

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Susan D. Huguenor, Co-chairs
Christopher N. Wu, Supervising Attorney, 415-865-7721

DATE: August 16, 2004

SUBJECT: Indian Child Welfare Act (amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; and revise form ADOPT-225) (Action Required)

Issue Statement

In 1978, Congress passed the Indian Child Welfare Act, (ICWA) (25 USC §1901 et seq.), which set minimum federal standards in custody proceedings involving Indian children. Numerous California appellate cases in recent years have discussed procedures for adhering to ICWA requirements in juvenile court proceedings. The proposed forms and amendments to rule 1439 of the California Rules of Court are needed to clarify the respective responsibilities of the juvenile court, probation department and child welfare agency in cases that fall under ICWA and to ensure that notice to tribes meets ICWA's requirements and intent. Amendments to the rule are also necessary to reflect ICWA's application to delinquency and status offense cases in some circumstances.

Senate Bill 947,¹ effective January 1, 2004, requires that notice of voluntary adoption proceedings be given to any Indian tribe of which the prospective adoptive child is a member or may be eligible for membership. New and revised adoption forms are proposed to meet the requirements of this legislation.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, amend rule 1439 of the California Rules of Court; adopt new mandatory forms, *Parental Notification of Indian Status (Juvenile Court)* (form JV-130), *Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)* (form JV-135); and, *Notice of Voluntary Adoption Proceedings for an Indian Child* (form ADOPT-226); and revise *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225), to:

¹ Stats. 2003, ch. 469 (Ducheny).

1. Clarify that ICWA applies to certain delinquency and status offense proceedings;
2. Clarify the notice procedures and content under ICWA; and
3. Add an advisory committee comment to reflect the availability of relevant information on the Administrative Office of the Courts, Center for Families, Children & the Courts, Web site.

The proposed amended rule and forms are attached at pages 14–34; the comment chart is attached at pages 35–47; the texts of the Indian Child Welfare Act and Senate Bill 947 are attached at pages 48–63.

Rationale for Recommendation

The Indian Child Welfare Act requires a specific process for notice to Indian tribes and the Department of the Interior in certain juvenile cases. Failure to follow the process may preclude juvenile court jurisdiction and may result in invalidation of the proceedings. Numerous California appellate cases have invalidated juvenile court orders because the act's notice requirements were not followed.

New form JV-130, *Parental Notification of Indian Status (Juvenile Court)*, would provide a simple procedure to ensure that the court inquires into the applicability of ICWA in dependency cases. This form would help ensure that appropriate notice is given as early as possible in cases in which ICWA applies.

New form JV-135, *Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)*, would ensure that the federally mandated notice to tribes would be provided. The new form provides the information required by the act. As the first mandatory court form used for this purpose, it would provide greater statewide uniformity in both the giving of notice to tribes and creating the record to show that the trial court has adequately reviewed the notice given to the tribe by the child welfare agency.

New form ADOPT-226, *Notice of Voluntary Adoption Proceedings for an Indian Child*, would implement Senate Bill 947, which, effective January 1, 2004, requires that notice of adoption proceedings be given to any Indian tribe of which the prospective adoptive child would be a member or may be eligible for membership.

Both notice forms, JV-135 and ADOPT-226, are intended to provide sufficiently specific information about the child's family to assist in the determination of the child's Indian status, while conforming to the mandates of Assembly Bill 205,² which requires the use of gender-neutral references to parents in public-use forms whenever possible.

Form ADOPT-225, *Parent of Indian Child Agrees to End Parental Rights*, would be revised to delete the item that currently allows a parent to indicate whether or not the parent desires that notice be given to an Indian tribe. An item would be added to ensure

² Stats. 2003, ch. 421 (Goldberg).

that the parent understands that any identified Indian tribe of which the child is a member or eligible for membership would be sent notice of the adoption proceeding. This change is also required by SB 947, which added Family Code section 8620, effective January 1, 2004.

Amendments to rule 1439(d) and (e) would establish a consistent process for the court and investigating agencies to determine whether the child may be an Indian child and how further inquiry into the child's Indian status should proceed.

The amendment to rule 1439(b) adds certain delinquency and status offense cases to the rule's coverage. Specifically, the rule would be applicable to those cases under Welfare and Institutions Code sections 601 and 602 in which the child is placed in foster care or is at risk of entering foster care.

In order to clarify that ICWA applies to proceedings under Welfare & Institutions Code sections 601 and 602, the amendments add "probation officer" where the rule currently references "social worker," and "probation department" where the rule references "county welfare department."

Rule 1439(f) would be amended to specify that proof of notice under the rule and any responses received must be filed in the juvenile court. Several appellate opinions have noted inadequate trial court records in the cases on appeal regarding notice under ICWA. The rule amendment serves as a reminder that filing the proofs of notice in the juvenile court action is an important step in the ICWA notice process.

Rule 1439(f)(5) would be amended to delete a reference that could be misinterpreted to imply that the court can or should make a determination regarding whether or not a child is an Indian child.

Rule 1439(f)(6) would be added to provide guidance to the court regarding the minimum amount of time that should be allowed for response to notice to tribes or the Bureau of Indian Affairs (BIA) before the court should consider exercising its discretion to determine that the act does not apply to the case, based on the information before the court.

Rule 1439(f)(7) would be added to allow notice of hearings to be sent in the same form given to other parties to a tribe that has been identified as the Indian child's tribe and has already received form JV-135. This provision would only be implemented if the tribe agrees. All notices would still be sent by certified or registered mail, return receipt requested, in accordance with the act.

An advisory committee comment would be added to the rule to note that the Washoe Tribe of Nevada and California is the only tribe in California that is currently authorized to exercise exclusive jurisdiction under the act. Previously, the rule stated that no tribe in

California is authorized to exercise exclusive jurisdiction under the act. That sentence would be deleted.

Several technical amendments are proposed to clarify the rule, such as replacing the word “shall” with more specific terms, such as “must” or “may,” as appropriate.

Alternative Actions Considered

No alternative actions were considered. The proposed changes and additions are necessary to assist the trial courts in complying with state and federal law. Numerous appellate court opinions criticizing the way trial courts and child welfare agencies address ICWA indicate the need for further guidance statewide.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 5 through June 4, 2004, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals, such as the directors, managers, supervisors, and staff of family court services. In addition, the proposal was circulated to the tribal advisory committee of the California Department of Social Services.

There were a total of 14 commentators.³ Seven commentators agreed with the proposal as circulated, although some in this group suggested changes. Four commentators agreed with the proposal only if modified, and 3 of those commentators suggested modifications. Three commentators indicated that they did not agree with the proposal, and 2 of those commentators suggested amendments.

One commentator recommended clarifying that the term “child custody proceeding” for which ICWA notice may be necessary refers to each hearing and that, once notice is required, notice might not have to be sent for certain hearings when child custody is not at issue. The committee believes that the term “proceedings” in the act applies to the action in general and not separately to each hearing in the case.

It was also suggested that the rule specify when the duty to inquire into ICWA applicability ends. Although, under the act and the proposed rule, the court may make a finding that the act does not apply to the case in certain circumstances, the court and agency have a continuing affirmative duty to inquire into possible ICWA applicability that may arise at a later date.

Several commentators recommended that, in addition to requiring the filing of copies of the notice form and any return receipts received, the rule should require the filing of any responses received from tribes or the BIA. The committee believes that this would be a

³ The comments are summarized in the attached chart at pages 35–47.

reasonable additional requirement that would assist in creating a more complete trial record.

