



Tribal Issues in State Court

Speakers: Kimberly Cluff, JD, Legal Director, California Tribal Families Coalition; Geneva Shaw, MSW, Training and Curriculum Development Director, California Tribal Families Coalition and Member of the Hoopa Valley Tribe

Live Webinar: October 24, 2025

Introduction:

Vida Castaneda: Good afternoon, everybody, and welcome. My name is Vida Castaneda. I'm the Senior Analyst in the Tribal State Programs Unit at the Judicial Council of California. Today's webinar is "*Tribal Issues in State Courts*", and we are so happy to have our speakers today, Kimberly Cluff and Geneva Shaw. So, Geneva, I will pass it to you. Very quickly, before I do that, if you need closed captioning settings, you are able to do that within your settings function here on Zoom. If you have any tech questions, Amanda Morris, she will place her email in the chat, you can reach out to her, and if you have, CEU questions, you can also reach out to her. Geneva.

Slide 1 & 2:

Geneva Shaw: Thank you so much, Vida, and again, thank you to everyone who's joining us here today. Welcome. As my colleague Kimberly Cluff, pulls up our slide deck to introduce our session today, I will briefly introduce myself. As mentioned, my name is Geneva Shaw, and I am a social worker. I also have the honor and privilege of serving as the training director for California Tribal Families Coalition. We'll introduce ourselves a little more in depth here on the next slide, but as you see, the focus of our time together are tribal issues in state courts, more on that momentarily. So again, welcome. I personally, I'm tuning in today from the beautiful homelands of the Wiyot peoples up here on the very Northern California coastline in Humboldt County. Again, I'm a professional social worker. I'm also an enrolled member of the Hoopa Valley Tribe. I also come from Yurok and Karuk peoples, all centered in and around the Humboldt County region, where I live, where I love, where I raise my beautiful family, and so thrilled to be here today with my colleague. Miss Kimberly Cluff, would you please introduce yourself to these beautiful people this afternoon?

Kimberly Cluff: I will! Thank you, Geneva, and thank you, Vida, and thank you, Amanda. My name is Kimberly Cluff. I have the honor of serving as the legal director at California Tribal Families Coalition, so I get to work with Geneva, at CTFC, and I am coming to you from the lands of the Chumash people in a town now known as Ojai, California. I am law-trained, and also have a policy degree from UC Berkeley, and in my role at CTFC, I get to work with a bunch of amazing folks as we move forward our, our mission. And oh, are we gonna ask folks to put their, their info in the chat?



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Geneva Shaw: Yeah, here in a slide or two, and first, as you advance the slide, Kimberly, we will also introduce. The organization that we have casually mentioned, which is California Tribal Families Coalition. If you're not familiar with the work of the Coalition, I strongly encourage you to check out our website, as you see here on this slide, at caltribalfamilies.org, where you can find a wealth of information on legislative and policy updates here in the state of California relative to the field of child welfare, Indian child welfare. You can also find additional training resources and beyond, and just a little bit about the work of CTFC, if you are unfamiliar. We are a tribally led organization. Approximately 50 federally recognized tribes here in the state of California are members of our organization. We are also led by a board of 13 duly elected tribal leaders who really give us direction and voice from their specific communities, you know, the work that they're doing across the state to really guide and lead our collective efforts, and really strengthening not just the compliance with the Indian Child Welfare Act here in California, but to really continue to push the dial and really help ICWA reach her full potential in the way that our ancestors really envisioned for ICWA. So, not only do we work in, kind of, the training space, which is part of what brings us all here together today. We also, which Kimberly, as the legal director, heads up our legal basket, as we affectionately refer to it as, in providing direct legal representation for tribes in their dependency case matters throughout the state, as well as a variety of other legally based activities, and we also do a lot of work in the policy and legislative space, once again, all here in the beautiful state of California. Again, check out our website where you can learn more.

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Geneva Shaw: And next, we will ask you all to introduce yourselves a little bit. So, if you could share with one another a bit about your professional role, I ask us to avoid acronyms, because we don't all speak the same acronym language all the time, so if you don't mind kind of really spelling it out, and sharing that in the chat, so we all have a collective idea of who's here with us today. And at your comfort level, if you also want to share a bit about your experience with ICWA, so whether you're new to ICWA, an old pro, or somewhere in between, would love to hear and read a little bit about that in the chat today as well.

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Geneva Shaw: And just to kind of orient us as we advance to the next slide, a little bit about kind of the intent and overview for our time here together. Now, I would start by saying this is not kind of a general ICWA training of sorts, but really the focus here today is to provide some overview of challenges, as well as best practices associated with tribal representation in state courts. So, part of, kind of, our target audience is to attorneys who are, or maybe thinking about or curious about, representing tribes in dependency matters and ICWA-eligible cases, as well as inviting in other friends, allies, and those who are working adjacent to this specific focus, so we're going to do a little bit of overview of a tribe's role in dependency court. We're going to, again, provide some kind of overview of challenges and barriers for effective tribal



representation in Dependency Court. And then finally, we'll also offer some best practices and opportunities for that tribal representation.

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Kimberly Cluff: So, I'm gonna take over here and just walk us through these definitions to be sure that we kind of level set on what people and cases really are ICWA cases. So, it's important in understanding, the landscape of the Indian Child Welfare Act to be sure that we know that an Indian Child Welfare Act case needs to have an Indian child and an Indian parent, and these are the, you know, very technical definitions of who are those people. The legal definition of an Indian child is an unmarried minor that's either a member or eligible for membership in an Indian tribe, and the biological child of a member. So, a youth or a minor or a child can be a member in two ways. One, they can directly be a member of the tribe, or two, they can be eligible for membership and the biological child of a person who is a member. And you can see that little star up there, and that star drives your eyes down to, membership can only be determined by the tribe, and this is something that I think, as an attorney that represents tribes, we do come across sometimes where folks, think, oh, well, let's see, this child, you know, grandma said something, and so we're going to determine that the child is a member of the tribe, and that's not how it works. Also, that comes up sometimes in when you've got two tribes, or three tribes that have an interest in a family. It's between the tribes to determine membership and then, the Indian parent, the definition of an Indian parent, any biological parent or parents of an Indian child, or any Indian person lawfully adopted. The biological parent does not have to be an Indian person in order for the protections of the Act to exist and to apply, and this one also comes up sometimes because we have, for example, you know, a mother and a father, and let's say the father is non-Native, and maybe from another country, and folks sometimes say, well, why are you calling the, you know, the guy from Canada, or Greece, or China? Why are you calling them an Indian parent? They're not an Indian person, and it is because if they are the parent of an Indian child, then it is really important to treat them with the protections of ICWA, because they are parenting an Indian child. They may not be Native themselves, but they will be parenting, we hope they'll be parenting an Indian child, and therefore, we want the protections and the additional services and all the things to go to them, even when they're not a native person. So those are two just really foundational definitions we always like to just start with.

