the other parent or Tribe, but the Department recommends notice to promote compliance with the placement preferences and stability for the Indian child.

Placement Preferences. Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

**ICWA's top preferred placement is a member of the Indian child's extended family.
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.**

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that:

- A prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.
- If the Indian child's parent(s) wants to request a placement that departs from the placement preferences, the parent(s) must attest that they have reviewed the placement options, if any, that comply with the order of preference.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Consent Safeguards. A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing, include the contents listed at § 23.126, and be recorded before a court of competent jurisdiction. Prior to accepting the consent, the court must:

- Explain to the parent or Indian custodian the terms and consequences of the consent in detail; and
- Explain to the parent or Indian custodian the limitations on withdrawal of consent listed in § 23.125(b)(2);
- Certify that the terms and consequences of the consent were explained on the record in detail (in the appropriate language) and were fully understood by the parent or Indian custodian.

A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

Withdrawal of Consent. The rule provides information for how a parent may withdraw consent to a voluntary foster-care placement, voluntary termination of parental rights, and voluntary adoption. See §§ 23.127 - 23.128. For example, a parent or Indian custodian may withdraw consent to an adoption any time prior to entry of the final adoption decree by filing a written document with the court of otherwise testifying before the court. Additional methods of withdrawing consent may be available under State law.

Adult Adoptees' Right to Information. An Indian who has reached age 18 who was the subject of an adoptive placement may apply to the court that entered the final adoption decree for information, and the court must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

2

IMPORTANT NOTE: This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

Active Efforts



U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR § 23.2, § 23.120

What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (see 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

Active efforts may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (6) Taking steps to keep siblings together whenever possible;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- (9) Monitoring progress and participation in services;
- (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- (11) Providing post-reunification services and monitoring.

Indian Child Welfare Act Information Sheet: Active Efforts in Probate Guardianship Cases

The *Indian Child Welfare Act* (25 U.S.C. §§1901 et. seq.) “ICWA” applies to any involuntary removal of an Indian child from the custody of his or her parent or Indian custodian for placement in the home of a guardian where the parent or Indian custodian cannot have the child returned upon demand.¹ ICWA protections apply to guardianship proceedings under the Probate Code involving an Indian child.²

Among ICWA’s substantive requirements is the requirement that “active efforts” have been made to “...provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”³ The purpose of this information sheet is to discuss how this “active efforts” requirement should be applied in a probate guardianship action involving an “Indian child”. While there are no reported California cases addressing the issue of “active efforts” in the context of a probate guardianship request, there are several reported decisions concerning the requirements in other situations where private individuals must meet the ICWA requirements and no government agency is involved.

The Probate Code references ICWA in several sections and in section 1459.5(b) incorporates by reference various provisions of the Welfare and Institutions Code, including section 361.7, which describes active efforts.

Under both ICWA and applicable state law, the party seeking the order removing the Indian child from the custody of his or her parent is responsible for providing evidence that active efforts have been provided.⁴ However, the evidence can include services and efforts provided by someone other than the petitioner.⁵ Evidence that the Indian parent had been provided with services to address his or her issues and those services were not successful may provide evidence to meet the active efforts requirement. In *In re Adoption of Hannah S.* mother sought an order terminating father’s parental rights so that the child’s step-father could adopt the Indian child. Father claimed *inter alia* that there was no showing of active efforts. The Court of Appeal held that evidence that mother had visited father in a tribal treatment program to address his substance abuse issues, that mother had attempted to reconcile with father despite violent acts towards her and had attempted to foster a relationship with the child until father’s conduct made that impossible.

Appellant has neither the ability nor the resources to provide him culturally appropriate services now that he is in state prison, nor is she required by ICWA to place herself or the

¹ 25 U.S.C. §1903 (1); Probate Code §§1449(c), 1459.5.

² *Guardianship of D.W.*, 221 Cal. App. 4th 242, 249 (2013)

³ 25 U.S.C. §1912(d).

⁴ *Id.*

⁵ See eg. *In re Adoption of Hannah S.*, 142 Cal.App.4th 988, 997 (2006)

minor at risk of physical or emotional harm by having direct contact with him... Appellant cannot be expected to be responsible for further attempts to alleviate the father's alcohol abuse and violence or to foster a parent-child relationship between the minor and the father when the father, despite appellant's prior support and understanding, perpetrated a vicious attack upon her ... (998)

In *In re Crystal K.*, 226 Cal.App.3d 655 (1990) the court similarly held in a step-parent adoption case involving an Indian child that the active efforts requirement applied and could be met by evidence

...proving, for example, that efforts have been made to contact the tribe to assist in maintaining the relationship between Joseph and Crystal, or that efforts have been made to enroll Joseph in child care, alcohol dependency, or similar social programs geared to native Alaskan culture or Indian culture, and that Joseph has spurned these efforts... (667)

Probate courts should look to the totality of efforts that have been made to assist the Indian parent with the issues underlying the guardianship petition, including any supports that the petitioner(s) may have provided such as respite care, financial and non-financial support such as food, clothing, housing, utilities, and assistance such as transportation, and finding services and assistance.

**ACTIVE EFFORTS
FINDINGS- ATTACHMENT TO THE MINUTES**

Case Number _____

The court finds the temporary/Legal Guardian(s) have employed the following **Active Efforts** to provide remedial services and rehabilitation toward reunification, but that those efforts have **failed** to prevent the breakup of the Indian family, and therefore **return** of the Minor to either/the parent would be **detrimental** to the Minor and that **placement** in the temporary/Legal Guardian(s) home has been **stable** and remains in the child's **best interest**. **The Active Efforts are:**

- ___(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- ___(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- ___(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- ___(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- ___(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- ___(6) Taking steps to keep siblings together whenever possible;
- ___(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- ___(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- ___(9) Monitoring progress and participation in services;
- ___(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- ___(11) Providing post-reunification services and monitoring.

Date: _____

Hon. Clare Keithley

Guide to the Appointment of Counsel

In cases under the Indian Child Welfare Act

Background

Section 1912 (b) of the Indian Child Welfare Act (25 USC 1901 *et seq.*) (see Appendix A) requires state courts to appoint counsel for indigent Indian parents and Indian custodians in all cases involving Indian children to which ICWA applies. ICWA applies to any case involving an Indian child, which may result in the foster care placement of the child, the adoption of the child, or the termination of parental rights of the parents of the child.¹ This can be a broader range of cases than those in which Courts in California generally appoint counsel. For instance it may require appointment of counsel for indigent Indian parents and Indian custodians in:

- Juvenile delinquency cases covered by ICWA;
- Probate guardianship cases covered by ICWA;
- Certain cases under the *Family Code* covered by ICWA and in particular cases seeking to terminate the parental rights of an Indian parent for the purposes of a step-parent adoption and cases in which custody of an Indian child may be granted to a non-parent over the objections of one or more of the parents.

California law² recognizes the requirements of the federal law to appoint counsel in these cases, but it does not make provision for payment of counsel in these cases. Federal regulations have been passed implementing the *Indian Child Welfare Act*. In particular, section 25 C.F.R. 23.13 (Appendix B) sets out the specific requirements and procedures in order to receive reimbursement from the Bureau of Indian Affairs for the appointment of counsel to an Indian parent or Indian custodian in a case involving and Indian child.

In general, in order to be eligible for reimbursement a case must:

- Involve an Indian child;
- Be covered by the Indian Child Welfare Act;
- Be one for which state law does not authorize the appointment of counsel;
- Involve **indigent** Indian parent(s) or Indian custodian(s).