Two commentators recommended that the rule clarify that ICWA notice must be sent whenever required by the act and the rule and is not solely dependent on which box on the petition form is checked. These commentators speculated that the proper notice might be avoided simply by checking the incorrect box on the petition. The committee agrees that proper notice is required regardless of which box on the petition form is checked. The committee further notes that juvenile court petitions must be verified before filing.

The proposal contains a new requirement that a court may find that the act does not apply to the case unless further evidence is later offered, if no determinative response to notice is received within a reasonable time but not less than 60 days after notice is sent. One commentator recommended deleting the 60-day requirement, as it is not mandated by the act. The proposal is intended to balance the need for a determination of the act's applicability with the tribes' and BIA's need for a reasonable time in which to respond to notice. The committee recommends adopting the proposed new procedure and monitoring its effectiveness.

Two commentators recommended several additions to the information requested in proposed new form JV-130, *Parental Notification of Indian Status (Juvenile Court)*. The committee believes this form should be kept as short and simple as possible in order to encourage its use at the initial hearing to suggest whether further inquiry into Indian heritage is needed.

Several suggestions were made regarding style or word choices. Also some incorrect statutory references and internal inconsistencies were pointed out. The committee agreed with several such miscellaneous changes, and specific responses are noted in the comment chart.

Comments regarding scope of rule

Several significant comments questioned the scope of the rule and its relationship to the mandates of the federal act. These comments are more fully described in the full report. The committee, however, deemed them beyond the scope of the current proposal and recommended that they be studied further after the changes in the current proposal are implemented.

Implementation Requirements and Costs

Implementation of the new and revised forms would require courts to incur standard reproduction costs.

Attachments

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Issue Statement

In 1978, Congress passed the Indian Child Welfare Act, (ICWA) (25 USC §1901 et seq.), which set minimum federal standards in custody proceedings involving Indian children. Numerous California appellate cases in recent years have discussed procedures for adhering to ICWA requirements in juvenile court proceedings. The proposed forms and amendments to rule 1439 of the California Rules of Court are needed to clarify the respective responsibilities of the juvenile court, probation department and child welfare agency in cases that fall under ICWA and to ensure that notice to tribes meets ICWA's requirements and intent. Amendments to the rule are also necessary to reflect ICWA's application to delinquency and status offense cases in some circumstances.

Senate Bill 947,¹ effective January 1, 2004, requires that notice of voluntary adoption proceedings be given to any Indian tribe of which the prospective adoptive child is a member or may be eligible for membership. New and revised adoption forms are proposed to meet the requirements of this legislation.

Recommendation

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The proposed amended rule and forms are attached at pages 14–34; the comment chart is attached at pages 35–47; the texts of the Indian Child Welfare Act and Senate Bill 947 are attached at pages 48–63.

Rationale for Recommendation

The Indian Child Welfare Act requires a specific process for notice to Indian tribes and the Department of the Interior in certain juvenile cases. Failure to follow the process may preclude juvenile court jurisdiction and may result in invalidation of the proceedings. Numerous cases have invalidated juvenile court orders because the act's notice requirements were not followed. (See *In re Karla C.* (2003) 113 Cal.App.4th 166 (reversing disposition orders due to failure to follow notice provisions of the act); *In re Samuel P.* (2002) 99 Cal.App.4th 1259 (reversing the juvenile court's out-of-home placement orders because the act's notice provisions were not followed); and *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247 (vacating the juvenile court's order setting a hearing to terminate parental rights because the act's notice provisions were not followed).)

New form JV-130, *Parental Notification of Indian Status (Juvenile Court)*, would provide a simple procedure to ensure that the court inquires into the applicability of ICWA in dependency cases. This form will help ensure that appropriate notice is given as early as possible in cases in which ICWA applies.

New form JV-135, *Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)*, would ensure that the federally mandated notice to tribes would be provided. The new form provides the information required by the act. As the first mandatory court form used for this purpose, it would provide greater statewide uniformity in both the giving of notice to tribes and creating the record to show that the trial court has adequately reviewed the notice given to the tribe by the child welfare agency.

New form ADOPT-226, *Notice of Voluntary Adoption Proceedings for an Indian Child*, would implement Senate Bill 947, which, effective January 1, 2004, requires that notice of adoption proceedings be given to any Indian tribe of which the prospective adoptive child would be a member or may be eligible for membership.

Both notice forms, JV-135 and ADOPT-226, are intended to provide sufficiently specific information about the child's family to assist in the determination of the child's Indian

status, while conforming to the mandates of Assembly Bill 205,² which requires the use of gender-neutral references to parents in public-use forms whenever possible.

Form ADOPT-225, *Parent of Indian Child Agrees to End Parental Rights*, would be revised to delete the item that currently allows a parent to indicate whether or not the parent desires that notice be given to an Indian tribe. An item would be added to ensure that the parent understands that any identified Indian tribe of which the child is a member or eligible for membership would be sent notice of the adoption proceeding. This change is also required by SB 947, which added Family Code section 8620, effective January 1, 2004. SB 947 is attached at pages 56–63.

Amendments to rule 1439(d) and (e) would establish a consistent process for the court and investigating agencies to determine whether the child may be an Indian child and how further inquiry into the child’s Indian status should proceed.

The amendment to rule 1439(b) adds certain delinquency and status offense cases to the rule’s coverage. Specifically, the rule would be applicable to those cases under Welfare and Institutions Code sections 601 and 602 in which the child is placed in foster care or is at risk of entering foster care. A substantial proportion of California foster care placements are made through delinquency proceedings and therefore come within the provisions of the act.

ICWA expressly exempts from its definition of “child custody proceedings” placements based on an act that, if committed by an adult, would be deemed a crime (“law violation”). Recent changes to California law, however, clearly state that some delinquency proceedings may result in the removal of a child from the parent’s home primarily for the child’s own welfare and not because of any law violation the child may have committed. (25 U.S.C. § 1903(1); Welf. & Inst. Code, §§ 628, 636, 727.) The final federal rule implementing the Adoption and Safe Families Act (ASFA), which sets forth the requirements for federal funding of foster care placements, provides that ICWA works in the context of ASFA with respect to children in delinquency proceedings, thus confirming that ICWA applies to delinquency proceedings involving potential foster care placement. (See 45 C.F.R. §§ 1355–1357, Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews Final Rule.)

In order to clarify that ICWA applies to proceedings under Welfare & Institutions Code sections 601 and 602, the amendments add “probation officer” where the rule currently references “social worker,” and “probation department” where the rule references “county welfare department.” Form JV-600, *Juvenile Wardship Petition*, was revised last year to include information regarding the possible application of ICWA to section 601 and 602 proceedings.

² Stats. 2003, ch. 421 (Goldberg).

Rule 1439(f) would be amended to specify that proof of notice under the rule and any responses received must be filed in the juvenile court. Several appellate opinions have noted inadequate trial court records in the cases on appeal regarding notice under ICWA. The rule amendment serves as a reminder that filing the proofs of notice in the juvenile court action is an important step in the ICWA notice process.

Rule 1439(f)(5) would be amended to delete a reference that could be misinterpreted to imply that the court can or should make a determination regarding whether or not a child is an Indian child.

Rule 1439(f)(6) would be added to provide guidance to the court regarding the minimum amount of time that should be allowed for response to notice to tribes or the Bureau of Indian Affairs (BIA) before the court should consider exercising its discretion to determine that the act does not apply to the case, based on the information before the court. The appropriate time for such a determination may vary depending on the facts of the case. In some cases, a determination might not be warranted even if no response to the notice is received due to the strength of the evidence before the court that the child may be an Indian child. An Indian child's tribe may intervene at any point during the case.