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Kimberly Cluff: Alright, so, ICWA's protections and, and how they work in the role of the tribe in those cases. So, Dependency Court, ICWA's protections are for the tribe, and they mean that the tribe is involved in all aspects of decision-making, when they have a tribal child, tribal parents involved in a decision or in a court case. We call them cases; we call them proceedings. The technical definition is an Indian child custody proceeding, being very lawyerly there. All participants in an ICWA case should have knowledge of the following, and these are just really some basic things that, as an advocate in an ICWA case, it's really important to know these things and to understand these things. As Geneva said, this is not an ICWA 101, but there are



tons of resources out there, including through CTFC, you can go to our training portal, but also the JCC has lots of resources that could help you understand some of these questions or some of these issues. Just really important to make sure that as you step into this field, as a lawyer or as an advocate, that you have that baseline understanding. It's essential. ICWA is a complex area of dependency law, and dependency is a complex area of law, and so it's just really important to be prepared to speak to some of these points, to be sure that as a person stepping into a courtroom or, you know, into the space of tribal child welfare, that you are able to be the person in the room that can also explain some of these things, because unfortunately, as much as we do a lot of training and lots of folks do training, there is, not always knowledge in the room when important decisions are being made. So, equal law and tribal sovereignty, being able to explain that. The nature of the tribe's relationship to its children and families, and that is really important. It's one of the most fundamental pieces of the Indian Child Welfare Act, is recognizing the important relationship between tribes and tribal children and families. It was part of what makes ICWA so important, is that that fundamental right was recognized in the federal statute and reiterated in Supreme Court cases, and then also understanding the different roles that a tribe might play in an ICWA case. Sometimes as that tribal government role, definitely as a party, sometimes bringing that expertise, sometimes providing services, and understanding all the different roles that the tribe may play. And then one thing to be careful of is that sometimes the thinking that we see in court is that some attorneys in the courtroom, sometimes even judges, think that tribes only really have an interest in the ICWA issues, and that's not the case. Tribes always have an interest in what's happening in the case generally, and so it's important to not think or to be aware that tribes have a broad interest across the case, and not only on the issues related to ICWA. We're not just all about inquiry and notice, I promise.

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Kimberly Cluff: Alright, now, how do tribes start that legal piece, that legal intervention to become a party in a case? So, tribes have the right to intervene at any point in a case. They can do so orally, just on the record or they may intervene in writing. What you see there on the screen is the ICWA-040, and this is one of several forms that the Judicial Council has developed to help, both with ICWA compliance and upholding the promise of ICWA, and to, quite honestly, make people's lives easier, having these forms. So that is a great tool for designation of a tribal representative, and it certainly lets the court know that the tribe wants to be involved in the case, but it is important to know that sometimes there's not a lawyer yet, or that a case may commence with a detention hearing, and you as a lawyer, or you as a stakeholder, you as a person working in the field, may not be there, may not have prepared documents, and so it is important that the person who has the authority for the tribe knows and understands, they can just say, "Your Honor, the tribe is intervening in this case". That is enough to get the tribe to party status. And then, of course, follow up with a writing, that's always a good idea. Intervention makes the tribe a party to the case, and that is a party on par with all other parties. There is not a difference between the tribe as a party, and a child as a party, or a parent as a party, so that means documents, notices of hearing, all of the things. As a tribal attorney, we can't



make the right decisions or advocate for our clients if we don't have all the information. It's really, really important. And you can see down there at the bottom of the screen. The Welfare and Institutions Code 827 includes tribes, and then also there is an ACL that addresses the issue of providing all of the information to tribes. There is... there are many ACLs, those are all county letters, and ACINs, all county information notices, that address issues of ICWA, and as an advocate, an attorney, a lay advocate for tribes. It's really important to be familiar with some of the, really critical ACLs, but quite honestly, especially if you're having trouble sleeping, I say get them all out and read them all. You'll feel more confident, you'll know more, and they are really actually quite helpful.

Geneva Shaw: And Kimberly, one of the things that I appreciate about that specific all-county letter 18-140, oftentimes there does come into question, like, what information can we share with the tribe? Thinking about confidentiality and things like that, and that ACL really spells out and gives good guidance around, the limitations, but really the authority of sharing information with tribes in ICWA-eligible cases. So, a great tool to have handy.

Kimberly Cluff: And Geneva, I just think... I think that's a great... you know, you... you are, super familiar with the fact that every tribe handles their cases differently, and so it can be, for example, that information related to a case is presented to a tribal council, and so, to your point, that ACL helps us understand and be confident that it's okay to share that information beyond just, say, the tribal social worker. So, yeah, it's, every tribe is different, and it is up to the tribal attorney to make sure that their client understands 827, and it's up to the attorney to make sure that all the people at the tribe who need to know do know, access, so thanks, Geneva.

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Kimberly Cluff: Alright, so, your role, your role, in representing a tribe, what does that look like? Just some nuts and bolts. So, first and foremost, you're representing a sovereign nation, not an individual. And it does come up pretty frequently, the question of, kind of, who's your client? When you're representing a tribe. So, it's really important to get clear on the relationship and the structure of the tribe. Who makes decisions? Who has been delegated authority to make decisions? Who does get that information? And who does not? So, it's important to be clear on that, that needs to be really laid out up front, and, for example, some tribal attorneys will be, you know, will ask their client, so that could be the tribal council, do you want this information? Do you want to be involved in the decision making? And tribes, more and more, have, say, directors of social services, tribal social workers, and tribal leaders may say, we delegate to that tribal social worker the ability to state the interests and the position of the tribe for purposes of our cases, that's how we want it to happen. And so just having clarity on that relationship and authority is so important. In order to have those frank conversations, in order to make sure that you've got clarity, you have to build a relationship with elected tribal leaders, and you have to be proactive about getting their trust, about making sure that they understand the questions you're asking them, and that's not just elected tribal leaders, that's folks across the board. One thing, and



I think we'll even talk about it a little bit, is that tribes are unfortunately under-resourced often. And that under-resourced might not be financially under-resourced, it could be just human capital under-resourced. There are not enough people out there, for example, who have the skill set and live in the rural areas and have, you know, are there able to be hired by tribes, just like is happening with counties across the state of California, there's a workforce issue sometimes, and so what that means is that folks wear multiple hats. It's not unusual for there to be, say, a delegate from a tribal council who also wears a hat of assisting with ICWA cases, and they also have all the duties of being an elected tribal leader, and so training and educating them, getting them comfortable with what the question is, making sure they have the resources they need, and then soliciting their input on how they want to be part of the decision-making is so important, but they can't make those decisions, they can't understand the import, or the importance, or the issues around confidentiality, or how court cases work. If they haven't had an opportunity to understand that system before they make decisions about how they're going to interface with it. Not all tribal leaders are experts on the nuances of ICWA or dependency adjudications. So, there's a real training role, and a real role in being open to explaining and walking folks through when you're representing a sovereign nation. And then, the last is to be prepared to participate in the building of the systems and the structures. So, for example, developing the policies and procedures. It's one thing to say, alright, you've told me now, this is how you want decisions to be made. Great. But let's get that in writing so it's clear, so that, for example, as we hire new people, we can say, here's our policies and procedures or even, as a lawyer, if I'm in court and a judge is questioning whether or not this has happened or that has happened, I want to be able to explain and say, for example, "Your Honor, we need a continuance because the Tribal Council needs to meet in order to make a decision. They meet once a month, and therefore, we need multiple weeks in order to be able to get the decision from the Tribal Council". Now, I am not advocating disclosing to tribal court to courts the ins and outs of tribal leadership or how tribes work, but it is helpful to know what the system is within the tribe as you are representing the tribe outside that system in the state court. Sometimes, when working with a tribe, it might be the first time that they have legal counsel. Since the initiation of the Tribal Dependency Representation Program in California, which provides resources for tribes to retain legal counsel, since then, many more tribes are able to retain counsel, but they haven't done that before, so they don't have a system or policies and procedures. They don't have a day, you know, per week where they're staffing cases with their legal counsel. They may not have systems like that, and so, oftentimes, in stepping into the role, it is important for the tribal attorney and working with tribal advocates or directors of social services or tribal social workers to figure out how do we create a roadmap or a blueprint to build a system within the tribe. It's, if you think about the system of leadership, the system of decision-making at a county level. It's complex. There's lots that goes on, and that's the same thing within a tribe. It may be a smaller sovereign, but it also has the complexity of having cases potentially in far-flung places. A county only has county cases. Tribes can have cases across multiple counties and multiple states. So, and the complexity of just the Indian Child Welfare Act. So, while the sovereign and the government might be slightly smaller, or a lot smaller, there



is still a tremendous level of complexity, and I think it's up to tribal attorneys to understand that complexity, and to be the force that assists the tribe in navigating that complexity.