¹ 25 U.S.C. § 1903. For a full explanation of application of ICWA see CJER Handbook on the Indian Child Welfare Act.

² See in particular Welf & Institutions Code § 317(a)(2) and Probate Code § 1474 at Appendix C

As soon as counsel is appointed, the State Court must send notice of the appointment to the Area Director for the Bureau of Indian Affairs. The notice **must include:**

- Name, address, and telephone number of attorney who has been appointed;
- Name and address of client for whom counsel is appointed;
- Relationship of client to child;
- Name of Indian child's tribe;
- Copy of the petition or complaint;
- Certification by the court that state law makes no provision for the appointment of counsel in such proceedings;
- Certification by the court that the Indian client is indigent.

A sample notice of appointment of counsel is attached as Form 1 to this guide.

Within ten days after receipt of the notice of appointment, the BIA Area Director is required to notify the court, the client and the attorney whether or not the appointment has been approved for reimbursement. If the appointment is not approved, the BIA Area Director must say why the appointment is not approved and the BIA Area Director's decision not to approve the appointment is subject to appeal.

After certification of the case, the federal regulations require submission of "vouchers" to the Area Director who certified the eligibility for payment. Vouchers can be submitted periodically and vouchers for all services must be submitted **no later than 90 days after completion of the legal action.**

A sample form of payment voucher is attached as Form 2 to this guide.

If all of the requirements set out in the statute and regulations are followed and the BIA Regional Director still denies payment an appeal may be made.

CAUTION!!! The Bureau of Indian Affairs routinely denies claims for payment on the basis that no funds have been appropriated by Congress to pay for the appointment of counsel in ICWA cases. Some individuals have been successful at appealing these denials.

Appendix A – 25 U.S.C. § 1912 (b)

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to [section 13](#) of this title.

Appendix B – 25 CFR § 23.13

§ 23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.

(a) When a state court appoints counsel for an indigent Indian party in an involuntary Indian child custody proceeding for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the BIA Area Director designated for that state in [§ 23.11](#). The notice shall include the following:

- (1) Name, address, and telephone number of attorney who has been appointed.
- (2) Name and address of client for whom counsel is appointed.
- (3) Relationship of client to child.
- (4) Name of Indian child's tribe.
- (5) Copy of the petition or complaint.
- (6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.
- (7) Certification by the court that the Indian client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the BIA unless:

- (1) The litigation does not involve a child custody proceeding as defined in [25 U.S.C. 1903 \(1\)](#);
- (2) The child who is the subject of the litigation is not an Indian child as defined in [25 U.S.C. 1903 \(4\)](#);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in [25 U.S.C. 1903 \(9\)](#), nor the child's Indian custodian as defined in [25 U.S.C. 1903 \(6\)](#);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice to the Area Director of appointment of counsel is incomplete; or

(6) Funds are not available for the particular fiscal year.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client, and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the BIA. If certification is denied, the notice shall include written reasons for that decision, together with a statement that complies with [25 CFR 2.7](#) and that informs the applicant that the decision may be appealed to the Assistant Secretary. The Assistant Secretary shall consider appeals under this subsection in accordance with [25 CFR 2.20 \(c\)](#) through [\(e\)](#). Appeal procedures shall be as set out in part 2 of this chapter.

(d) When determining attorney fees and expenses, the court shall:

(1) Determine the amount of payment due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in state juvenile delinquency proceedings; and

(2) Submit approved vouchers to the Area Director who certified eligibility for BIA payment, together with the court's certification that the amount requested is reasonable under the state standards considering the work actually performed in light of criteria that apply in determining fees and expenses for appointed counsel in state juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The amount of payment due the state-appointed counsel is inconsistent with the fees and expenses specified in § 23.13 (d)(1); or

(2) The client has not been certified previously as eligible under paragraph (c) of this section; or

(3) The voucher is submitted later than 90 days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

(f) No later than 15 days after receipt of a payment voucher, the Area Director shall send written notice to the court, the client, and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied, or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that complies with [25 CFR 2.7](#) and that informs the client that the decision may be appealed to the Interior Board of Indian Appeals in accordance with [25 CFR 2.4 \(e\)](#); [43 CFR 4.310](#) through [4.318](#) and [43 CFR 4.330](#) through [4.340](#).

(g) Failure of the Area Director to meet the deadline specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraph (f) of this section.

(h) Payment for appointed counsel does not extend to Indian tribes involved in state court child custody proceedings or to Indian families involved in Indian child custody proceedings in tribal courts.

Appendix C – California Statutes re. Appointment of Counsel in ICWA Cases

Welfare & Institutions Code § 317. Appointment of counsel

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

(2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the provisions of subsection (b) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of Title 25 of the Code of Federal Regulations are applicable.

Probate Code § 1474. Matters involving children of Indian ancestry

If an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel in proceedings described in Section 1459.5, the provisions of subsection (b) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of Title 25 of the Code of Federal Regulations are applicable.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	
NOTICE OF ORDER APPOINTING COUNSEL FOR INDIAN PARENT/CUSTODIAN OR CHILD	CASE NUMBER:

To: Regional Director
 Pacific Regional Office
 Bureau of Indian Affairs
 2800 Cottage Way
 Sacramento, CA 95825

You are hereby notified of appointment of counsel pursuant to 25 U.S.C. §1912(b) and 25 C.F.R. §23.13

1. The proceeding was heard:

On *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____
 Judge *(name)*: _____ Temporary Judge

Petitioner/Plaintiff present Attorney present *(name)*: _____
 Respondent/Defendant present Attorney present *(name)*: _____
 Other present Attorney present *(name)*: _____

THE COURT FINDS that this is a case covered by the *Indian Child Welfare Act* 25 U.S.C. §1901 et seq. requiring appointment of counsel pursuant to 25 U.S.C. §1912(b)

Counsel appointed _____ <i>(name of counsel)</i> Address: Phone number: _____ E-mail address (optional): _____

Party for whom counsel appointed _____ <i>(name of party)</i> Address: Phone number: _____ E-mail address (optional): _____
--

_____ is : <i>(check one)</i> <i>(Insert Name of Party)</i> <input type="checkbox"/> the mother of the Indian child involved in this proceeding <input type="checkbox"/> the father of the Indian child involved in this proceeding <input type="checkbox"/> the Indian custodian of the Indian child involved in this proceeding <input type="checkbox"/> the Indian child

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	CASE NUMBER:
--	--------------

(If counsel is being appointed for an Indian child specify) REASON FOR APPOINTMENT:

The child's Indian tribe is:

The court hereby certifies that state law makes no provision for appointment of counsel for the (check one)

Indian parent Indian custodian child in these proceedings

The court certifies that the party for whom counsel has been appointed is indigent.

The attorney shall be paid in accordance with the procedures and criteria used in determining the fees and expenses to be paid appointed counsel in juvenile delinquency proceedings.

THE COURT SO ORDERS.

Date:

JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:	
VOUCHER FOR PAYMENT OF COUNSEL APPOINTED IN INDIAN CHILD WELFARE ACT CASE	CASE NUMBER: _____

To: Regional Director
 Pacific Regional Office
 Bureau of Indian Affairs
 2800 Cottage Way
 Sacramento, CA 95825

On _____ this court appointed _____ as counsel for _____ pursuant to 25 U.S.C. §1912(b)
 (insert date) (insert name of Attorney) (insert name of party)
 and 25 C.F.R. §23.13. Notice of appointment was sent to the BIA Regional Director and was approved on _____
 (date).