Rule 1439(f)(7) would be added to allow notice of hearings to be sent in the same form given to other parties to a tribe that has been identified as the Indian Child's tribe and has already received form JV-135. Much of the information contained in JV-135 is a description of family heritage designed to assist a tribe to determine whether the child is a member or may be eligible for membership. Once a tribe has made that determination and has agreed to receive future notices in the same form as other parties, there is no need to repeat all of the family information in every hearing notice. Future notices would still be sent by certified or registered mail, return receipt requested, as required by the act.

An advisory committee comment would be added to the rule to note that the Washoe Tribe of Nevada and California is the only tribe in California that is currently authorized to exercise exclusive jurisdiction under the act. Previously, the rule stated that no tribe in California is authorized to exercise exclusive jurisdiction under the act. That sentence would be deleted.

Several technical amendments are proposed to clarify the rule, such as replacing the word "shall" with more specific terms, such as "must" or "may," as appropriate.

History of proposal

The current proposal makes modifications to another proposal that circulated for comment in 2003 and was later withdrawn. The major differences between the current proposal and the 2003 proposal are:

1. A form for response to the notice to tribes and the BIA was proposed in 2003 as a convenience for the noticed entities to inform the court of their intentions. That form was omitted from the current proposal because it might imply that there are limitations on when or how a tribe may respond to the notice.
2. The 2003 proposal would have modified the definition of “Indian child” to state that it does not include a child for whom the inquiry and notice under the act fails to elicit any information (For example, no response is received) suggesting that the child meets the definition of Indian child. The section was intended to clarify that the court can make a determination that ICWA does not apply in that situation unless further evidence that the act applies is later received. The current proposal, rather than modify the definition of the term “Indian child,” allows the court to make a determination that the act does not apply to the case if no response to notice is received within a reasonable time but no less than 60 days after notice is given.
3. A new form, ADOPT-226, has been added to the proposal to conform practice in adoption cases to new Family Code section 8620, requiring notice to Indian tribes in specified cases.

Alternative Actions Considered

No alternative actions were considered. The proposed changes and additions are necessary to assist the trial courts in complying with state and federal law. Numerous appellate court opinions criticizing the way trial courts and child welfare agencies address ICWA indicate the need for further guidance statewide.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 5 through June 4, 2004, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals, such as the directors, managers, supervisors, and staff of family court services. In addition, the proposal was circulated to the tribal advisory committee of the California Department of Social Services.

There were a total of 14 commentators.³ Seven commentators agreed with the proposal as circulated, although some in this group suggested changes. Four commentators agreed with the proposal only if modified, and 3 of those commentators suggested modifications. Three commentators indicated that they did not agree with the proposal, and 2 of those commentators suggested amendments.

One commentator recommended clarifying that the term “child custody proceeding” for which ICWA notice may be necessary refers to each hearing and that, once notice is

³ The comments are summarized in the attached chart at pages 35–47.

required, notice might not have to be sent for certain hearings when child custody is not at issue. The committee believes that the term “proceedings” in the act applies to the action in general and not separately to each hearing in the case.

It was also suggested that the rule specify when the duty to inquire into ICWA applicability ends. Although, under the act and the proposed rule, the court may make a finding that the act does not apply to the case in certain circumstances, the court and agency have a continuing affirmative duty to inquire into possible ICWA applicability that may arise at a later date.

Several commentators recommended that, in addition to requiring the filing of copies of the notice form and any return receipts received, the rule should require the filing of any responses received from tribes or the BIA. The committee believes that this would be a reasonable additional requirement that would assist in creating a more complete trial record.

Two commentators recommended that the rule clarify that ICWA notice must be sent whenever required by the act and the rule and is not solely dependent on which box on the petition form is checked. These commentators speculated that the proper notice might be avoided simply by checking the incorrect box on the petition. The committee agrees that proper notice is required regardless of which box on the petition form is checked. The committee further notes that juvenile court petitions must be verified before filing.

The proposal contains a new requirement that a court may find that the act does not apply to the case unless further evidence is later offered, if no determinative response to notice is received within a reasonable time but not less than 60 days after notice is sent. One commentator recommended deleting the 60-day requirement, as it is not mandated by the act. The proposal in 2003 specified that the definition of Indian child does not include a child for whom inquiry and notice do not elicit sufficient information. Several commentators to the previous proposal, including tribal representatives, objected to that section on the grounds that it appeared to infringe on the right of the tribe to determine the child’s status. Currently, there is no guideline in the act or the rule regarding when a court may find that the act does not apply to the case. A tribe may intervene in the case of an Indian child at any time, and there is no mandatory time or manner for a tribe’s response to notice. The current proposal is intended to balance the need for a determination of the act’s applicability with the tribes’ and BIA’s need for a reasonable time in which to respond to notice. The committee recommends adopting the proposed new procedure and monitoring its effectiveness.

One commentator recommended changes to three sections that would clarify when the court may deem rights under ICWA waived. There were no changes proposed to these sections, and the recommended changes are likely to be viewed as substantive. These changes should be considered for circulation at a later date.

Two commentators recommended several additions to the information requested in proposed new form JV-130, *Parental Notification of Indian Status (Juvenile Court)*. The committee believes this form should be kept as short and simple as possible in order to encourage its use at the initial hearing to suggest whether further inquiry into Indian heritage is needed. If further inquiry is necessary, the act and the rule require that the social worker or probation officer conduct an appropriate investigation and, if indicated by the investigation's results, file an amended petition form and give notice under the rule.

Several suggestions were made regarding style or word choices. Also some incorrect statutory references and internal inconsistencies were pointed out. The committee agreed with several such miscellaneous changes, and specific responses are noted in the comment chart.

Comments regarding scope of rule

The most significant comments questioned the scope of the rule and its relationship to the mandates of the federal act. These comments include:

1. Notice is required under the act if the court “knows or has reason to know that an Indian child is involved.” (25 USC § 1912(a)) Under rule 1439, notice is required based on knowledge that the child “may be” an Indian child or “may have” Indian ancestry. A recommendation was made to conform the rule’s language to the act.
2. The current rule requires the court to treat the child “as if” he or she is an Indian child when the petition or other circumstances indicate that the child may be an Indian child or may have Indian ancestry. Under proposed rule 1439(f)(6), the court would have discretion to subsequently find that the act does not apply to the case if the required notice and inquiry do not result in a determinative response. As previously noted, this finding could only be made more than 60 days after the sending of notice. Two commentators recommended eliminating the requirement of treating the child “as if” he or she is an Indian child before the child is actually shown to meet the definition of Indian child. These comments argue that the current procedure is not required by the act and is an unnecessary burden on the court and the agency.
3. A related comment recommends that the rule clarify that the substantive provisions of the act do not apply to a child who may not be an Indian child.
4. The rule currently requires notice to be sent to all tribes in which the child may be a member or may be eligible for membership. One commentator recommends narrowing the requirement of notice only to those tribes in which the child actually is a member or is eligible for membership.

The rule changes recommended in these comments would constitute major substantive revisions to California's ICWA procedures. Nothing in the current proposal would change the current standards addressed in these comments. The committee believes that implementing any of the enumerated recommendations without the opportunity of public comment is inadvisable as they are likely to be controversial.

California's procedures arguably are more stringent than the minimum standards of the federal act in certain areas. These higher standards are designed to minimize the likelihood that juvenile court proceedings will later be invalidated. One commentator argues that the risk of conducting potentially invalid dependency proceedings is outweighed by the burden of giving notice in additional cases.