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Geneva Shaw: And Kimberly, while we don't name that kind of building of the blueprint piece as an opportunity, I personally find that to be an exciting opportunity, right? To be a part of the build, to help create some of that blueprint, and helping establish some really good frameworks that can live on beyond any of our time working for a particular tribe, and also bringing some of your own kind of best practices and experiences to kind of the building of that infrastructure as tribes are, have been, and continue to be on journeys of growth, right? And expanding their authority to be able to advocate strongly on behalf of their member children. So, I really think that's also just a potentially really exciting part of the work.

Kimberly Cluff: I could not agree more. It's one of my favorite things to, say, work with a tribe who says, like, wow, you know, we've just had a tribal social worker, and we just generally have followed what the county said, and we're really there just to hold the hand of mom or dad or grandma or something, to building up a system where the tribe gets to say, we are a sovereign nation, and we have a role in this state court case, and how exciting. We're gonna transfer this to tribal court, like, you know, to be building a system where the tribe is really exercising its sovereignty to its full extent. That is really exciting, and it's a lot of work. Sometimes folks say, well, I've had judges say, why doesn't the tribe just take this case? Well, because there's limited resources, limited bandwidth, all the things. Again, being knowledgeable is really important, and understanding the philosophy of the tribe, the mindset of the tribe. You are speaking for the tribe when you're in court, and so, I think it's just, it's really fun to get to walk into court and be like, I am here on behalf of a tribe, and we've got a plan. That's one of my favorite things. So, kind of to that idea of the tribe's philosophy, what is the tribe that you're representing, that you're working on behalf of, what's their philosophy on courtroom participation? Again, oftentimes in the past, tribes have had no resources, and quite honestly, have been unwelcome in state courtrooms have been intimidated to be in state courtrooms. I've been doing this for almost 30 years. I like to think that's not that long ago that I started working, in this work, but I remember days and I won't name the county, where a tribal chairman was told, he wasn't allowed to enter the courtroom. I don't think that's the case anymore, but certainly, if that's in the past, it could repeat. And so, thinking about the tribe's philosophy and courtroom participation, and wanting to have that robust participation, where the tribe has the resources and they're capable, and they have an interest, is really great. So, it's important to say to the tribe, the tribal leader, the decision maker who's been delegated the authority to make these decisions, hey, are we going to court in person? Are you coming with me, tribal social worker? Am I going by myself? Do I know your position, so I go without you, or is it better that you come with me? Like, how are we gonna do this? How are we gonna be showing up and being part of the courtroom process? Also, what cases are we actually going to intervene on? Are we going to intervene on every single case? Are we doing this on a case-by-case basis? One thing that occurs, which is a resource issue, is that there are



tribes that make decisions that they don't have capacity to participate or intervene in cases, let's say, that are out of state. We have out-of-state tribes who have cases in California, and they are not able to have the resources to be present in their California cases because they're far away. And so, it's important to have that understanding, and it's important also to let parties, let folks know, we are not participating in this case, we're not going to show up. However, ICWA still applies, even if the tribe hasn't intervened, even if the tribe is not present in person, ICWA still applies, and that's really important, and it's important for your client, for the tribe, to know that, and then, what are the tribe's guiding values when it comes to protecting their rights in the courtroom, and supporting children, parents, families, and the community as a whole? Does that change based on the status of the proceeding? So, let's just pull that apart for a second. You know, there are multiple interests in a courtroom when you have a dependency case, right? There's, the best interests of the child, and there's the overriding idea that we don't want to break up families, we want families to be intact and be together, and sometimes it feels like you can't have both of those. If there's a real risk to a child, if they're returned to their family of origin, and it may be that the tribe pivots towards protecting the child. It could be that tribes always want to go to the maximum of services. They always want to push for 18 or 24 months in services. That could be their philosophy when it comes to what they want in court. You've got to know what that is. You've got to know what that is. Does the tribe have guiding values on how to make decisions when children or parents don't agree? There are tribes who really struggle. When a tribal parent is saying X, a non-tribal member parent, who's also an Indian parent, says Y, and you've maybe got a child or children in the middle. What I find helpful is to know what the guiding values are, to bring folks back to what are the tribe's principles, maybe based in culture and tradition, for how they view family, family structure, the interests of children, the interests of family. Also, extended family. What are the values on decision-making with extended family? That's also an issue. There are some tribes where, you know, aunties or uncles may have a large role in deciding or thinking about or being part of cases where children are, in need of care, and so, it's important to understand what those guiding values are, and what those decision-making tools are. Another way in which the decision-making tools can be different in different tribes, is, for example. I've worked with tribes who have, like, an elders' council that works adjacent with the elected tribal council. We work with tribes that have ICWA committees. So, there can be also different decision-making modalities, and it's essential that we know, what those are, understand them, and are available to participate or be present, provide that training, and, land, you know, kind of figuring out the baseline, all of those things, and then last here, does the tribe have policies and procedures that outline clear roles and accountability? If they don't, let's see if we can develop them? Or if they don't, is that a conscious decision, that they don't want to commit some of those things to writing? Just because a way of doing things isn't committed to writing within tribal governance structures does not mean that it doesn't exist, or that it's not real or valued, it's helpful sometimes to have things in writing. Sometimes things aren't going to be in writing, so that's also a conversation. What do we put in writing? What do we not put in writing? And... Who's accountable to what? Tribes are not that unlike, sometimes, tribal governments are not that unlike other governments, which is they have multiple departments. For example, tribes



may have a social services department. They may also have, say, an enrollment or membership department. Those two departments have to work together in order to figure out if a child is eligible for membership or not. Who's accountable or responsible for making sure that membership decisions or determinations are made in a timely manner? Whose job is it to do that thing? A very crucial thing when you have an ICWA case, that is, you know, starting out. We want to get that membership issue resolved as quickly as we can. Alright. So, thinking about the tribe's philosophy and courtroom participation, how they present themselves, when they present themselves, how they make decisions around, getting involved in their court cases, all of those. A tribal attorney or advocate needs to understand and know, and if they don't, it's on them to find out and to ask the questions and be part of the solution if something needs to be put in writing.

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Kimberly Cluff: Alright, now, that's a lot that I just talked about, and that is only a little tiny tip of the iceberg when it comes to all the things that tribal attorneys need to be thinking about. Because this area is complex, and actually the area of dependency is complex, there are tools for attorneys working in this field that they can look to, that help them, guide them, serve as a roadmap for how they'd be the best attorney they can be on those cases. There is a performance standard for attorneys that represent agencies, like counties or states, and there's a performance standard in writing for attorneys that represent children, and there's a performance standard for attorneys that represent parents. There wasn't a performance standard for attorneys that represent tribes, and so somebody at CTFC got the wild idea that maybe there should be one that gets written. The first ever in the country, as far as we know, we draft, we developed the performance standards for attorneys that represent tribal governments in state ICWA proceedings. We did this back in 2023, and the object of doing that, of creating the Performance Standards Guide, was to make sure that attorneys that represent tribal governments, that they know what they need to do, that they know what the roadmap is, so that that tribal government receives the best representation possible. We wanted to provide guidance to folks who are doing this work, and we wanted to provide that guidance in a way that really recognizes and solidifies the differences, as well as the similarities between representing other types of clients. There are incredible differences when representing a sovereign nation in an ICWA case, as opposed to, say, representing an agency, or a parent, or a child, or a de facto parent, or, you know, any other folks that might be parties, and so, we drafted this document, I think it's pretty cool. It also has language that helps people who are within a tribe supervising attorneys, and so it has some ideas on supervision of attorneys within the context of representing a tribe, and, and it's a useful guide also for folks outside of the outside of a tribal system, so if you're in private practice, or at a law firm, but intending to represent tribes, certainly a lot of good information in there as well.

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Kimberly Cluff: Alright, So, Geneva, I'm gonna hand it back over to you for these challenges.