PAYMENT TO:

Name: _____
 SSN/SC# _____
 Address: _____

Have you previously submitted a voucher in this case? Yes No
 If so, how much have you received? \$ _____

TIME IN COURT: Itemize

TOTAL IN COURT HOURS: _____

TIME OUT OF COURT: Itemize

TOTAL OUT OF COURT HOURS: _____

EXPENSES: Itemize

TOTAL EXPENSES: \$ _____

I hereby certify the above information to be just, correct, unpaid, and due by law.

Date _____

 Signature of Attorney

_____	Hours in Court	@\$	_____	= \$	_____
_____	Hours out of Court	@\$	_____	= \$	_____
	TOTAL			= \$	_____

APPROVED:

Date _____

 Judicial Officer

Indian Child Welfare Act

PROBATE COURT AUTHORITIES:2023

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California Probate Code Provisions Implementing ICWA

Sec. 1449. Indian child custody proceedings; definitions; membership in more than one tribe

(a) As used in this division, unless the context otherwise requires, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and “tribal court” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) When used in connection with an Indian child custody proceeding, the terms “extended family member” and “parent” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), including a voluntary or involuntary proceeding that may result in an Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement.

(d) When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe for purposes of the Indian child custody proceeding. The court shall make that determination as follows:

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

(A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.

(B) The child’s participation in activities of each tribe.

(C) The child’s fluency in the language of each tribe.

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

(E) The residence on or near one of the tribes’ reservations by the child parents, Indian custodian, or extended family members.

(F) Tribal membership of custodial parent or Indian custodian.

(G) Interest asserted by each tribe in response to the notice specified in Section 1460.2.

(H) The child’s self-identification.

(3) If an Indian child becomes a member of a tribe other than the one designated by the court as

the Indian child's tribe under paragraph (2), actions taken based on the court's determination prior to the child's becoming a tribal member shall continue to be valid.

Sec. 1459. Legislative findings and declarations; children of Indian ancestry

(a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether or not the child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated, or where the child has resided or been domiciled.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act, the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

(d) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher state or federal standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

Sec. 1459.5. Application of federal law to proceedings involving children of Indian ancestry

(a) The Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) shall apply to the following guardianship or conservatorship proceedings under this division when the proposed ward or conservatee is an Indian child:

(1) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents pursuant to Section 1500 and the parents retain the right to have custody of the child returned to them upon demand.

(2) To a proceeding to have an Indian child declared free from the custody and control of one or both parents brought in a guardianship proceeding.

(3) In any case in which the petition is a petition for conservatorship of the person of a minor whose marriage has been dissolved, the proposed conservator is seeking physical custody of the minor, the proposed conservator is not the natural parent or Indian custodian of the proposed conservatee and the natural parent or Indian custodian does not retain the right to have custody of the child returned to them upon demand.

(b) When the Indian Child Welfare Act applies to a proceeding under this division, the court shall apply Sections 224.3 to 224.6, inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare and Institutions Code, and the following rules from the California Rules of Court, as they read on January 1, 2005:

(1) Paragraph (7) of subdivision (b) of Rule 1410.

(2) Subdivision (i) of Rule 1412.

(c) In the provisions cited in subdivision (b), references to social workers, probation officers, county welfare department, or probation department shall be construed as meaning the party seeking a foster care placement, guardianship, or adoption.

Sec. 1460.2. Proposed ward or conservatee may be a child of Indian ancestry; notice to interested parties; requirements; time; proof

(a) If the court or petitioner knows or has reason to know that the proposed ward or conservatee may be an Indian child, notice shall comply with subdivision (b) in any case in which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1459.5.

(b) Any notice sent under this section shall be sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and shall comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.

(2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the Indian child's tribe in accordance with subdivision (d) of Section 1449, after which notice need only be sent to the tribe

determined to be the Indian child's tribe.

(4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the Indian child's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court.

(5) The notice shall include all of the following information:

(A) The name, birthdate, and birthplace of the Indian child, if known.

(B) The name of any Indian tribe in which the child is a member or may be eligible for membership, if known.

(C) All names known of the Indian child's biological parents, grandparents and great-grandparents or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.

(D) A copy of the petition.

(E) A copy of the child's birth certificate, if available.

(F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(G) A statement of the following:

(i) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding.

(ii) The right of the child's parents, Indian custodians, and tribe to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.

(iii) The right of the child's parents, Indian custodians, and tribe to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.

(iv) The potential legal consequences of the proceedings on the future custodial rights of the child's parents or Indian custodians.

(v) That if the parents or Indian custodians are unable to afford counsel, counsel shall be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(vi) That the information contained in the notice, petition, pleading, and other court documents is confidential, so any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding 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. Sec. 1901 et seq.).

(c) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After a tribe acknowledges that the child is a member or

eligible for membership in the tribe, or after the Indian child's tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (G) of paragraph (5) of subdivision (b) need not be included with the notice.

(d) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (e).

(e) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe or the Bureau of Indian Affairs. The parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to 10 days' notice when a lengthier notice period is required by statute.

(f) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

(g) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section, shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

Sec. 1474. Matters involving children of Indian ancestry appointment of counsel

If an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel in proceedings described in Section 1459.5, the provisions of subsection (b) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of Title 25 of the Code of Federal Regulations are applicable.

Sec. 1500.1. Consent by Indian child's parent; requirements

(a) Notwithstanding any other section in this part, and in accordance with Section 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a guardian of the person or of a guardian of the person and the estate given by an Indian child's parent is not valid unless both of the following occur:

(1) The consent is executed in writing at least 10 days after the child's birth and recorded before a judge.

(2) The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood.

(b) The parent of an Indian child may withdraw his or her consent to guardianship for any reason at any time prior to the issuance of letters of guardianship and the child shall be returned to the parent.

Sec. 1510. Petition for appointment; contents

(a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor. A relative may file a petition

for the appointment of a guardian under this section regardless of the relative's immigration status.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(6) In the case of a guardianship of the person involving an Indian child, any Indian custodian and the Indian child's tribe.

(d) If the petitioner or proposed guardian is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed guardian's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed ward for services performed as a guardian. The petitioner's or proposed guardian's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed guardian's fees or other compensation.

(2) Unless a petition for appointment of a temporary guardian that contains the statements required by this paragraph is filed together with a petition for appointment of a guardian, both of the following:

(A) A statement of the petitioner's or proposed guardian's license information.

(B) A statement explaining who engaged the petitioner or proposed guardian or how the petitioner or proposed guardian was engaged to file the petition for appointment of a guardian or to agree to accept the appointment as guardian and what prior relationship the petitioner or proposed guardian had with the proposed ward or the proposed ward's family or friends.

(e) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed guardian, the petition shall state that fact and name the institution.

(f) The petition shall state, so far as is known to the petitioner or proposed guardian, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans

Administration for the proposed ward.

(g) If the petitioner or proposed guardian has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.

(h) If the petitioners or proposed guardians have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners or proposed guardians shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(i) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(j) If the proposed ward is or may be an Indian child, the petition shall state that fact.

Sec. 1511. Notice of Hearing

(a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition. The court shall not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in any manner authorized by the court, on all of the following persons:

(1) The proposed ward if 12 years of age or older.

(2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward.

(3) The parents of the proposed ward.

(4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be delivered pursuant to Section 1215 to the addresses stated in the petition, or in any manner authorized by the court, to all of the following:

(1) The spouse named in the petition.

(2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of notice to any one or more or all of the relatives.

(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or 1542 to be given to the Director of State Hospitals or the Director of Developmental Services or the Director of Social Services, notice shall be delivered pursuant to Section 1215 as required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be delivered pursuant to Section 1215 to the office of

the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section.