ICWA anticipates that states may provide a higher standard of protection to the rights of Indian families than ICWA itself provides. In such circumstances, ICWA provides that the higher standard applies. (25 USC §1921) Congress declared in ICWA that its intention was to create "minimum Federal standards for the removal of Indian children from their families." (25 USC §1902)

The 2003 proposal related to ICWA was withdrawn after the comment period, mainly due to comments received from tribal interests. The current proposal is intended to achieve many of the same substantive goals of the prior proposal, and it is important to note that no objections were received from any tribal groups or individuals. The committee therefore recommends that the current proposal be approved, the enumerated recommendations be studied further, and implementation of the new provisions be monitored. AOC staff will work with the courts, attorneys, child welfare agencies, probation departments, and tribal representatives to examine where consensus can be achieved and what issues should be highlighted in a future proposal addressing the topics contained in these recommendations.

Implementation Requirements and Costs

Implementation of the new and revised forms would require courts to incur standard reproduction costs.

Attachments

Rule 1439 of the California Rules of Court is amended, effective January 1, 2005 to read:

Rule 1439. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)

(a) **[Definitions; 25 U.S.C. § 1903]** As used in this rule, unless the context or subject matter otherwise requires:

(1)–(2) ***

(3) “Indian custodian” means any Indian person who has:

(A) legal custody of an Indian child under tribal law or custom, or under state law; or

(B) temporary physical care, custody, and control of an Indian child whose parent or parents have transferred custody to that person.

(4) “Parent of an Indian child” means the biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. (This definition does not include a non-Indian adoptive parent, or an unwed alleged father where paternity has not been determined or acknowledged.)

(5) ***

(6) “Indian tribe” means any ~~Indian~~ tribe, band, nation, or other organized group or community of Indians eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.

(7)–(8) ***

(9) “Foster care placement” means any temporary placement from which a child may not be removed by the parent or Indian custodian upon demand, including a shelter care home, a foster home, or an institution, or the home of a guardian or conservator.

(10)–(12) ***

(b) **[Applicability of rule; 25 U.S.C. §§ 1911, 1912]** This rule applies to all proceedings under section 300 et seq. and to proceedings under section 601

1 and section 602 et seq. in which the child is at risk of entering foster care or is
2 in foster care, including detention hearings, jurisdiction hearings, disposition
3 hearings, reviews, hearings under section 366.26, and subsequent hearings
4 affecting the status of the Indian child.
5

6 **(c) [Jurisdiction; 25 U.S.C. § 1911]**
7

8 (1) If the Indian child resides or is domiciled on an Indian reservation that
9 exercises exclusive jurisdiction under the act over child custody
10 proceedings, the petition under section 300 must be dismissed. ~~At present,~~
11 ~~no California tribe is authorized under the Act to exercise exclusive~~
12 ~~jurisdiction.~~
13

14 (A) If the Indian child is temporarily off a reservation that exercises
15 exclusive jurisdiction, the juvenile court ~~shall~~ must exercise
16 temporary jurisdiction if there is an immediate threat of serious
17 physical harm to the child.
18

19 (B) Absent extraordinary circumstances, temporary emergency custody
20 ~~shall~~ must terminate within 90 days, unless the court determines by
21 clear and convincing evidence, including the testimony of at least
22 one qualified expert witness, that return of the child is likely to cause
23 serious damage to the child.
24

25 (C) The child ~~shall~~ must be returned immediately to the parent or Indian
26 custodian when the emergency placement is no longer necessary to
27 prevent serious harm to the child.
28

29 (2) If the Indian child is not domiciled or residing on a reservation that
30 exercises exclusive jurisdiction, the tribe, parent, or Indian custodian may
31 petition the court to transfer the proceedings to the tribal jurisdiction, and
32 the juvenile court ~~shall~~ must transfer ~~jurisdiction~~ the proceedings to tribal
33 jurisdiction unless there is good cause not to do so.
34

35 (A) Either parent may object to the transfer.
36

37 (B) The tribe may decline the transfer of ~~jurisdiction~~ the proceedings.
38

39 (3) If the tribe does not intervene or the tribal court does not request transfer
40 to tribal jurisdiction, ~~or if there is no response to the notice~~, the court
41 should proceed to exercise its jurisdiction regarding the Indian child
42 under section 300 et seq., in accordance with the procedures and

standards of proof as required by both juvenile court law and the act.

(d) **[Inquiry]** The court, ~~and~~ the 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 is to be, or has been, filed is or may be an Indian child.

(1) In juvenile wardship proceedings, if the probation officer believes that the child is at risk of entering foster care or is in foster care, he or she must ask the child, if the child is old enough, and the parents or legal guardians whether the child may be an Indian child or may have Indian ancestors.

~~(1)~~(2) In dependency cases, the social worker must ask the child, if the child is old enough, and the parents or legal guardians whether the child may be an Indian child or may have Indian ancestors. ~~section 1(l) or 1(m) of the Juvenile Dependency Petition (Version One) (JV 100) or section 1(i) or 1(j) of the Juvenile Dependency Petition (Version Two) (JV 110) must be checked if there is reason to know the child may be a member of or eligible for membership in a federally recognized Indian tribe or if there is reason to believe the child may be of Indian ancestry.~~

(3) At the first appearance by a parent or guardian 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, the parent or guardian must be ordered to complete form JV-130, Parental Notification of Indian Status.

~~(2)~~(4) The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following:

(A) A ~~party~~ person having an interest in the child, including the child, an Indian tribe, an Indian organization, an officer of the court, or a public or private agency, informs the court or the county welfare agency or the probation department or provides information suggesting that the child is an Indian child;

(B) The residence of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or

1 (C) The child or the child’s family has received services or benefits from
2 a tribe or services that are available to Indians from tribes or the
3 federal government, such as the Indian Health Service.
4

5 (e) **[Proceedings; 25 U.S.C. § 1912 Petition]**
6

7 (1) Section 1(l) or 1(m) on either the initial or an amended *Juvenile*
8 *Dependency Petition (Version One) (JV-100) or section 1(i) or 1(j) of the*
9 *initial or an amended *Juvenile Dependency Petition (Version Two) (JV-**
10 *110) must be checked if the county welfare department knows or has*
11 *reason to know that the child may be a member of or eligible for*
12 *membership in a federally recognized Indian tribe or if there is reason to*
13 *believe the child may be of Indian ancestry, as appropriate.*
14

15 (2) Section 1(m) or 1(n) on either the initial or an amended *Juvenile*
16 *Wardship Petition (JV-600) must be checked if the county probation*
17 *department knows or has reason to know that the child may be a member*
18 *of or eligible for membership in a federally recognized Indian tribe or if*
19 *there is reason to believe the child may be of Indian ancestry, as*
20 *appropriate.*
21

22 (3) If section 1(l) of the *Juvenile Dependency Petition (Version One) (JV-*
23 *100) or section 1(i) of the *Juvenile Dependency Petition (Version Two)**
24 *(JV-110) or section 1(m) of the *Juvenile Wardship Petition (JV-600)**
25 *is checked, or if, upon inquiry, or based on other information, the court has*
26 *reason to know the child may be an Indian child, the court shall ~~shall~~ must*
27 *proceed as if the child is were an Indian child and ~~shall~~ must proceed with*
28 *all dependency and wardship hearings, observing the Welfare and*
29 *Institutions Code timelines while complying with the act and this rule.*
30