Geneva Shaw: Yeah, and we know there certainly are plenty, and we've made a lot of advancements in this field, right? Kimberly shared the example, going back, you know, some years where a tribal leader was not even welcomed into the courtroom, right? And so, while, again, we've made a lot of advancements, courtrooms are increasingly becoming more welcoming spaces. We're building our capacity within, kind of, tribal government space there still are a variety of challenges to really having good, strong, robust, welcomed tribal representation in dependency courts, and a variety of those things oftentimes are outside of our control, right? So, for example, there might be some barriers due to things like the availability of resources, and Kimberly's already alluded to this. Sometimes it's just sheer human capital. There's not enough tribal staff to be effectively representing all of the tribes' cases across multiple jurisdictions, including multiple states. So, just a sheer amount, of limitations to the available resources to really be able to bring that strong tribal voice to all of their children who are impacted by child welfare systems, not only are there oftentimes limitations in resources, again, the staffing, that human capital and capacity, but also, once again, the location, right? It's hard to geographically be physically present in all of the courtrooms, in all of the child and family team meetings, in all of the, you know, investigations, again, spanning throughout the state and across the nation. So, we know that tribes are, you know increasingly trying to build the capacity and really address some of those gaps, but that very much is the reality, right? So, we also know that that is further complicated by the differences in different jurisdictions around ICWA knowledge, right? Around understanding the role of tribes in ICWA cases, around kind of creating that welcoming and inclusive environment, and then further complicated by different attorney licensing standards and requirements in different jurisdictions. So really kind of being mindful of those pieces and also researching and having awareness of potentially different attorney licensing requirements in different jurisdictions, being proactive in getting ahead of some of those potential trip-ups as you move forward, and providing that good, strong representation. And then, you know, we're always all collectively, we all have a role in building the capacity, right? And that's part of why we're here, because we want to provide even more information, training, guidance, and networking, building the network, building the pool of good, strong tribal attorneys and advocates to be doing this work. And the good news is, in doing this work, we don't always have to be reinventing the wheel, right? Because there have been good advancements. There are many tribes who have great infrastructure that we can also draw from, we can share from, and we can sometimes, you know, help pave the way for others who are going to come after us in kind of helping different jurisdictions along in creating more welcoming spaces, and achieving the ICWA compliance that we're all striving for, that not only impacts the tribe that we're representing, but impacts other tribes who enter into those courtroom and county spaces.

Kimberly Cluff: And Geneva, I just want to add to that, two thoughts. One, is differing attorneys, and, or differing jurisdictions with attorneys, so if you represent a tribe in California, and they have a case, let's say, in Nevada, there are the pro hoc vice requirements, and I think we'll touch on that. And so, there's an area where you've got to know what you can do, what you



can't do. There's also things like the complication of those cases that are not clear whether ICWA applies or not, and that complicates the reality of tribes and the available resources and the knowledge. So, there's just challenges out there. Now, I will say one challenge that has been, kind of, I don't know, we've kind of conquered a bit, is being able to, appear by Zoom because of COVID, and we don't exactly have the data, but just anecdotally, there everyone in any country talks about the increased participation of tribes because of the ability to appear remotely. And so, yes, there are challenges and barriers, but there's also some bright spots. Alright, so some more barriers for tribes' independency. Geneva, anything here that you felt like you wanted to comment on?

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Geneva Shaw: Most definitely, and one thing I wanted to also say that I don't think is expressly named on any of our slides is that in representing a tribe, we, whether explicitly named or not, we are serving also as subject matter experts to the courts. So, we have a role in kind of doing that educational piece, or, you know, kind of being brave, and when it's, like hey, tribal leader, you're not allowed in the courtroom where we have the talking points, we have the knowledge, we have, you know, kind of our own, you know, wealth of experience and knowledge to fall back on to kind of respectfully correct the courts. You know, we are allowed, and kind of here's why. So, I also just wanted to name that there is a lot of you know, educating that oftentimes come or advocacy, and really asserting, a tribe's role and authority in the courtroom and beyond. There are also some additional administrative burdens, right? And I think this also, in part, goes back to getting clear on kind of whose roles are what, because oftentimes, maybe some of these functions are being done by, other administrative support folks within, the tribal structure. So, you know, doing some of this kind of clerical work, and doing some of the kind of paperwork hustle for us, right? And understanding that, you know, our whoever is kind of doing some of this administrative role will come up across, you know, inconsistencies, across different jurisdictions, and, you know, kind of what we identify as some burdens or additional barriers. So again, I think this is an area where we have to do some advocacy and education for different, court clerks' offices, and kind of on that administrative piece to make sure that, you know, we're, we are able to, you know, not only access the appropriate information, but also offer the appropriate information to the courts in preparation for court hearings, and not kind of coming up on unnecessary burdens and being able to do so. So again, an area where some advocacy sometimes needs to happen. Some examples of where we experience, what we would call maybe some lack of consideration, or maybe some kind of training areas needed, that produce unnecessary burdens for tribal resources and time, which again, as we just talked about. That's a, that's a challenge in and of itself, right? Having enough resources, staffing, time, and presence to be able to do this work effectively across jurisdictions. So again, some of those examples or, you know, kind of areas where we see some struggle are around filing restrictions. So different jurisdictions have different systems, right? We might have a good groove and a good rhythm. with a county that we work with very regularly, and we've kind of established that, but now we're jumping into a county that's, you know, on the other side of the state, and they've got a whole



different system, and they don't know us, and we're trying to, you know, get not only access to the information we need, but also do our filings. So, for example, some of those filing restrictions are, like, the e-filing and courtesy filings that are sometimes required to be done in person, but what if, again, we're on the other side of the state? How can we accomplish that in person when we have this, you know, access barrier, this geography barrier, and just the resource barrier, right? So, being able to do some courtesy filings, perhaps, for tribes outside of our region in the place where we have established those systems can be really helpful and really appreciated, also kind of helping, you know, our local jurisdictions understand some of those burdens for outside area tribes to be able to access and streamline those systems in ways that can be done remotely or from, you know, farther away geographically. There is sometimes the requiring of wet signatures and notarized signatures on filings. Kimberly, what do we mean when we say this requiring of wet signatures? Like, what is that what does that really mean, and what is that kind of that barrier associated with?

Kimberly Cluff: Yeah, so, you know, a wet signature is like an original signature. It means the actual piece of paper that the pen actually sat on and went. We are very accustomed to digital signatures these days, and many jurisdictions don't require, you know, a wet signature, and we're all, you know, digitally signing. But there are jurisdictions that require wet signatures, or require notarization on signatures with filings, and that's really difficult for tribes because of the geographic distances, for example, and I mean, have you FedExed giant packages, anytime lately that need an overnight? It's very expensive. So, there's just these things that come up, and I, I think about a case that I did for a tribe in the Midwest that was in California and, this is unusual, but I think it tells the story. I needed to send them a document, I needed them to send me a document, and they said I couldn't send anything, for a couple of days, because they thought they might get a package of paper for their printer the following week. They were so under-resourced in their social services department that they were hoping to get a pack of paper for their printer. When you think about that level of lack of resources, it helps to explain sometimes why tribes are slow to do things, or late to do things, or are asking if we can kind of change the rules for the tribe and how it's going to file something or get something accomplished. So, it's just really important to understand, and again, not just the lack of resources, but also just things like distance. Can really be really, really difficult. And then you can see there also the limited or inconsistency of e-filing providers. Sometimes they don't accept the fee waiver for tribes for dependency filings, and those fees can be something that's not attainable for tribes. It can be also that say, okay, I have the tribal credit card, but I need to get authorization to utilize the credit card in order to to, pay the fee. These, what may feel like small administrative burdens can explain why sometimes there's a little bit of, like, hey, is the tribe involved, not involved, what's happening here? I think also one thing I want to mention is that one barrier that tribes face, in dependency court, that might kind of come out of administrative burdens, it might come out of, you know, lots of different places, but which we sometimes call, kind of, ICWA fatigue on the state or the county level, which is folks say, oh gosh, ICWA, it's so hard, there's so, all this work that has to be done, all this noticing that has to be done, and I think collectively, as advocates for