(2) Has not been given notice as required by this section because the person cannot with reasonable diligence be given the notice or because the giving of notice to that person would be contrary to the interest of justice.

(i) If notice is required by Section 1460.2 to be given to an Indian custodian or tribe, notice shall be mailed as required.

Sec. 1513. Investigation; filing of report and recommendation concerning proposed guardianship; contents of report; confidentiality; application of section

(a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator shall make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate.

Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this

requirement for cases involving relative guardians.

(b) If the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code, the court may refer the matter to the local child welfare services agency to initiate an investigation of the referral pursuant to Sections 328 and 329 of the Welfare and Institutions Code and to report the findings of that investigation to the court. Pending completion of the investigation, the court may take any reasonable steps it deems appropriate to protect the child's safety, including, but not limited to, appointment of a temporary guardian or issuance of a temporary restraining order. If dependency proceedings are initiated, the guardianship proceedings shall be stayed in accordance with Section 304 of the Welfare and Institutions Code. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code. If a dependency proceeding is not initiated, the probate court shall retain jurisdiction to hear the guardianship matter.

(c) Prior to ruling on the petition for guardianship, the court shall read and consider all reports submitted pursuant to this section, which shall be reflected in the minutes or stated on the record. Any person who reports to the court pursuant to this section may be called and examined by any party to the proceeding.

(d) All reports authorized by this section are confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall make provisions to limit access to the reports exclusively to persons entitled to receipt. The reports shall be made available to all parties entitled to receipt no less than three court days before the hearing on the guardianship petition.

(e) For the purpose of writing either report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

(f) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.26 of the Welfare and Institutions Code.

(g) For purposes of this section, a "relative" means a person who is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution.

(h) In an Indian child custody proceeding, any person making an investigation and report shall consult with the Indian child's tribe and include in the report information provided by the tribe.

Sec. 1516.5. Proceeding to have child declared free from custody and control of one or both parents:

(a) A proceeding to have a child declared free from the custody and control of one or both parents may be brought in accordance with the procedures specified in Part 4 (commencing with Section 7800) of Division 12 of the Family Code within an existing guardianship proceeding, in an adoption action, or in a separate action filed for that purpose, if all of the following requirements are satisfied:

(1) One or both parents do not have the legal custody of the child.

(2) The child has been in the physical custody of the guardian for a period of not less than two years.

(3) The court finds that the child would benefit from being adopted by his or her guardian. In making this determination, the court shall consider all factors relating to the best interest of the child, including, but not limited to, the nature and extent of the relationship between all of the following:

(A) The child and the birth parent.

(B) The child and the guardian, including family members of the guardian.

(C) The child and any siblings or half siblings.

(b) The court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in subdivision (a). The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to Section 7851 of the Family Code.

(c) The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section.

(d) This section does not apply to any child who is a dependent of the juvenile court or to any Indian child.

Sec. 1601. Termination of a guardianship of an Indian child

Upon petition of the guardian, a parent, the minor ward, or, in the case of an Indian child custody proceeding, an Indian custodian or the ward's tribe, the court may make an order terminating the guardianship if the court determines that it is in the ward's best interest to terminate the guardianship. Upon petition of a ward who is 18 years of age or older, the court shall make an order terminating the guardianship. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

California Welfare and Institutions Code Provisions re. ICWA Incorporated by reference into the Probate Code

Sec. 224.2. Determination whether child is an Indian child; considerations; scope of Inquiry

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

(b) If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party

reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.

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

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

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

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

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

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

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

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

(e) If the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.

(1) There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).

(2) When there is reason to believe the child is an Indian child, further inquiry is necessary to help the court, social worker, or probation officer determine whether there is reason to know a child is an Indian child. Further inquiry includes, but is not limited to, all of the following:

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

(B) Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may

reasonably be expected to have information regarding the child's membership status or eligibility.

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

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

(g) If 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 shall 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.

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

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

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

(j) Notwithstanding a determination that the federal Indian Child Welfare Act of 1978 does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information required by Section 224.3 that was not previously available or included in the notice issued under Section 224.3, the party seeking placement shall provide the additional information to any tribes entitled to notice under Section 224.3 and to the Secretary of the Interior's designated agent.

(k) Notwithstanding any other provision, an Indian child's tribe may participate by telephone, or

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

Sec. 224.4. Intervention in proceedings by tribe

The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

Sec. 224.5. Full faith and credit to tribal proceedings and records

In an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.

Sec. 224.6. Testimony of qualified expert witnesses; qualifications; participation at hearings; written reports and recommendations

(a) When testimony of a "qualified expert witness" is required in an Indian child custody proceeding, a "qualified expert witness" shall be qualified to testify regarding whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and shall be qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. A person may be designated by the child's tribe as qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. The individual may not be an employee of the person or agency recommending foster care placement or termination of parental rights.

(b) In considering whether to remove an Indian child from the custody of a parent or Indian custodian or to terminate the parental rights of the parent of an Indian child, the court shall do both of the following:

(1) Require that a qualified expert witness testify regarding whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) Consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices.

(c) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(1) A person designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

(2) A member or citizen of the Indian child's tribe who is recognized by the tribal community as

knowledgeable in tribal customs as they pertain to family organization and child-rearing practices.

(3) An expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

(d) The court or any party may request the assistance of the Indian child's tribe or Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

(e) The court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony only if the parties have so stipulated in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily.

Sec. 305.5. Removal of Indian child from custody of parents by state or local authority; transfer of proceedings to tribal court

(a) In any Indian child custody proceeding as defined by Section 224.1, the court shall determine the child's residence and domicile as defined in Section 224.1 and in the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(b) If at any stage of an Indian child custody proceeding as defined in Section 224.1 and in Section 1903 of the federal Indian Child Welfare Act of 1978, the court receives information from the child welfare agency or any other source that suggests an Indian child is already a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, as recognized in Section 1911 of Title 25 of the United States Code, or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, the state court shall expeditiously notify the tribe and the tribal court of the pending dismissal based on the tribe's exclusive jurisdiction. The notification shall advise the tribe that the state court will dismiss the child custody proceeding upon receiving confirmation from the tribe that the child is a ward of a tribal court or subject to the tribe's exclusive jurisdiction.

(c) Unless otherwise agreed upon by the state and the tribe pursuant to Section 1919 of Title 25 of the United States Code, upon receipt of confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (b), the state court shall dismiss the child custody proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record. If the local agency has not already transferred physical custody of the Indian child to the child's tribe, the state court shall order that the local agency do so forthwith and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe. This subdivision does not preclude a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe.

(d) In the case of an Indian child who is not a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe, as described in subdivision (b), the state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, or the child's tribe, unless the state court finds good cause not to transfer. The petition

for transfer may be made orally on the record or in writing at any stage of the proceedings. Upon receipt of a petition for transfer, the state court shall terminate jurisdiction only after receiving confirmation that the tribal court has accepted the transfer. At the time that the state court terminates jurisdiction, the state court shall also do both of the following:

(1) Expeditiously provide the tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any state court record.

(2) Work with the tribal court to ensure that the transfer of the child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(e) (1) If a petition to transfer proceedings as described in subdivision (d) is made orally on the record or in writing, the state court shall find good cause to deny the petition if either of the following circumstances are shown to exist:

(A) One or both of the child's parents object to the transfer.

(B) The tribal court of the child's tribe declines the transfer.

(2) In determining whether good cause exists to deny a transfer, the state court shall not consider any of the following:

(A) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems.