31 (A) A determination by the identified tribe or tribes ~~or the Bureau of~~
32 ~~Indian Affairs (BIA)~~ that the child is or is not an Indian child, ~~shall~~
33 ~~be~~ is definitive.
34

35 (B) If no particular tribe can be reasonably identified, a determination by
36 the Bureau of Indian Affairs (BIA) that the child is not an Indian
37 child is definitive.
38

39 (4) If section 1(m) of the *Juvenile Dependency Petition (Version One) (JV-*
40 *100) is checked and section 1(l) is not, or section 1(j) of the *Juvenile**
41 *Dependency Petition (Version Two) (JV-110) is checked and section 1(i)*
42 *is not, or if section 1(n) of the *Juvenile Wardship Petition (JV-600) is**
43 *checked and section 1(m) is not, notice of the proceedings to the Bureau*

1 of Indian Affairs and further inquiry regarding the possible Indian status
2 of the child are the only requirements.
3

4 (f) [Notice; 25 U.S.C. § 1912] The parent or legal guardian and Indian custodian
5 of an Indian child, and the Indian child's tribe, must be notified of the pending
6 petition and the right of the tribe to intervene in the proceedings, and proof of
7 such notice, including copies of notices sent and all return receipts and
8 responses received, must be filed with the juvenile court. If at any time after
9 the filing of the petition the court knows or has reason to know that the child is
10 or may be an Indian child, the following notice procedures must be followed:
11

- 12 (1) Notice of Involuntary Child Custody Proceedings for an Indian Child,
13 (Juvenile Court) (JV-135) must be sent, with a copy of the petition, by
14 registered or certified mail with return receipt requested, and
15 additional notice by first class mail is recommended.
16
- 17 (2) Notice to the tribe ~~shall~~ must be to the tribal chairman ~~or person~~ unless
18 the tribe has designated another agent for service.
19
- 20 (3) Notice ~~shall~~ must be sent to all tribes of which the child may be a
21 member or may be eligible for membership.
22
- 23 (4) If the identity or location of the parent or Indian custodian or the tribe
24 cannot be determined, notice ~~shall~~ must be sent to the specified office
25 of the Secretary of the Interior, which has 15 days to provide notice as
26 required.
27
- 28 (5) Notice ~~shall~~ must be sent whenever there is reason to believe the child
29 may be an Indian child, and for every hearing thereafter unless and
30 until it is determined that the ~~child is not an Indian child~~ act does not
31 apply to the case.
32
- 33 (6) If, after a reasonable time following the sending of notice under this
34 rule, but in no event less than 60 days, no determinative response to the
35 notice is received, the court may determine that the act does not apply
36 to the case unless further evidence of the applicability of the act is later
37 received.
38
- 39 (7) If an Indian child's tribe has exercised its right of intervention in the
40 proceedings after receiving form JV-135, subsequent notices may be
41 sent in the form provided to all other parties. All other provisions of
42 this section continue to apply.
43

1 (g)–(k) ***
2

3 (l) [**Reasonable Active efforts; 25 U.S.C. § 1912**] In addition to the findings
4 required under section 361, in order to place an Indian child out of the custody
5 of a parent or Indian custodian, or to issue orders under section 366.26, the
6 court must find that active efforts have been made to provide remedial services
7 and rehabilitative programs designed to prevent the breakup of the Indian
8 family, and that these efforts were unsuccessful.
9

10 (1) The court shall consider the prevailing social and cultural conditions of
11 the Indian child's tribe.
12

13 (2) Efforts to provide services shall include attempts to utilize the available
14 resources of extended family members, the tribe, Indian social service
15 agencies, and individual Indian caregivers.
16

17 (m)–(p) ***
18
19
20

Advisory Committee Comment (2005)

21 As of January 1, 2004, only the Washoe Tribe of Nevada and California is authorized under the
22 act to exercise exclusive jurisdiction. An updated list of tribes authorized to exercise exclusive
23 jurisdiction can be found on the Web site of the Administrative Office of the Courts, Center for Families,
24 Children & the Courts at www.courtinfo.ca.gov/programs/cfcc.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT 10 08/02/04 mc</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
PARENTAL NOTIFICATION OF INDIAN STATUS (Juvenile Court)	CASE NUMBER:

To the parent or guardian of the above-named child: you are required to provide the information requested below regarding the child's Indian status. In the event that new information becomes available that would change your response, you must inform your attorney and the social worker or probation officer immediately and an updated form must be filed with the court.

1. Name:

2. Relationship to child:

3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe (*name each*): _____.

- b. I may have Indian ancestry.

- c. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe (*name each*): _____.

- d. I have no Indian ancestry as far as I know.

4. A previous form JV-130 has has not been filed with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)
(Signature)

Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT 12</h1> <h1 style="margin: 0;">09/07/04</h1> <h1 style="margin: 0;">mc</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INVOLUNTARY CHILD CUSTODY PROCEEDINGS FOR AN INDIAN CHILD (Juvenile Court)	CASE NUMBER:

NOTICE TO (*check all that apply*):

- Parent
 Tribe
 Indian Custodian
 Bureau of Indian Affairs (BIA)

1. a. Child's name:
 b. Date of birth:
 c. Place of birth (*city, state, and, if applicable, reservation*):
2. Child is reported to be eligible for membership in the following tribe or band (*name each*):

Based on a petition filed (*date*): _____, the child has been temporarily placed in the custody of the county welfare department, probation department, or Indian custodian named below:

3. County welfare department (*address*):
4. Probation department (*address*):
5. Indian custodian (*name each*):
 Tribe (*name each*):

6. Name of social worker or probation officer: _____ Telephone number: _____
 E-mail address: _____

HEARING INFORMATION

7. Date of next hearing:	Dept:	Time:	Type of hearing:
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- Located at above address Other:

CASE NAME: _____	CASE NUMBER:
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8. UNDER THE INDIAN CHILD WELFARE ACT AND CALIFORNIA LAW:

- a. The biological or adoptive parents, any Indian custodian, and the child's tribe have the right to be present at all hearings.
- b. The biological or adoptive parents, any Indian custodian, and the child's tribe have the right to intervene in the proceedings.
- c. If the parents or custodians have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- d. If the child's tribe, any parent, or any Indian custodian requests it, the court will permit the hearing to be held up to 20 days after receipt of this notice.
- e. The date, time, and place of the hearing are on the first page of this form.
- f. If the tribe has a tribal court, the tribe, any parent, or any Indian custodian of the child may request a transfer of the case to the child's tribal court. They also have the right to refuse to have the case transferred to the tribal court.
- g. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible adoption of the child.
- h. Juvenile court proceedings are confidential. Information concerning the juvenile court proceedings should be kept confidential.

9. a. INFORMATION ON CHILD WHO IS THE SUBJECT OF AN INVOLUNTARY CUSTODY PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

Attach any information that might be of assistance in determining the child's Indian status, including names and addresses of extended family members who may have Indian heritage.