tribes, we have to push back really hard on the narrative that somehow ICWA, doesn't serve tribal families, or doesn't serve tribes, or is a big barrier for, for counties or the state, the fundamental civil rights that ICWA holds up and protects are so incredibly important to the continuing existence and thrivance of tribes. That, you know, a little bit of difficulty here and there, or a request to receive a pleading in a different way, or a request to be let into a filing portal for the, you know, county courthouse. Those are very small potatoes when it comes to the idea of upholding and living up to the promise of the Indian Child Welfare Act, and so this idea that, like, ICWA is so hard, I think as advocates for tribes, we need to have our narrative down of exactly how we explain that the, compliance and upholding the Act is far and beyond, so much more important than, than the additional duties that need to go along with that compliance. So, one more thing in terms of administrative burdens. It's just the access to case files. So, where counties don't have online portals that tribes can get into, it gets really complicated to get the different documents that are needed, and it gets complicated by different court administrators. One thing they teach us in law school is, you know, the person you need to worry about in the courtroom the most is not so much the judge, but the judge's clerk, because they kind of hold the keys to the kingdom sometimes. That's also the same thing sometimes with courts, with, like, the court's office. You know, the court clerks in the office who manage all the paperwork, hats off to them, they have such a difficult job, but it is really difficult for tribes who don't practice in that courtroom all the time, right? Sometimes dependency courtrooms, those attorneys, that judge, those advocates, they're with each other in that courtroom. They have kind of casual ways of relating, oh, I'll send it over to you, or the attorneys have offices next door to each other, or judges start to build systems within the courtroom, administrative systems that everybody knows because they're there all day, and then all of a sudden, here comes a tribe and they don't know all those rules or those systems of getting stuff done, and so the, the lack of accessibility, both to things like online portals, but also just the inner workings of that particular courtroom, that sets tribes behind in their ability to fully participate in the cases. And we know that time is of the essence so frequently, anything that can be done to facilitate tribes being able to quickly and effectively get the information they need and show up in court as they need to is really helpful and a lot of that comes out of building relationships. There's such a strong relational aspect to tribes being able to fully realize all of their rights and their duties in these cases when they're interfacing with court systems. I have to say, that's probably one of the most important skill sets that tribal attorneys can have outside of knowing the law is understanding the importance of the relational aspect of doing this work. You've got to build relationship with folks, across the board, both within the case and kind of outside the case. Okay. Administrator? Oh!

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Geneva Shaw: Yeah, I was gonna say, you know, this one here, I feel my colleague, like, pinging in my ear so hard, because... which I think really, like, don't trust governmental websites, right? So, it might say on a website, like, here's the court clerk hours and filings must be made by this time, and that's not always correct. So double checking, preparing in advance, making the phone call, and, like, knowing for sure, like, when your time deadline is to be able to



do a filing, because we find that there's sometimes inconsistencies with what's posted on a website, for example, and when those clerk hours are really real. So, there is some inconsistencies sometimes there, not only in hours and availability, so just this reminder to, like, double-check those things in advance and you know, I feel the CIA wiretap coming down, but, like, don't it's a governmental website of what, you know, is articulated there. Especially when it comes to things like, you know, you're in-person versus your dropbox hours. You know, again, doing things enough ahead of time in case you run into challenges around being able to reach the clerks over the phone and some of those other nuances that can result in rejected e-filings. So really, you know, as much as possible, not waiting till the last minute to make sure we're clear on the processes and what we need to do to have smooth filings or whatever needs to happen. And really, again, this, like, reinforcement that, you know, we can all have a role, tribal attorneys you know, advocates can all have a role in highlighting some of those administrative burdens, especially in jurisdictions where we do have those relationships. Maybe the ones that we do work with fairly regularly, and kind of we've gotten... we've hacked into the system, right, of, like, how things function, and to elevate some of those challenges and bring to the attention, because if we're having those challenges, other tribes are as well. And if we have built a relationship, and or just, you know, kind of highlighting and elevating some of those challenges, and can bring those to the attention of the courts and potentially get those resolved. That's not only a win for the tribe that you're representing, but it's a win for potentially many other tribes who might be having kind of similar barriers or kind of inconsistencies pop up that get in the way of the administrative pieces.

Kimberly Cluff: Yeah, I can't tell you how many times I've said, wait, that's not how the rule of court says we're supposed to do it, and everyone's like, oh, but that's just how we do it here. But you didn't put that on the website! I didn't know! One thing that also I think tribal attorneys and advocates can do around these administrative burdens and other things is actually be a resource of training for courts and for court staff. We at CTFC have gone and done trainings for court systems. We've had meetings with folks. As they're rethinking some of their administrative processes, we've gone and had conversations with them of, like, how they can also best make sure tribes get documents and know what systems are, kind of at play in different counties, or in different court systems, or even different courtrooms. So, making oneself available to be a resource, a positive resource, a training resource, help look over, say, you know, local rules or something, both builds relationship, allows the tribe to be in the room when decisions are being made, and actually serves long-term, because the end result of those conversations ends up working better for tribes.

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Kimberly Cluff: Alright, additional barriers, just timeliness. Gosh, timeliness is an issue. Getting reports in advance, and we absolutely understand that timely reports is an issue across the state, across the country, that, you know, so often, information is just not getting anywhere, to the people who need the information. It's just not getting to folks in advance. Tribes do have



the ability to appear in court, to do all these things, but if you don't have the information, it's really, really difficult, to, to do your job as a tribal attorney, and, you know, sometimes it's awkward. Like, I don't want to be the jerk who's always needing continuances, because I didn't get the report. Attorneys in the courtroom sometimes will say, oh, I didn't get the report, but I'll step out in the hallway and take 5 minutes to read the report. I can't do that because I have a tribal government who I have to talk to about that report. I can't just step out in the hallway, read it, and come back in and know the position. I might be working for a tribe where the decision-making path involves multiple levels of the tribe, of the tribal government. So, I'm not, I can't do that, and so I end up being the person who says, "Your Honor, I, I need a continuance", and I just, ugh, I don't like it, right? I don't like to be that party who always needs more time, just like, you know, I don't always like that more cases are appealed on ICWA than almost any other issue in California, that ICWA is sometimes perceived as being a source of so many appeals, right? It's that, feeling of, like, ugh. I want to position tribes as being great partners and parties and doing a good job, within courtroom systems and within child welfare systems, but I have an obligation to be sure that my client has all the information and the time necessary to make the right decisions for a case. So, it's a balance. It's a balance, and I think on balance, it tips towards the more time and the more thoughtful, deliberation on decisions is necessary, and so that means that the timeliness of receiving information becomes that much more important. An opportunity here is to bring that challenge, you know, the challenge of not having things on time to the court's attention. Tribes are a loud voice in the courtroom. When we are there, I think that bench officers really do want to hear from tribes once they understand the role of the tribe, and so if we can be part of making the system better, I think that is on our plate to do.