(B) Whether the child custody proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.

(C) Whether there have been prior proceedings involving the child for which no transfer petition was filed.

(D) Whether the transfer could affect the placement of the child.

(E) Whether the Indian child has cultural connections with the tribe or its reservation.

(3) The burden of establishing good cause not to transfer shall be on the party opposing the transfer. If the state court believes, or any party asserts, that good cause not to transfer exists, the reasons for that belief or assertion shall be stated orally on the record or in writing and made available to all parties who are petitioning for the transfer, and the petitioner shall have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

(4) This section and Sections 1911 and 1918 of Title 25 of the United States Code shall not be construed as requiring a tribe to petition the Secretary of the Interior to reassume exclusive jurisdiction pursuant to Section 1918 of Title 25 of the United States Code prior to exercising jurisdiction over a proceeding transferred under subdivision (d).

(f) If any petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the state court shall decline jurisdiction over the petition and shall immediately return the child to his or her parent or Indian custodian, unless

retaining the child outside the custody of his or her parent or Indian custodian is necessary to prevent imminent physical damage or harm.

(g) This section shall not be construed to prevent the emergency removal of an Indian child who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, but is temporarily located off the reservation, from a parent or Indian custodian or the emergency placement of the child in a foster home or institution in order to prevent imminent physical damage or harm to the child. The state or local authority shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate an Indian child custody proceeding, transfer the child to the jurisdiction of the Indian child's tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(h) When an Indian child is transferred from a state court to an Indian tribe pursuant to subdivision (c), (d), or (g), the county shall, pursuant to Section 827.15, release the child case file to the tribe having jurisdiction.

Sec. 361.31. Placement of children with Indian ancestry; considerations; priority of placement in adoptions; record of foster care

(a) If an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section. The placement shall be analyzed each time there is a change in placement.

(b) Any foster care or guardianship placement of an Indian child, or any emergency removal of a child who is known to be, or if there is reason to know that the child is, an Indian child shall be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) A foster home licensed, approved, or specified by the child's tribe.

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(4) 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.

(c) In any adoptive placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) Other members or citizens of the child's tribe.

(3) Another Indian family.

(d) Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe, so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).

(e) Where appropriate, the placement preference of the Indian child, if of sufficient age, or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement.

(f) The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in meeting the placement preferences under this section. A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness, as defined in subdivision (c) of Section 224.6, who is knowledgeable regarding the social and cultural standards of the Indian community.

(g) Any person or court involved in the placement of an Indian child shall use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference established in this section and in the supervision of the placement.

(h) If a party asserts that good cause not to follow the placement preferences exists, the reason for that assertion shall be stated orally on the record or provided in writing to the parties to the Indian child custody proceeding and the court.

(i) The party seeking departure from the placement preferences shall bear the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(j) A state court's determination of good cause to depart from the placement preferences shall be made on the record or in writing and shall be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.

(3) The presence of a sibling attachment that can be maintained only through a particular placement.

(4) The extraordinary physical, mental, or emotional needs of the Indian child, including specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted. For purposes of this paragraph, the standard for determining whether a placement is unavailable shall conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian

child's parent or extended family members maintain social and cultural ties.

(k) A placement shall not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(l) A placement shall not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(m) A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the active efforts to comply with the applicable order of preference specified in this section, and shall be made available within 14 days of a request by the child's tribe.

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

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

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

(c) A foster care placement or guardianship shall not be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

California Rules of Court Implementing ICWA

Rule 7.51. Service of notice of hearing

(a) Direct notice required

(1) Except as otherwise permitted in the Probate Code, a notice sent by mail under Probate Code section 1220 must be mailed individually and directly to the person entitled to notice.

(2) A notice mailed to a person in care of another person is insufficient unless the person entitled to notice is an adult and has directed the party giving notice in writing to send the notice in care of the second person.

(3) Notices mailed to more than one person in the same household must be sent separately to each person.

(b) Notice to attorney

If a notice is required or permitted to be given to a person who is represented by an attorney of record in the proceeding, the notice must be sent as required in Probate Code section 1214.

(c) Notice to guardian or conservator

(1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator.

(2) A copy of the notice must also be sent to the ward or conservatee unless:

(A) The court dispenses with such notice; or

(B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is personally served on a California- resident guardian or conservator of the estate of the ward or conservatee.

(d) Notice to minor

Except as permitted in Probate Code section 1460.1 for guardianships, conservatorships, and certain protective proceedings under division 4 of the Probate Code, notice to a minor must be sent directly to the minor. A separate copy of the notice must be sent to the person or persons having legal custody of the minor, with whom the minor resides.

(e) Notice required in a decedent's estate when a beneficiary has died

(1) Notice when a beneficiary dies after the decedent

Notice must be sent to the personal representative of a beneficiary who died after the decedent and survived for a period required by the decedent's will. If no personal representative has been appointed for the postdeceased beneficiary, notice must be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate.

(2) Notice when a beneficiary of the decedent's will dies before the decedent

When a beneficiary under the will of the decedent died before the decedent or fails to survive the decedent for a period required by the decedent's will, notice must be sent to the persons named in the decedent's will as substitute beneficiaries of the gift to the predeceased beneficiary. If the decedent's will does not make a substitute disposition of that gift, notice must be sent as follows:

(A) If the predeceased beneficiary is a "transferee" under Probate Code section 21110(c), to the issue of the predeceased beneficiary determined under Probate Code section 240 and to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

(B) If the predeceased beneficiary is not a "transferee" under Probate Code section 21110(c), to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

(f) Notice when Indian Child Welfare Act may apply

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or specified conservatorship proceeding, notice must be given as prescribed in rule 7.1015(e).

Rule 7.1003. Confidential guardianship status report form

(a) Due date of status report

Each guardian required by the court to complete, sign, and file the status report authorized by Probate Code section 1513.2 must file the completed and signed report no later than one month after the anniversary of the date of the order appointing him or her as guardian. Co-guardians may sign and file their reports jointly.

(b) Court clerk's duties

The clerk of each court that requires guardians to file the status report authorized by Probate Code section 1513.2 must:

- (1) Determine the annual due date for the completed report from each appointed guardian required to file the report;
- (2) Fill in the due date for the completed report, in the space provided in the form for that purpose, on each blank copy of the form that must be mailed to appointed guardians under (3); and
- (3) Mail by first class mail to each appointed guardian no later than one month prior to the date the status report is due under (a) a blank copy of Confidential Guardianship Status Report (form GC-251) for each child under guardianship under the same case number.

(c) Access to status report

- (1) Except as provided in paragraph 2, the clerk must make a status report submitted under Probate Code section 1513.2 available only to persons served in the guardianship proceedings or their attorneys.
- (2) If the ward is an Indian child and the child's tribe has intervened in the proceeding, the clerk must also make the status report available to the representative designated by the child's tribe.
- (3) Paragraphs (1) and (2) are not intended to preclude an interested person or an Indian child's tribe that has not intervened from filing a petition for a court order directing the clerk to make the status report available to that person or tribe.

Rule 7.1013. Change of ward's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed below at least 15 days before the date of the proposed change and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

- (1) The ward if he or she is 12 years of age or older;
- (2) The attorney of record for the ward;
- (3) The ward's parents and any former Indian custodian;

- (4) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;
 - (5) A guardian of the ward's estate;
 - (6) Any person who was nominated as guardian of the ward but was not appointed guardian in the proceeding; and
 - (7) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.
- (b) Ward's personal residence

The "ward's personal residence" under (a) is the ward's residence when the first petition for appointment of a guardian was filed in the proceeding.