<input type="checkbox"/> Mother <input type="checkbox"/> Father	<input type="checkbox"/> Mother <input type="checkbox"/> Father
Name <i>(include maiden, married, and former or aliases):</i>	Name <i>(include maiden, married, and former or aliases):</i>
Current and former addresses:	Current and former addresses:
Birthdate and place:	Birthdate and place:
Tribe, band, and location:	Tribe, band, and location:
If available, provide enrollment number or BIA/tribal agency:	If available, provide enrollment number or BIA/tribal agency:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME: —	CASE NUMBER:
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9. b. INFORMATION ON CHILD WHO IS THE SUBJECT OF AN INVOLUNTARY CHILD CUSTODY PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	
<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	

CASE NAME: _____	CASE NUMBER:
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9. c. INFORMATION ON CHILD WHO IS THE SUBJECT OF AN INVOLUNTARY CHILD CUSTODY PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	
<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	

CASE NAME: _____	CASE NUMBER: _____
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INFORMATION ON CHILD WHO IS THE SUBJECT OF AN INVOLUNTARY CUSTODY PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

10. Birth father is named on birth certificate. Unknown
11. Birth father has acknowledged paternity. Unknown
12. There has been a judicial declaration of paternity. Unknown
13. Other alleged father (*name each*):

The following optional questions may be helpful in tracing the ancestry of any person alleging Indian descent.

14. Have you or any of members of your family ever:
- a. Attended an Indian school? Yes No Unknown

Name/relationship	Type of school	Dates attended	Location of school

- b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?
 Yes No Unknown

Name/relationship	Type of treatment	Dates treatment received	Location where treatment received

- c. Lived on federal trust land, a reservation or rancheria, or an allotment? Yes No Unknown

Name/relationship	Name and address	Dates

15. Tribal affiliation and location (*check any that apply*).

- a. 1906 Final Roll Name of relative: _____

The 1906 Final Roll was prepared by the Dawes Commission. Individuals who allege to be of Chickasaw, Creek, Cherokee, Choctaw, or Seminole ancestry from Oklahoma must provide the name of a relative who is listed on this final roll.

- b. Roll of 1924 Name of relative: _____

The Roll of 1924 relates to the Eastern Band of Cherokees who were from states other than Oklahoma (such as North Carolina, Georgia, Mississippi, or another southeastern state). Individuals who allege to be of Eastern Cherokee descent must provide the name of a relative listed on the Roll of 1924.

- c. California Judgment Roll Roll number, if available: _____

CASE NAME: _____	CASE NUMBER: _____
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CERTIFICATE OF MAILING

(To be completed by social worker, probation officer, or clerk of juvenile court)

I certify that a copy of the *Notice of Involuntary Child Custody Proceedings for an Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or bureau as indicated below. Each envelope was sealed and deposited with the United States Postal Service at *(place)*: _____ on *(date)*: _____

Date:

Title:

Department:

(TYPE OR PRINT NAME)



(SIGNATURE)

This form and any return receipts must be filed with the court.

List all persons, tribes, or agencies provided notice with the full mailing address *(attach extra sheets if necessary)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT 10 09/07/04 mc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF VOLUNTARY ADOPTION PROCEEDINGS FOR AN INDIAN CHILD	CASE NUMBER:

NOTICE TO (check all that apply):

Parent
 Tribe
 Indian Custodian

1. a. Child's name:
 b. Date of birth:
 c. Place of birth (*city, state, and, if applicable, reservation*):
2. Child is reported to be eligible for membership in the following tribe or band (*name each*):
3. Name of sending organization:
 Address:

Adoption agency
 Adoption service provider

4. Indian custodian (*name each*):
 Tribe (*name each*):

5. Name of social worker or service provider:
 Address:

Telephone number:
 E-mail address:

HEARING INFORMATION

6. Date of next hearing: _____ Dept: _____ Time: _____ Type of hearing: _____

Located at above address
 Other:

CASE NAME: _____	CASE NUMBER:
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7. UNDER THE INDIAN CHILD WELFARE ACT AND CALIFORNIA LAW:

- a. The biological or adoptive parents, any Indian custodian, and the child's tribe have the right to be present at all hearings.
- b. The biological or adoptive parents, any Indian custodian, and the child's tribe have the right to intervene in the proceedings.
- c. If the parents or custodians have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- d. The date, time, and place of the hearing are on the first page of this form.
- e. The recipient of this notice is requested to provide confirmation of the child's Indian status to the social worker or service provider listed in item 5 on page 1.
- f. If all other notices required by law have been provided to an Indian tribe, the Indian tribe receiving the prior notices is encouraged to provide notice to the department of social services and to the licensed adoption agency or adoption service provider no later than five calendar days prior to the date of the final adoption hearing, indicating whether or not it intends to intervene in the proceeding, either on its own behalf or on behalf of a tribal member who is a relative of the child.

8. a. INFORMATION ON CHILD WHO IS THE SUBJECT OF A VOLUNTARY ADOPTION PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

Attach any information that might be of assistance in determining the child's Indian status, including names and addresses of extended family members who may have Indian heritage.

<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Mother	<input type="checkbox"/> Father
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	

CASE NAME: _____	CASE NUMBER: _____
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8. b. INFORMATION ON CHILD WHO IS THE SUBJECT OF A VOLUNTARY ADOPTION PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	
<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	

CASE NAME: _____	CASE NUMBER:
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8. c. INFORMATION ON CHILD WHO IS THE SUBJECT OF VOLUNTARY ADOPTION PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	
<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather	<input type="checkbox"/> Maternal <input type="checkbox"/> Great-grandmother	<input type="checkbox"/> Paternal <input type="checkbox"/> Great-grandfather
Name <i>(include maiden, married, and former or aliases):</i>		Name <i>(include maiden, married, and former or aliases):</i>	
Current and former addresses:		Current and former addresses:	
Birthdate and place:		Birthdate and place:	
Tribe, band, and location:		Tribe, band, and location:	
If available, provide enrollment number or BIA/tribal agency:		If available, provide enrollment number or BIA/tribal agency:	
If deceased, date and place of death:		If deceased, date and place of death:	
Additional information:		Additional information:	

CASE NAME: _____	CASE NUMBER: _____
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INFORMATION ON CHILD WHO IS THE SUBJECT OF A VOLUNTARY ADOPTION PROCEEDING
(Indicate if any of the information requested below is unknown or nonapplicable.)

9. Birth father is named on birth certificate. Unknown
10. Birth father has acknowledged paternity. Unknown
11. There has been a judicial declaration of paternity. Unknown
12. Other alleged father (*name each*):

The following optional questions may be helpful in tracing the ancestry of any person alleging Indian descent.

13. Have you or any of members of your family ever:
- a. Attended an Indian school? Yes No Unknown

Name/relationship	Type of school	Dates attended	Location of school

- b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?
 Yes No Unknown

Name/relationship	Type of treatment	Dates treatment received	Location where treatment received

- c. Lived on federal trust land, a reservation or rancheria, or an allotment? Yes No Unknown

Name/relationship	Name and address	Dates

14. Tribal affiliation and location (*check any that apply*).

- a. 1906 Final Roll Name of relative: _____

The 1906 Final Roll was prepared by the Dawes Commission. Individuals who allege to be of Chickasaw, Creek, Cherokee, Choctaw, or Seminole ancestry from Oklahoma must provide the name of a relative who is listed on this final roll.

- b. Roll of 1924 Name of relative: _____

The Roll of 1924 relates to the Eastern Band of Cherokees who were from states other than Oklahoma (such as North Carolina, Georgia, Mississippi, or another southeastern state). Individuals who allege to be of Eastern Cherokee descent must provide the name of a relative listed on the Roll of 1924.

- c. California Judgment Roll Roll number, if available: _____

CASE NAME: _____	CASE NUMBER: _____
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CERTIFICATE OF MAILING

(To be completed by social worker, probation officer, or clerk of juvenile court)

I certify that a copy of the *Notice of Voluntary Adoption Proceedings for an Indian Child*, with a copy of the adoption petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or bureau as indicated below. Each envelope was sealed and deposited with the United States Postal Service at *(place)*: _____ on *(date)*: _____

Date:

Title:

Department:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE)

This form and any return receipts must be filed with the court.