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Kimberly Cluff: Okay, some more barriers, and I'm gonna say barriers and opportunities, right? Tribal attorneys are often, I know for us, probably 80% of our appearances are done remotely, and that is, in part, something that came out of COVID, but also, we worked on and, were successful in getting the state to allow tribes more liberty at appearing remotely. So, in California, we actually have special rules for tribes to appear remotely. Why is that? A lot of what we've talked about, a lack of resources, travel is very expensive, distances, sometimes it's just really hard to get to places. Also, the lack of human capital, and the fact that tribes may have cases across the state and across the country. That's not the case in, say, a particular county, where the attorneys are from that county, or likely from that county, and all the cases are taking place in that one court. So, in-person appearances are very effective, right? I love appearing in person. I think most attorneys prefer to appear in person when they can, and so there's a decision point. The quality of remote appearing, of remote appearances has to be weighed against the resources to appear in person. Courts that are still using, say, CourtCall. I don't think that an attorney can adequately represent a tribe on court call without an actual video appearance, but it could be the tribe you work for is comfortable with a tribal advocate or tribal attorney using just a court call. I think there's only a couple of counties left in California that don't have video or virtual appearance by video. So, thinking about how do we balance the lack of resources, the



distance, the time, and all of those things, and when we're going to appear remotely is super important, and what goes into that is the quality of the technology, the quality of the Wi-Fi. And that's not just the Wi-Fi or the quality of the infrastructure at the court. Understand that many tribes in California don't have great Wi-Fi access. There are digital deserts still, unfortunately, in California, so also being aware of and talking to tribal leaders about the limitations on appearing remotely if there isn't adequate Wi-Fi. We did make some progress, as I mentioned, in AB686, and that established that tribes are not subject to paying fees associated with remote appearances, and so that is our... that's work done to break down those barriers for tribes to be able to participate. Again, we've seen an uptick in tribal intervention and participation in cases with the advent of remote appearances, and I think we will continue to see an increase in tribal participation when we take down other barriers, like fees. Alright, I'm gonna pause here for a second and check in with Vida. Vida, do we have any questions in the chat? If we don't...

Vida Castaneda: We do not have any questions yet.

Kimberly Cluff: Alright, so if you've got questions, feel free to pop them in the chat, and onward.

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Kimberly Cluff: Okay, qualified expert witnesses. This is an area where ICWA is very unique, in that this is an expert that is only required in the context of an ICWA case. QEWs, or qualified experts, or Qualified Indian Experts, people use different terminology. They are necessary, they meet an evidentiary burden contained in the law. It's important as a tribal attorney, you understand what that, legal requirement is, but this is something that we see happen sometimes, and tribal attorneys need to really be on the lookout for it. The QEW is a person who is, ideally, familiar with the tribal community, tribal family practices, child-rearing standards, so that they can add an expert voice to questions around whether or not a child would suffer serious emotional or physical harm if they were to remain in the custody of their parents or their family of origin. How can that person come into a case and opine like that if there's not a conversation with the tribe about that person, about their qualifications? So, QEW appointments should not be made without the tribe's input, and this is something that tribal attorneys really need to be on top of, because sometimes decisions are made where the tribal attorney is not involved, because this is an expert... this is an expert witness that the county produces. So, if it's the county's expert, some county counsels have taken the position that I don't want to listen to the tribe, it's my expert, and we know both that, best practice says you've got to have the tribe there. The law is, you know, tells us that the right way to handle this is to talk to the tribe to be sure that that QEW is the right person for that case. If the agency appoints a QEW without consulting with the tribe, I think that best practice is you file an objection if the tribe does not agree with the county's QEW. You have to file an objection. Having a QEW who really is knowledgeable about those cultural standards and social standards and child-rearing practices is so important. It's, it can be so pivotal for the court, for your bench officer, to understand what's really happening in a case,



that the, we can't let that go. We can't let unqualified folks be taking on that role. So, let's see that as an opportunity. You can be super proactive about consulting with tribal leadership and tribal social services about who do we want to have as QEWs? How do we increase the size of the pool and the people that are there? My experience is that when the tribe says to an agency, we have a qualified person, we have a QEW that you can use, or here's our list of folks who we won't object if you choose someone off this list, that agencies are happy to do that. They're happy to not have another fight with the tribe. They're also happy to just have the resource, because they're scrambling trying to find somebody. Now, the state of California maintains a list of people who have informed the state, actually, JCC maintains the list, of people who have informed JCC in the state, that they are eligible, or they are willing to be QEWs. They are not necessarily anointed, no one, is testing their, their, you know, competency, etc. It's just a list that you can look at, and then contact those people. So, sometimes what happens is that a county agency will say, we got this person off the list. The state list, or we got this person off the, you know, interwebs, we saw this list. The fact that a person is on that list does not negate that the tribe should be involved in the decision of appointing the QEW. So, one of the best ways to avoid having a QEW just kind of shoved into a case by an agency is to be really proactive, to cultivate people to be QEWs, to be in conversation early on with the agency about the QEW. We have assisted tribes in hosting events to recruit QEWs, and we've been involved in training of potential QEWs, and that way, we create that bigger pool, and we resolve the issue, and we don't find ourselves, having counties say, we can't find anybody, so we're gonna try to just get some person to take the stand. You can see down there at the bottom of the slide, there's some tools that have been put out. Thank you to the JCC. There's a Q&A document on expert witnesses. Really, really helpful information that you can get your hands on.

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Kimberly Cluff: Alright, so how about a couple of just tips? Some tips as a tribal attorney. Let's see here. Number 1, let's see, should be receiving agency court reports 10 days before court appearances. Yes, that is the rule! You should be receiving those agency reports 10 days prior. Why is that so important? We've already talked about it. You represent a sovereign nation! You've got to be able to talk to the sovereign nation about what's in that report, what the recommendations are. You can't step in the hallway and just figure that out on your own. So that is just so important. Sometimes, tribes will submit a report and think about doing that. It can be really, really helpful. Consider 10, 15 days before the court appearance, if the tribe will submit a report of its own, or if there'll be good cause to request a continuance because a report has not come. So, two things that can happen. It's not very often that tribes are submitting, kind of, filing and providing to parties, their own take on the case, their own report, certainly is allowed, and if there's capacity to do so, I think it'd be great, and, of course, don't be afraid to make that good cause request for a continuance, even if it means you feel a little bit like the jerk in the room. Super important. Also, something that needs to happen is checking in with family. Of course, an attorney can't speak to a represented party, but maybe there's tribal family, aunts and uncles who, have been involved, or caregivers, or might be helpful in supporting, and so it's okay to



have a conversation with them. I really like to try to check in with county counsels to speak to them prior to just showing up in court. Especially in those cases that are, let's say, in post-permanency, where you might have long gaps before the case is geared up and going into court. Doing check-ins in between, say, those 6-month, periods of time when you're in family reunification is always a good idea to make sure that things are going smoothly. And one of the most important things in terms of checking in in those interims is our active efforts occurring? Because if you go from month, you know, month 6 to month 12, your, the case is on kind of autopilot, the attorneys are like, wow, we just know that the parents are out doing their thing, and it turns out that there's not active efforts being provided, then you have a fight, and maybe that could have been avoided if there'd been a really good conversation in that interim period to check on active efforts. Checking in with minors' and parents' counsel before a hearing is also always a good idea if you can. Again, you can check in on things like, are active efforts occurring? Also, sometimes there's important to have a conversation about concurrent planning and understand what they are thinking on concurrent planning. One of the reasons for an ICWA case that's particularly important, and as a tribal attorney, it's particularly important, is that there's an additional option for post-permanency. There's an additional permanent plan of tribal customary adoption. And those minors' counsels and parents' counsels and county counsels may be unfamiliar with tribal customary adoption, and so you, as a tribal attorney or advocate, might be the only person in the room who's knowledgeable of that possibility, or that option of permanency, and so checking in and making sure that they're familiar. Now, the forms, the mandatory forms, require that, concurrent planning include tribal customary adoption, but that's a box on a form, and it's not a replacement for a conversation about, hey, are you familiar with tribal customary adoption? And this tribe would be interested in that if needed, or this tribe does not do that. Or this tribe that I represent does not do adoption, does not support TPR. Letting that be known early on in checking in with folks can be really helpful. Requesting that your matters be set on the same day or same calendar for consistency. In larger, jurisdictions, sometimes you're bouncing around different courtrooms, but also in some jurisdictions, there's an ICWA court. Los Angeles has a dedicated courtroom that's for ICWA cases. Some courts have a dedicated day, that that's their ICWA court day. If that is helpful, advocate for that in the counties or places in which you have a lot of cases, that it creates efficiency, and efficiency helps save resources and retain resources for lots of other things that are going on, and then, lastly, here, remember who bears the burden of responsibility, and have the agency, the, you know, strength to say no when necessary. ICWA involves advocacy. In ICWA, often involves saying no to the normal course of business in a county dependency case, because ICWA is different, and folks are sometimes uncomfortable with that difference, because it takes them out of their routine of how they generally handle standard dependency cases.