- (c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

- (1) The ward's attorney of record;
- (2) The ward's parents and any former Indian custodian;
- (3) Any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in the proceeding;
- (4) A guardian of the ward's estate;
- (5) Any person who was nominated as guardian of the ward but was not appointed guardian in the proceeding; and
- (6) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

Rule 7.1015. Guardianship and certain conservatorship proceedings involving Indian children (Prob. Code, §§ 1449, 1459, 1459.5, 1460.2, 1511(b), (i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963; 25 C.F.R. §§ 23.1–23.144)

- (a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

- (1) "Act" means the federal Indian Child Welfare Act (25 U.S.C. §§ 1901–1963).
- (2) "Petitioner" refers to:
 - (A) A petitioner for the appointment of a guardian of the person of a minor child; or

(B) A petitioner for the appointment of a conservator of the person of a formerly married minor child whose marriage has been dissolved.

(b) Applicability of this rule and rules 5.480 through 5.487

(1) This rule applies to the following proceedings under division 4 of the Probate Code:

(A) A guardianship of the person or of the person and estate, including a temporary guardianship, in which the proposed guardian of the person is not the proposed ward's biological parent or Indian custodian;

(B) A conservatorship or limited conservatorship of the person or of the person and estate, including a temporary conservatorship, of a formerly married minor whose marriage has been dissolved in which the proposed conservator of the person is not the proposed conservatee's biological parent or Indian custodian and is seeking physical custody of the proposed conservatee.

(2) Unless the context requires otherwise, rules 5.480 through 5.4878 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.488 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of the person and to the appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a guardian or conservator of the person of a child in a proceeding listed in (1), the duties and responsibilities of a petitioner under the Act and this rule become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner knows or possesses concerning the child to the appointed guardian or conservator.

(c) Inquiry

(1) The court, at the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner, have an affirmative and continuing duty to inquire whether each child who is the subject of a proceeding identified in (b)(1) is or may be an Indian child.

(2) Before filing a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child who is the subject of the proceeding, if the child is old enough, the parents, any Indian custodian or previously appointed guardian of the person, and available extended family members, as defined in 25 U.S.C. § 1903(2), or other persons having an interest in the child whether the child is or may be an Indian child, complete Indian Child Inquiry Attachment (form ICWA-010(A)), and attach that form to the petition.

(3) At the beginning of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, the court must:

(A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child; and

(C) Order the parent, Indian custodian, or existing guardian, if available, to complete Parental Notification of Indian Status (form ICWA-020).

(4) If the parent, Indian custodian, or guardian is not available at the beginning of a proceeding identified in (b)(1), the court must order the petitioner to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered that person to complete and deliver to the petitioner a Parental Notification of Indian Status (form ICWA-020).

(5) If the court or county investigator, the petitioner, or the attorney for a the petitioner knows or has reason to know or believe that an Indian child is the subject of the proceeding, but has not conclusively determined that the child is an Indian child, that person must, as soon as practicable, conduct further inquiry by:

(A) Interviewing the parents, Indian custodian, and “extended family members” to gather the information listed in Welfare and Institutions Code section 224.3(a)(5);

(B) Contacting the federal Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership;

(C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child’s tribal membership or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C); and

(D) Filing with the court documentation of that further inquiry, including, at a minimum:

(i) The names of all persons contacted and interviewed or attempted to be interviewed under subparagraph (A), the dates of those contacts and interviews, and any information gathered from them; and

(ii) The dates and methods of contact with the agencies listed in subparagraph (B) and the tribes and persons in subparagraph (C) and any information gathered as a result of those contacts.

(6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have sufficient evidence to determine that the child is an Indian child, and the further inquiry conducted in (5) has not been conducted, the court must order one or more of the persons named in (5) to conduct the inquiry and submit the documentation described in that paragraph.

(7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is an Indian child are those set forth in Welfare and Institutions Code section 224.2(d) and rule 5.481(b).

(d) Temporary guardianships and conservatorships of an Indian child

In addition to the applicable requirements in Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062, the following requirements apply to temporary guardianship and conservatorship proceedings if the court knows or has reason to know that the

proposed ward is an Indian child:

(1) Before appointing a temporary guardian or conservator of the person for an Indian child over the objection of a parent, tribe, or Indian custodian, the court must:

(A) Advise the parent or Indian custodian that if they cannot afford counsel, the court will appoint counsel for them under section 1912(b) of the Indian Child Welfare Act; and

(B) Find, in addition to facts in the petition establishing good cause for the appointment and any other showing the court may require under Probate Code section 2250(b), that the appointment is necessary to prevent imminent physical damage or harm to the child.

(2) At a hearing under Probate Code section 2250(f) or on a petition, including an ex parte petition, to terminate a temporary guardianship or conservatorship of an Indian child, the court must determine whether the temporary guardianship or conservatorship is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the temporary guardianship or conservatorship is no longer necessary, the court must terminate the temporary guardianship or conservatorship and, if a parent or Indian custodian is available, order the child returned to the physical custody of the parent or Indian custodian.

(3) Before extending a temporary guardianship or conservatorship of an Indian child, under Probate Code section 2257(b), more than 30 days from the date of its establishment, the court must, in addition to finding good cause for the extension, determine that:

(A) Terminating the temporary guardianship or conservatorship would subject the child to imminent physical damage or harm;

(B) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(C) It has not been possible to hold a hearing on the petition to appoint a guardian that complies with the substantive requirements of the Act for a foster care placement proceeding.

(e) Notice

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of Welfare and Institutions Code section 224.2(d) and rule 5.481(b), that an Indian child is the subject of the proceeding, the petitioner and the court must give notice of the proceeding and the right of the child's tribe to intervene in the manner prescribed by Welfare and Institutions Code section 224.3(a) and rule 5.481(c) to the child's parents, the child's Indian custodian or previously appointed guardian of the person, if any, and the child's tribe or, if the child's tribe has not been determined, all tribes of which the child may be a member or eligible for membership.

Rule 5.480. Application

This chapter addressing the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) as codified in various sections of the Family Code, Probate Code, and Welfare and Institutions Codes, applies to most proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents;

termination of parental rights; preadoptive placement; or adoptive placement. This chapter applies to:

- (1) Proceedings under Welfare and Institutions Code section 300 et seq.;
- (2) Proceedings under Welfare and Institutions Code sections 601 and 602 et seq., whenever the child is either in foster care or at risk of entering foster care. In these proceedings, inquiry is required in accordance with rule 5.481(a). The other requirements of this chapter contained in rules 5.481 through 5.487 apply only if:
 - (A) The court's jurisdiction is based on conduct that would not be criminal if the child were 18 years of age or over;
 - (B) The court has found that placement outside the home of the parent or legal guardian is based entirely on harmful conditions within the child's home. Without a specific finding, it is presumed that placement outside the home is based at least in part on the child's criminal conduct, and this chapter shall not apply; or
 - (C) The court is setting a hearing to terminate parental rights of the child's parents.
- (3) Proceedings under Family Code section 3041;
- (4) Proceedings under the Family Code resulting in adoption or termination of parental rights; and
- (5) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand.

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

- (1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party reporting child abuse or neglect, whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or in an Alaska Native village, and must complete the Indian Child Inquiry Attachment (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.