List all persons, tribes, or agencies provided notice with the full mailing address *(attach extra sheets if necessary)*:

ADOPT-225

Parent of Indian Child Agrees to End Parental Rights

Clerk stamps below when form is filed.

<p>DRAFT 6 07/19/04 mc</p>

- ① I want my child to be adopted by (name(s)):
- a. _____
- b. _____
- Their relationship to Indian child: (Check all that apply)
- Related to child (specify): _____
- Members of child's tribe Indian parents
- None of the above

Court name and street address:

<p>Superior Court of California, County of</p>

- ② The parent(s) in ① meet do not meet the placement preference requirements of the Indian Child Welfare Act.

- ③ Indian child (name): _____
- Date of birth: _____ Age: _____
- Child's tribe(s): _____
- Enrollment #: _____
- Check here if you do not know the enrollment #.

<p>Case Number:</p>

- ④ Your name: _____
- Mother Father (Check only one. Each parent fills out a separate form.)
- Your address (skip this if you have a lawyer):

City: _____ State: _____ Zip: _____

Phone #: _____ Your tribe(s): _____ Enrollment #: _____

Check here if you do not know the enrollment #.

Your lawyer (if you have one): (Name, address, phone #, and State Bar #):

- ⑤ I am the parent in ④ and I understand and say:
- I agree to give up my parental rights.
 - I agree to the adoption of my child by the parent(s) listed in ①.
 - I understand what will happen when I sign this form.
 - No one has threatened me or made promises to me to get me to sign this form.
 - I understand that until the judge signs an Adoption Order (ADOPT-215) or an order to end my parental rights, I can change my mind and my child will be returned to me.
 - I want the court to let me know if the adoption is canceled so I can ask the court to give custody of my child back to me. The court will give the custody of my child back to me if the judge decides it is in my child's best interest.
 - I do not give up any of my rights under the Indian Child Welfare Act by signing this form.
 - My child was at least 10 days old when I signed this form.
 - I understand that notice of the adoption request will be sent to any Indian tribe of which my child may be a member or eligible for membership.



Case Number: _____

Your name: _____

6 At the time of signing this form, I do not live and am not domiciled on an Indian reservation.

Date: _____
Type or print your name

Signature of Indian parent

Judge's Certification

I, Judge _____,
Superior Court of California, County of _____, certify:

- This form was completed in writing and recorded before me.
- I fully explained the terms and consequences to *(name of parent)*: _____
- The parent fully understood the terms and consequences.
- The parent speaks English or used an interpreter at the hearing.

Certified:

Date: _____

Judge (or Judicial Officer)

**SPR04-31
Indian Child Welfare Act**

(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Rachel M. Bavis Deputy County Counsel Orange County Counsel	N	N	<ol style="list-style-type: none"> 1. Supports comments by Gary Seiser 2. Recommend that JV-130: <ol style="list-style-type: none"> a. Advise parents to contact SW to provide additional information re: Indian heritage. b. Provide space for enrollment numbers of parent and child. c. Provide space for name, address and phone number of parent and direct parent to provide names, addresses, and phone numbers of any family members with information regarding family's Indian ancestry. d. Provide space for name of tribe and check box to show that parent does not know name of tribe. 3. Recommend that JV-135 and ADOPT-226: <ol style="list-style-type: none"> a. Add boxes for Date of Death. b. Change references to "you" to "a parent or family member" to reflect that the SW 	<ol style="list-style-type: none"> 1. No response necessary. 2. JV-130 is designed to be a simple form that might trigger a more complete inquiry that would elicit all of the information suggested. This form must be kept brief in order to be used in court at the initial hearing. 3a. Date of death is not required by federal guidelines, but might be helpful to an investigation. Date of Death will be added 3b. Agree to modify text.

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(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				and not the parent is responsible for completing the form. c. Add a “Remarks” or “Additional Information” section to forms.	3c. Agree to modify form.
2.	Hon. Barbara J. Beck Presiding Judge, Juvenile Court Superior Court of Santa Barbara County	A	N	<i>No specific comments.</i>	<i>No response required.</i>
3.	Ms. Cynthia Brandt Court Program Supervisor Superior Court of Ventura County	A	N	<i>No specific comments.</i>	<i>No response required.</i>
4.	Hon. John E. Dobroth Judge Superior Court of Ventura County	A	N	<i>No specific comments.</i>	<i>No response required.</i>
5.	Ms. Carole Greeley Bay Area Dependency Chapter of California Appellate Defense Counsel	AM	Y	1. Inquiry required in (d)(2) is insufficient: a. Social worker (SW) should ask if child “may be” an Indian Child or “may have” Indian ancestors. b. Rule should expressly require SW to exercise due diligence and to conduct a good faith investigation. c. Rule should expressly require notice form to be filed and served by SW.	1a. Agree to modify text. 1b. Committee believes current language is sufficient. 1c. The directive to that effect is printed directly on the form.

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Indian Child Welfare Act

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>2. Circumstances to trigger ICWA inquiry listed in (d)(4) are inconsistent with federal guidelines. Section should say, “the child may be an Indian child.”</p> <p>3. (d)(3) should specify that:</p> <ul style="list-style-type: none"> a. Clerk must provide JV-130 form to parent b. Court must read JV-130 form to parent if parent mentally disabled or unable to read English. c. Rule should specify that SW must assist parent to complete form, parent must return completed form to SW, and SW must file and serve form. d. Form should say parent “may be” a member of a tribe, parent “may have” Indian ancestry, and child “may be” a tribal member. <p>4. Can SW avoid ICWA notice by checking wrong box on petition form under (e)(2)? Proper notice should be required regardless of which box checked.</p>	<p>2. The circumstances listed in (d)(4) are consistent with, and more stringent than, the federal guidelines.</p> <p>3a. Requirement that parent be ordered to complete the form is sufficient.</p> <p>3b. This issue would apply to the proceedings as a whole and falls under the court’s general duty to ensure due process.</p> <p>3c. The committee believes further specification of procedure is unnecessary for this relatively simple form. Will revisit the issue in the future if necessary.</p> <p>3d. Agree to modify text.</p> <p>4. Proper notice under ICWA is still required regardless of which box is checked on petition form. Only a verified petition may be filed.</p>

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(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>5. (f) should require SW to file, in addition to notice sent and return receipts received, all documents sent to tribes and BIA and all responses received from tribes and BIA.</p> <p>6. The word “determinative” should be deleted from (f)(6) as too ambiguous. If response received that information is insufficient, SW should be required to exercise due diligence and attempt notice again.</p> <p>7. All items regarding content of notice specified in federal guidelines should be contained in both rule and JV-135 form.</p>	<p>5. Agree to suggested modification regarding responses received from tribes or BIA. Requiring SW to file copies of all documents sent to tribes is unnecessary as they may be voluminous in a particular case and may already be part of the court record.</p> <p>6. Court should retain discretion to decide when information received is sufficient to make a finding that the act does or does not apply to the case and what further investigative efforts need to be made.</p> <p>7. All items regarding content of notice in federal regulations and guidelines are contained in form JV-135. Repeating in the rule is unnecessary.</p>
6.	Ms. Kim R. Hubbard President Orange County Bar Association	N	N	<i>No specific comments.</i>	<i>No response required.</i>
7.	Ms. Cheryl Kanatzar Court Program Manager Superior Court of Ventura County	A	N	<i>No specific comments.</i>	<i>No response required.</i>
8.	Mr. Kevin Lane Assistant Clerk/Administrator Court of Appeal, Fourth	AM	N	<i>No specific comments.</i>	<i>No response required.</i>