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Geneva Shaw: I think one example, too, Kimberly, of, like, kind of this, you know, having an agency to say no, is also this recognition that it is the county's responsibility to provide active efforts, and sometimes there can be a, you know, a tendency, or it might come up in the



courtroom to, like, kind of you know, kind of pawn something. I don't want to say pawn something off on the tribe, but kind of pawn something off on the tribe. And, you know, while it's great if the tribe is willing, able, has resources to take on a thing, and it might actually be that that's the county's responsibility to perform and engage in those active efforts. And while, you know they're inviting the tribe to kind of have a hands-on role. It actually might not be the tribe's role and responsibility, and therefore might kind of require some of that pushback or saying no.

Kimberly Cluff: Yeah. It is very frustrating when the solution for achieving active efforts in a case is for the agency to ask the tribe to do all the case supports for the family. It's like, oh, you think that the parents should go to a red road program? Great, can you get them there? Can you find it? Can you refer them? Can you take them? That's not active efforts.

Geneva Shaw: Cheaper. visits? I feel like that's another one. Supervise the visits, which sometimes makes sense, because it's in tribal community, in tribal space, and not the tribe's resource responsibility.

Kimberly Cluff: Yeah. I'm gonna pivot here for just a second and talk about probate for a moment, because as an attorney for a tribe who handles ICWA cases, probate is on deck. ICWA applies to dependency cases, probate cases, and can apply also to some family law cases, where there's, for example, an adoption. So just to touch on a couple of things that we see as a practice matter, practical matter, come up when ICWA interfaces with ICWA. So, for example, who's the petitioner and the tribe, and how do they fit together? The petitioner is responsible for providing active efforts in a probate guardianship. Maybe tribal staff assists the petitioner, maybe the tribal staff assists in providing the active efforts. Maybe tribal staff support on the QEW. How this comes up, grandma comes to Tribal Social Services and says, my daughter, you know, is incarcerated for a period of time, and I need to take care of my grandchild, but now I have to go enroll her in school, and they won't let me, because I don't have technical custody of her. Tribal social services might say, well, let's see, we could refer it, and it could become a dependency case, because there might be an abandonment here, but maybe the better route is a probate guardianship, and so, the tribe may hold the hand of that auntie or grandma in helping her establish a guardianship for the safety and the care of that tribal child. In that case, grandma is technically the petitioner, but grandma may not have the resources to, for example, handle all the things that go with complying with ICWA. So sometimes the tribe will be a partner to the petitioner, but on the other hand, there can be, you know, a situation where the tribe hears about a probate guardianship. Unfortunately, probate courts are a little less familiar with applying ICWA, and all of a sudden, the tribe finds itself in a probate courtroom trying to figure out if anybody has done anything, with regard to the Indian Child Welfare Act. And so then, as a tribal attorney, you might find yourself asking to throw that petition out, for example, because it doesn't comply with the Act. So, there's just lots of different rules when it comes to probate, but sometimes, also, the tribe may be the actual petitioner, and we do see that sometimes. Parents may consent to probate guardianship, but that consent has to be in writing, and has to be certified



by the court, and you can see that, that section, that probate code section there. This is something that, again, bench officers are just unfamiliar with frequently, and is a mistake, and tribal attorneys are probably the only one in the room who are familiar with that, and so being on guard is really important. Because ICWA requires that parents in an Indian child custody proceeding have legal counsel, which a probate guardianship is, it is an Indian child custody proceeding. The parents need to get legal counsel, but the probate courts aren't accustomed to that. All the probate guardianships that happen in the county where you are, probably very few of the people involved in those probate guardianships have legal counsel. Maybe petitioners sometimes hire private attorneys or something. And so, probate judges or bench officers are unfamiliar with the requirement that they appoint you know, from, let's say, the panel attorneys, that's sometimes where probate judges find attorneys for those parents, they're just unfamiliar with that requirement, and so tribes can advocate for the court-appointed counsel for children and for the parents in those probate cases. It's just a really often missed item in probate cases that involve ICWA. Most probate courts, most probate cases involve a court investigator who goes out and investigates that case. It is really important that the court investigator speak to the tribe to be sure that the tribe's input, tribe's position, is included in that court investigator's report, and think of the court investigator as similar to the social worker in a case independency, where that social worker is preparing a report for the court to inform the court what's going on in the case. Court investigator may fill that same role, and the tribe's voice needs to be heard in that. Many times, courts issue those 30-day temporary guardianships, then come back to issue the actual letters. If there has not been ICWA compliance, you can seek invalidation. You may not, but you can, and if... one thing to be aware of is that if tribes don't insist on ICWA compliance in a case because it's kind of convenient, or it's late in the game, or something, and then don't insist another time because, oh gosh, you know, we're going to get the outcome we want, we're not getting those probate courts to understand and understand the gravity of the Indian Child Welfare Act if we constantly kind of give them a pass. So, think about from a systemic perspective, the importance of raising ICWA issues so that we're not creating bench officers who don't take ICWA seriously because they perceive that the tribe didn't take ICWA seriously, and then lastly, if you think a family would be better served in dependency, the tribe can motion the court to refer the matter over in what we call a 1513. This is, at the core, what we call hidden foster care. This is something that has been evaluated and examined and investigated in California for going on a decade, which is the use of probate as an alternate to dependency. What that does is it saves county resources, and sometimes that is not the best outcome for a child to be in a probate guardianship, and there really does need to be a dependency. So being aware of the 15-13 problem, and then advising your client, even though we don't like the idea of creating another child welfare case, this probate guardianship actually does belong in the child welfare system. Those are tough ones, but really necessary to do that analysis and inform your client.

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Kimberly Cluff: Okay. So, here we go. Out-of-state advocacy, all of the tips we've talked about apply, but oftentimes, out-of-state, we're relying only on the federal language, whereas in



California, we have our state statutes as well. So, be sure that you understand, if the state in which you are representing the tribe at a state, if it has a state ICWA statute, right now about 17 do, of varying quality. If you are working on an out-of-state case, you might need to associate with local council. That's an order to pro hac Vice. And if you've got questions about that, feel free to find the resources. So, for example, there are attorney, there's a list of attorneys who have helped in the past, and so you can find that through MSU. Sometimes, a local tribe in the jurisdiction where you need to be, that's far away, you can connect with that local tribe, and that has been sometimes helpful on things like getting resources for families as well, not just on the legal front, but also on the social work front. Fights over bringing children closer to the tribe are hot and heavy. These are hard fights. Oftentimes, when a tribal child that's from a tribe in California is, let's say, you know, halfway across the country, one of the first things that tribes often want to do is bring the child home. These can be very difficult fights, especially if there's allegations or assertions that the child is bonded and is settled where they are, and we don't want to disrupt where they are, etc. And being able to elevate and have really strong narrative about the importance of bringing a child back to the geography and place from which their people come, knowing how to explain that, both relationally to the people involved in the case and to your bench officer in a way that is legally compelling, that's hard. So be sure that you've spent time understanding the background of the tribe that you represent, making sure you have that narrative right, and then be on the lookout for opponents of ICWA, and when they get involved in cases. You know, we won at the Supreme Court, but they're still on the hunt. They are still looking for cases, maybe not to take us back to the Supreme Court, but maybe to take us back to, I don't know, the California Supreme Court, or other state Supreme Courts, or other interim federal courts. So, you can see there a list of folks who have made, made it their job to attack ICWA, to try to bring appellate cases, so if you see one of those names pop up in a case that you're involved in, let your tribe know be aware, and then reach out and find resources. These are not folks that should be taken on just, you know, on the one-off. These are folks who... we have a system of lawyers who pay attention and know how to bring successful defenses of ICWA, so make sure you bring in the right resources if you see one of these folks.