(2) At the first appearance by a parent, Indian custodian, or guardian, and all other participants in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights, proceeding to declare a child free of the custody and control of one or both parents, preadoptive placement, or adoption proceeding; and at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement, as described in Welfare and Institutions Code section 224.1(d)(1), or that may result in an order for guardianship, conservatorship, or custody under Family Code section 3041; the court must:

(A) Ask each participant present whether the participant knows or has reason to know the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child; and

(C) Order the parent, Indian custodian, or guardian, if available, to complete Parental Notification of Indian Status (form ICWA-020).

(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete Parental Notification of Indian Status (form ICWA-020).

(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know or believe that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 United States Code section 1903, to gather the information listed in Welfare and Institutions Code section 224.3(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5);

(B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child’s membership status or eligibility. These contacts must at a minimum include the contacts and sharing of information listed in Welfare and Institutions Code section 224.2(e)(3).

(5) The petitioner must on an ongoing basis include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child’s Indian status, as well as evidence of how and when this information was provided to the relevant tribes. Whenever new information is received, that information must be expeditiously provided to the tribes.

(b) Reason to know the child is an Indian child

- (1) There is reason to know a child involved in a proceeding is an Indian child if:
 - (A) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court the child is an Indian child;
 - (B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village;
 - (C) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
 - (D) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
 - (E) The court is informed that the child is or has been a ward of a tribal court; or
 - (F) The court is informed that either parent or the child possesses an identification card indicating membership or citizenship in an Indian tribe.
- (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 there is no reason to know the child is an Indian child and 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; or
 - (B) Find it is known the child is an Indian child, and that the Indian Child Welfare Act applies, and order compliance with the requirements of the act, including notice in accordance with (c) below; or
 - (C) Find there is reason to know 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.
- (4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, must be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law

or custom.

(c) Notice

(1) If it is known or there is reason to know 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 224.3, Family Code section 180, and Probate Code section 1460.2 for all initial hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, or an order of guardianship, conservatorship, or custody under Family Code section 3041. For all other hearings, and for continued hearings, notice must be provided to the child's parents, legal guardian or Indian custodian, and tribe in accordance with Welfare and Institutions Code sections 292, 293, and 295.

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send Notice of Child Custody Proceeding for Indian Child (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2) in any case described by rule 5.480(2)(A)–(C).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (b)(1).

(4) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

Rule 5.481 amended effective January 1, 2020; adopted effective January 1, 2008; previously amended effective January 1, 2013, and July 1, 2013.

Advisory Committee Comment

Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence, information sharing, and notice under the Indian Child Welfare Act and state law.

Rule 5.482. Proceedings after notice

(a) Timing of proceedings

(1) If it is known or there is reason to know a child is an Indian child, a court hearing that may result in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs has received notice, except as stated in sections (a)(2) and (3).

(2) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster

care described by rule 5.480(2)(A)–(C) may proceed without delay, provided that:

(A) Notice of the detention hearing must be given as soon as possible after the filing of the petition initiating the proceeding; and

(B) Proof of notice must be filed with the court within 10 days after the filing of the petition.

(3) The parent, Indian custodian, or tribe must be granted a continuance, if requested, of up to 20 days to prepare for the proceeding, except for specified hearings in the following circumstances:

(A) The detention hearing in dependency cases and in delinquency cases described by rule 5.480(2)(A)–(C);

(B) The jurisdiction hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds the continuance would not conform to speedy trial considerations under Welfare and Institutions Code section 657; and

(C) The disposition hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.485 when holding the disposition hearing.

(b) Proof of notice

Proof of notice in accordance with this rule must be filed with the court in advance of the hearing, except for those excluded by (a)(2) and (3), and must include Notice of Child Custody Proceeding for Indian Child (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.

(c) Determination of applicability of the Indian Child Welfare Act

(1) If the court finds that proper and adequate inquiry, further inquiry, and due diligence were conducted under Welfare and Institutions Code section 224.2 and, if applicable, notice provided under Welfare and Institutions Code section 224.3, and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the Indian Child Welfare Act does not apply to the proceedings.

(2) The determination of the court that the Indian Child Welfare Act does not apply in (c)(1) is subject to reversal based on sufficiency of the evidence. The court must reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry under Welfare and Institutions Code section 224.3.

(d) Intervention

The Indian child's tribe and Indian custodian are entitled to intervene, orally or in writing, at any point in the proceedings. The tribe may, but is not required to, file with the court the Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child (form ICWA-040) to give notice of its intent to intervene.

(e) Posthearing actions

Whenever an Indian child is removed from a guardian, conservator, other custodian, foster home, or institution for placement with a different guardian, conservator, custodian, foster home, institution, or preadoptive or adoptive home, the placement must comply with the placement preferences and standards specified in Welfare and Institutions Code section 361.31.

(f) Consultation with tribe

Any person or court involved in the placement of an Indian child in a proceeding described by rule 5.480 must use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference specified in rule 5.485.

(g) Tribal appearance by telephone or other remote means

(1) In any proceeding governed by the Indian Child Welfare Act involving an Indian child held between January 1, 2022, and June 30, 2023, the child's tribe may appear by remote means at any proceeding as provided by the applicable provisions of rule 3.672, and during that time, paragraph (2) is suspended.

(2) In any proceeding governed by the Indian Child Welfare Act involving an Indian child, the child's tribe may, on notification to the court, appear at any hearing, including the detention hearing, by telephone or other computerized remote means. The method of appearance may be determined by the court consistent with court capacity and contractual obligations, and taking into account the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided.

(3) No fee may be charged to a tribe for a telephonic or other remote appearance.

Rule 5.483. Dismissal and transfer of case

(a) Dismissal when tribal court has exclusive jurisdiction

Subject to the terms of any agreement between the state and the tribe under 25 United States Code section 1919:

(1) If the court receives information at any stage of the proceeding suggesting that the Indian child is already the ward of the tribal court or is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under 25 United States Code section 1911 or 1918 the court must expeditiously notify the tribe and the tribal court that it intends to dismiss the case upon receiving confirmation from the tribe or tribal court that the child is a ward of the tribal court or subject to the tribe's exclusive jurisdiction.

(2) When the court receives confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the state court must dismiss the proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record. If the local agency has not already transferred physical custody of the Indian child to the child's tribe, the state court must order that the local agency do so forthwith and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe.

(3) This section does not preclude an emergency removal consistent with 25 United States Code section 1922, 25 Code of Federal Regulations part 23.113, and Welfare and Institutions Code section 319 to protect the child from risk of imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe.

(b) Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction

Unless the court finds good cause under subdivision (d), the court must order transfer of a case to the tribal court of the child's tribe if the parent, the Indian custodian, or the child's tribe requests.

(c) Documentation of request to transfer a case to tribal court

(1) The parent, the Indian custodian, or the child's tribe may request transfer of the case, either orally or in writing or by filing Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-050).

If the request is made orally, the court must document the request and make it part of the record.

(2) Upon receipt of a transfer petition, the state court must ensure that the tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the tribal court wishes to decline the transfer.

(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction

(1) Either of the following circumstances constitutes mandatory good cause to deny a request to transfer:

(A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record; or

(B) The tribal court of the child's tribe declines the transfer.

(2) In assessing whether good cause to deny the transfer exists, the court must not consider:

(A) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems;

(B) Whether the child custody proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage. It must not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer;

(C) Whether there have been prior proceedings involving the child for which no transfer petition was filed;

(D) Whether transfer could affect the placement of the child; or

(E) Whether the Indian child has cultural connections with the tribe or its reservation.

(3) If it appears that there is good cause to deny a transfer, the court must hold an evidentiary hearing on the transfer and make its findings on the record.

(e) Evidentiary burdens

(1) The burden of establishing good cause to deny a request to transfer is on the party opposing the transfer.