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Kimberly Cluff: Okay. So, relationship building. Geneva? I'm wondering if I could pass it over to you to talk about relationship building, what that might look like, and some best practices.

Geneva Shaw: Most definitely. So, as we are kind of winding down towards the end of our time together, we wanted to just bring us back to, you know, what we've already articulated in various ways, which is the very important foundation of relationship building, right? And really the good work that can come from investing in this piece, and a variety of ways which that can be accomplished. We've provided some examples, I'm sure there are plenty more that I also, you know, welcome you all to share in the chat or otherwise, on ways in which you have achieved and accomplished some of this critical piece. So, for example, there may be, county-specific efforts around core improvement or ICWA-specific meetings to build relationship with local



tribes, council, and courts. Consider, you know, assessing, determining if there are these specific convenings already happening, and get involved and have a presence. And you can do so even if, in my experience, even if you are, you know, from, you know, maybe an out-of-the-region, representing a tribe out of the region, but you're finding an uptick in this particular county or jurisdiction, you know, to be involved virtually in those kind of comings-togethers. I think a lot of these convenings, in my experience, are oftentimes remote, so folks are, you know, tapping in via Zoom and coming together to provide input on, you know, county court improvement processes and ICWA-specific relationship building and kind of even the development of local policies and procedures, you know, tribal collaboration policies and procedures and beyond. I think it can be really effective and can also go a long way to offer something, right? So, collaborating to co-host trainings, for example, in your tribal facilities, whether it is to help the courts get educated on the unique history, culture, traditions, and advancements of the tribe you represent, or other, you know, kind of legal ICWA-specific topic areas, or a marriage of both, to really just, you know, help inform, you know, the courts and, you know, counties and other adjacent professionals on the unique nuances, the unique histories, the unique, again, philosophies and values around child protection of the tribe you represent, and just breaking bread, right? And just kind in space together and, you know, getting to know each other in a more relaxed environment, you know, hearing about each other's families or whatever it is when we all come together in a different type of setting. I think it can be really helpful, too, especially if you're, again, kind of newer to a particular jurisdiction, is just getting a sense of what's working well. You know, there are a lot of things that counties are doing that have, you know, that are significant innovations in the space of, like, what's working well to really increase ICO compliance and best practices, and really honor the spirit of collaboration and teaming when it comes to tribes and county practices. So really understanding not only what's working well, but lift up and celebrate what's working well, and kind of acknowledge those advancements. I think that's a really important starting point to then also shift into where are some of our areas of needed growth, right? And I think human nature, it's really helpful to start with what's working well and build upon the successes, and then kind of, again, dig into kind of where are some areas where we need to still do some work and kind of roll up our sleeves. It's very common that your tribal social worker or social workers, depending on again, the staffing and team of the tribe you're working for, to better understand, kind of, from their perspective, you know, their working relationships with the county, as a whole, with certain social workers individually, with attorneys individually, or as kind of, you know, in a more whole perspective, and just, you know, again, leaning into, like, where good work is happening, and how to build upon the good work happening, and lift up that good practice, and the positive tribal collaboration that I think, in my experience, like, county councils appreciate hearing about, like, what's working well, what's going well. And not only county counsels, but also, you know, program managers and deputy directors of tribal agencies. They appreciate kind of being recognized, hearing about, and acknowledging the good practice, and that can go a long way for, again, positive, productive relationship building that then gives us a platform to, you know, continue to address some of the other areas of weakness or where good work needs to continue to build upon and advance. Can't



underscore enough the importance of just spending that time, energy, and resource to do this relational piece, can go a long way for our tribal children and families.

Kimberly Cluff: Thanks, Geneva. I just want to give a couple of examples, that I've come across in recent time of small things, or seemingly small, that can have a big impact. I have been, I have a case up in Klamath, Oregon, and in that court, the judge opens court on certain days with a tribal elder doing a prayer. Takes, I don't know, maybe 2 minutes? But it absolutely changes the feeling in the courtroom, and I think the Native people that are there feel so seen and so heard, and it just really, is a beautiful thing, and it doesn't take a lot of time, and it doesn't take a lot of resources, and yet it's a simple way to show that that court is taking the issues of tribal people very seriously. Another one is, just family wellness courts, and family wellness courts that include, for example, joint jurisdiction and tribal court judges being part of some of those systems, that also is a way, it doesn't cost a lot of resources, where you can see a best practice and you can uphold the spirit of the Indian Child Welfare Act by having tribal involvement and having spaces where tribes' voices are particularly heard. And then the last one is something that we saw out in Inyo County. This has to do with delinquency cases, but the probation department out there, when they have a Native kid come in, they just call the local tribal social worker, and she helps them figure out where that Native kid comes from. Even if it's not from the tribe where she works, she just helps them. There's not that many, it doesn't take a lot of resources, but it has created a sense of they are collaborating to get the best outcome for Native children, not just the Native children of that tribe, but for all Native children that cross over into the juvenile delinquency system out in that county. So, small things can sometimes make a huge difference. You can also do big stuff, but don't forget you can do the small things, too, that brings us to the end of our time together.

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Kimberly Cluff: Of course, if there's questions or comments, feel free to put them in the chat. We've got a couple minutes left, but also, you've got our website, you can submit questions there, and we are always really excited to hear a little bit more about what's going on where you are, so feel free to also share your stories. And, here you go, some additional resources that you might find helpful. We're always nerdy about reading up on the latest and greatest and want to be sure everyone around us has all these cool resources, and, you can find us on all the places, and all the grams, and all the... all the things, so feel free to get in touch. Thanks so much. I'll pass it over to you Vida.

Vida Castaneda: Thank you so much. Yes, we do have a question, in regards to probate guardianship and active efforts. This individual stated “when, there aren't many or any programs in the area that the tribe considers active efforts, which the child may participate, often the child is barred due to the tribe's age requirements, location, and frequency of the programs. What best practices would you say, number one, petitioner, and number two, the tribe should follow in this situation?”



Kimberly Cluff: G, you want to start, or you want me to?

Geneva Shaw: Dive on in there, Kimberly.

Kimberly Cluff: All right. If I understand the question correctly, I hope I do, if someone is saying, hey, we're having trouble accessing resources because we don't have a resource, the tribe is far, and we don't have resources for active efforts or services that a kid needs, so my one easy default, if it is relevant, is Indian Health Services. Right? Your Indian Health Services exist across the state of California. They're in different places, they're not everywhere, but they tend to serve also folks who are in urban centers, for example, so people who are maybe away from tribal lands. They may not have the exact service, but they tend to be great about resources and pointing out, like, you know, hey, but maybe try X. Other tribal social services organizations that are urban centers, or that are not actually on reservations for a specific tribe exist, and you can certainly find them. Google is amazing that way. But, for example, there are, drug and alcohol rehabilitation programs for Native people that exist in urban centers that folks from anywhere in the state, and even out of state, can go to. And some of those programs also do things like youth programs, they sometimes have after-school programs. So those are some of the, right off the bat, I would say start with the established, you know, kind of bigger programs, like Indian Health Services, as maybe a starting point.

Geneva Shaw: The other one that I would mention, too, and certainly there are kind of some limitations, as far as requirements, as pointed out in the question, but our, there are tribal TANF programs that serve all counties throughout California, and while it might not necessarily be that you're the, the, family is seeking or needing or qualifies for monthly aid, our tribal TANF programs do so much great work in the way of prevention and just, like, cultural programming, and sometimes you just, you know, really kind of child-focused and targeted, good activities. So, also doing a lot of collaboration with other agencies and programs in their particular service areas. So, I always think tribal TANF programs are also a great resource because, again, they are serving counties, you know, every county in California.

Vida Castaneda: Wonderful. Well, thank you to you both. That was a fantastic presentation, and if you have any questions about CEUs, please reach out to Amanda Morris. She's the person who sent you your link and the materials for today. Thank you to everyone and have a wonderful weekend.

Kimberly Cluff: Thank you.