(2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated orally on the record or in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

(f) Order on request to transfer

(1) The court must issue its final order on the Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:

(A) All of the findings, orders, or modifications of orders that have been made in the case;

(B) The name and address of the tribe to which jurisdiction is being transferred;

(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;

(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and

(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.

(g) Advisement when transfer order granted

When the court grants a petition transferring a case to tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b) and rule 5.483, the court must advise the parties orally and in writing that any appeal to the order for transfer to a tribal court must be made before the transfer to tribal jurisdiction is finalized and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

(h) Proceeding after transfer

When, under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), the court transfers any proceeding listed in rule 5.480, the court must proceed as follows:

(1) Dismiss the proceeding or terminate jurisdiction if the court has received proof that the tribal court has accepted the transfer of jurisdiction;

(2) Make an order transferring the physical custody of the child to a designated representative

of the tribal court (not necessarily the same “designated representative” identified in the Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child (form ICWA-040)); and

(3) Include in the Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) all contact information for the designated tribal court representative.

Advisory Committee Comment

Once a transfer to tribal court is finalized as provided in rule 5.483(h), the appellate court lacks jurisdiction to order the case returned to state court (In re M.M. (2007) 154 Cal.App.4th 897).

As stated by the Court of Appeal in In re M.M., the juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child “pending review on appeal or for any other period or periods that it may deem appropriate” (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See Nuckolls v. Bank of California, Nat. Assn. (1936) 7 Cal.2d 574, 577 [61 P.2d 927] [“Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court.”].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112).

Subdivision (g) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.484. Emergency proceedings involving an Indian child

(a) Standards for removal

Whenever it is known or there is reason to know the case involves an Indian child, the court may not order an emergency removal or placement of the child without a finding that the removal or placement is necessary to prevent imminent physical damage or harm to the child. The petition requesting emergency removal or continued emergency placement of the child or its accompanying documents must contain the following:

- (1) A statement of the risk of imminent physical damage or harm to the child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child;
- (2) The name, age, and last known address of the Indian child;
- (3) The name and address of the child’s parents and Indian custodian, if any;
- (4) The steps taken to provide notice to the child’s parents, Indian custodian, and tribe about the emergency proceeding;
- (5) If the child’s parents and Indian custodian 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 custodian;
- (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

(1) Whenever it is known or there is reason to know 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 on Request for Ex Parte Hearing to Return Physical Custody of an Indian Child (form ICWA-070) to determine whether the emergency situation has ended.

(2) If the request provides evidence of new information establishing that the emergency placement is no longer necessary, the court must promptly schedule a hearing. At the hearing the court must 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 must order the child returned to the physical custody of the parents or Indian custodian.

(3) In accordance with rules 3.10 and 3.20, this procedure is governed by the provisions of division 6, chapter 3 and division 11, chapter 4 of title 3 of the California Rules of Court.

(c) Time limitation on emergency proceedings

An emergency removal must not continue for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(3) It has not been possible to have a hearing that complies with the substantive requirements of the Indian Child Welfare Act for a foster care placement proceeding.

Rule 5.485. Placement of an Indian child

(a) Evidentiary burdens

In any child custody proceeding listed in rule 5.480, the court may not order placement of an Indian child unless it finds by clear and convincing evidence that continued custody with the

parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage and it considers evidence regarding prevailing social and cultural standards of the child's tribe, including that tribe's family organization and child-rearing practices.

(1) Testimony by a "qualified expert witness," as defined in Welfare and Institutions Code section 224.6, Family Code section 177(a), and Probate Code section 1459.5(b), is required before a court orders a child placed in foster care or terminates parental rights.

(2) Stipulation by the parent, Indian custodian, or tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe has been fully advised of the requirements of the Indian Child Welfare Act and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing.

(3) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of Welfare and Institutions Code section 361, will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(b) Standards and preferences in placement of an Indian child

(1) All placements of an Indian child must be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met.

(2) Unless the court finds by clear and convincing evidence that there is good cause to deviate from them, whenever it is known or there is reason to know the child is an Indian child, all placement in any proceeding listed in rules 5.480 and 5.484 must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.

(3) The court must analyze the availability of placements within the placement preferences in descending order without skipping. The court may deviate from the preference order only for good cause, which may include the following considerations:

(A) The requests of the parent or Indian custodian if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(B) The requests of the Indian child, when of sufficient age and capacity to understand the decision being made;

(C) The presence of a sibling attachment that can be maintained only through a particular placement;

(D) The extraordinary physical, mental, or emotional needs of the Indian child, including specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or

(E) The unavailability of a suitable placement within the placement preferences based on a documented diligent effort to identify placements meeting the preference criteria. The standard for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or

with which the Indian child's parent or extended family members maintain social and cultural ties.

(4) The placement preferences must be analyzed and considered each time there is a change in the child's placement. A finding that there is good cause to deviate from the placement preferences does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

(5) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another or solely on the basis of ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the Indian Child Welfare Act.

(6) The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.

(7) The preferences and wishes of the Indian child, when of sufficient age, and the parent must be considered, and weight given to a consenting parent's request for anonymity.

(8) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial events of the child's tribe.

(c) Active efforts

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful. These active efforts must include affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite the child with his or her family, must be tailored to the facts and circumstances of the case, and must be consistent with the requirements of Welfare and Institutions Code section 224.1(f).

(1) The active efforts must be documented in detail in the record.

(2) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(3) Active efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

Rule 5.486. Termination of parental rights

(a) Evidentiary burdens

The court may only terminate parental rights to an Indian child or declare an Indian child free of the custody and control of one or both parents if at the hearing terminating parental rights or declaring the child free of the custody and control of one or both parents, the court:

- (1) Finds by clear and convincing evidence that active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family were made; and
- (2) Makes a determination, supported by evidence beyond a reasonable doubt, including testimony of one or more “qualified expert witnesses” as defined in Welfare and Institutions Code section 224.6 and Family Code section 177(a), that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(b) When parental rights may not be terminated

The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child’s best interest. Such a reason may include:

- (1) 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, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, “relative” must include an “extended family member,” as defined in the Indian Child Welfare Act (25 U.S.C. § 1903(2));
- (2) 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; or
- (3) The child’s tribe has identified tribal customary adoption, guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.487. Petition to invalidate orders

(a) Who may petition

Any Indian child who is the subject of any action for foster-care placement, guardianship or conservatorship placement, custody placement under Family Code section 3041, declaration freeing a child from the custody and control of one or both parents, preadoptive placement, adoptive placement, or termination of parental rights; any parent or Indian custodian from whose custody such child was removed; and the Indian child’s tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

(b) Court of competent jurisdiction

If the Indian child is a dependent child or ward of the juvenile court or the subject of a pending petition, the juvenile court is a court of competent jurisdiction with the authority to hear the request to invalidate the foster placement or termination of parental rights.

(c) Request to return custody of the Indian child

If a final decree of adoption is vacated or set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may request a return of custody of the Indian child.

- (1) The court must reinstate jurisdiction.
- (2) In a juvenile case, the juvenile court must hold a new disposition hearing in accordance with 25 United States Code section 1901 et seq. where the court may consider all placement options as stated in Welfare and Institutions Code sections 361.31(b), (c), (d), and (h).
- (3) The court may consider placement with a biological parent or prior Indian custodian if the biological parent or prior Indian custodian can show that placement with him or her is not detrimental to the child and that the placement is in the best interests of the child.
- (4) The hearing on the request to return custody of an Indian child must be conducted in accordance with statutory requirements and the relevant sections of this rule.