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(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Appellate District San Diego				
9.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County	A	N	<ol style="list-style-type: none"> 1. Proposed rule and form amendments will help clarify procedure and save time. 2. Suggested changes marked on rule text and proposed forms: <ol style="list-style-type: none"> a. Clarify that juvenile court does not transfer jurisdiction to tribe (consistent with Seiser comment 4). b. Several non-substantive style and grammar changes proposed. c. Would change rule text to require notice only if child shown to be an Indian child (consistent with Seiser comment 12). 3. Question whether request for description of medical treatment received on JV-135 and ADOPT-226 permissible under HIPAA. 	<ol style="list-style-type: none"> 1. No response necessary. 2a. Agree to modify text. 2b. Changes will be made as appropriate 2c. The rule’s procedure may prevent later invalidation of juvenile court decisions. State procedure may be more stringent than the act if not in conflict with the act’s purpose. A substantive change to this policy was not proposed. 3. This request should not contravene federal health privacy law as long as it is optional, remains confidential and the purpose is clear. The child welfare agency is not a “covered entity” under HIPAA.
10.	Ms. Tina Rasnow SHLA Center Coordinator	A	N	<i>No specific comments.</i>	<i>No response required.</i>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Superior Court of Ventura County				
11.	Hon. Arthur G. Scotland Administrative Presiding Justice Court of Appeal, Third Appellate District Sacramento	N	N	<ol style="list-style-type: none"> 1. Rule should not require treating child “as if” he or she is an Indian child based solely on suggestion of Indian ancestry. Requiring compliance with ICWA substantive requirements before child is found to be an Indian child is in conflict with the act and rule 1439(b) which states that the rule applies to proceedings “affecting the status of the Indian child.” 2. Rule should clarify that substantive provisions of ICWA do not apply to a child who may not be an Indian child. At several stages of dependency proceedings, ICWA substantive requirements may cause delays and impose additional burdens on placement decisions to the detriment of non-Indian children whose ancestry is being investigated. 3. Rather than treating child “as if” he or she is an Indian child, rule should provide that, if child is found to be an Indian child, prior proceedings not in compliance with ICWA may be invalidated. 4. (f)(6) does not specify whether giving of notice triggering 60 day time period begins at time notice is sent or date on return receipt. 5. Would allow SW to orally amend petition in court based on new information regarding Indian 	<ol style="list-style-type: none"> 1. The rule’s procedure may prevent later invalidation of juvenile court decisions. State procedure may be more stringent than the act if not in conflict with the act’s purpose. A substantive change to this policy was not proposed. 2. The rule’s procedure may prevent later invalidation of juvenile court decisions. State procedure may be more stringent than the act if not in conflict with the act’s purpose. The change suggested is likely to be controversial and should be considered at a later date. 3. No substantive change affecting this policy was contained in the proposal. The change suggested is likely to be controversial and should be considered at a later time. 4. Rule text will be modified to clarify that time period begins when notice is sent. 5. The committee believes that the juvenile court file should contain a

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>ancestry rather than requiring filing of an amended petition.</p> <p>6. (e)(2) requirement only of notice to BIA and further inquiry if possibility of Indian ancestry is shown appears to conflict with ICWA if notice need not be sent to a particular tribe that might be implicated in the information.</p> <p>7. The entities to be noticed should be determined by the court and not by the SW or PO decision to check one box or the other on petition form as required in (d).</p> <p>8. JV-135 should provide space for current and former addresses of relatives listed as required by federal guidelines.</p> <p>9. Note that tribes listed in reference to 1906 Final Roll in current CDSS form SOC 318 are omitted from proposed forms.</p>	<p>full and accurate amended petition.</p> <p>6. If a particular tribe is named, the box on the petition indicating possible membership in a federally recognized should be checked in nearly.</p> <p>7. No substantive change affecting this policy was contained in the proposal. The delinquency petition form was amended last year to include ICWA information. The requirements in (d) regarding which entities must be noticed is intended to clarify, in the context of information shown on juvenile court petitions, the mandates of (f) regarding notice procedures.</p> <p>8. Agree to modify form to include space for addresses.</p> <p>9. Omission of these tribes was inadvertent. They will be added back into the list in this section.</p>
12.	Mr. Gary Seiser, Senior Deputy Office of County Counsel, Juvenile Dependency	AM	N	1. Restrict definition of “child custody proceeding” to hearings at which a custody or placement order is requested; clarify that ICWA does not apply to <u>all</u> hearings.	1. The word “proceedings” in the act appears to apply to the action in general and not separately to each hearing in the action.

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(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Division San Diego County			<ol style="list-style-type: none"> 2. Restrict definition of “foster care placement” to “non-secure institutions.” 3. Further specify applicability of rule to foster care placements, including relative care and non-relative extended family member care as defined in sec. 362.7. 4. Specify that “jurisdiction” cannot be transferred from the juvenile court under ICWA and UCCJEA, only the “case” or “proceedings.” Court and tribe may have concurrent jurisdiction. 5. Clarify in (c)(3) that Welf. and Inst. Code still applies even if tribe intervenes in case. 6. Specify when duty to inquire into ICWA applicability ends. 7. Would move directive to SW or probation officer (PO) to check appropriate box on petition form 	<ol style="list-style-type: none"> 2. Unnecessary to change the term “institution” as used in the act because (b) specifies that the rule is only applicable to cases in which the child is at risk for entering foster care. 3. The general term “foster care” is sufficient to describe the rule’s application in cases under sec. 601 and 602. 4. Agree that the act refers to transfer of “proceedings” and not jurisdiction. Modifications will be made accordingly. ICWA, however, takes priority over UCCJEA under terms of the UCCJEA itself (Fam. Code sec. 3404(a)). 5. Agree with suggested modification. 6. The court and agency have a continuing duty to inquire into the possible Indian status of children before the court and further specification is unnecessary. 7. Agree to modify text.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>to the following subdivision.</p> <p>8. Would distinguish circumstances in (d)(2) that would give rise to further ICWA inquiry from those that would trigger probable cause determination giving rise to notice requirement.</p> <p>9. Would change description of relevant probation placements in (d)(3) consistent with comment 3 above.</p> <p>10. Rule should not require notice under the act based solely on suggestion that the child “may be” an Indian child. This is a lower threshold for notice than the act requires.</p> <p>11. Would remove requirement that court must act “as if” the child were an Indian child pending determination of ICWA applicability since that is not required by the act and is therefore an unnecessary budgetary burden.</p>	<p>8. Although the committee agrees with the suggestion to move and reorganize these provisions within the rule as recommended in the previous comment, a substantive change in the threshold requirements for ICWA notice was not proposed. The recommended change is likely to be controversial and should be considered at a later date.</p> <p>9. Suggested change unnecessary.</p> <p>10. The rule’s procedure may prevent later invalidation of juvenile court decisions. State procedure may be more stringent than the act if not in conflict with the act’s purpose. A substantive change to this policy was not proposed.</p> <p>11. The rule’s procedure may prevent later invalidation of juvenile court decisions. Proposed amendment to clarify when the court may find that the act does not apply will help to minimize the burden of having to</p>

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(amend Cal. Rules of Court, rule 1439; adopt new mandatory forms JV-130, JV-135, and ADOPT-226; revise form ADOPT-225)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>12. Would limit requirement of notice only to tribes in which the child <u>is</u> a member or <u>is</u> eligible for membership. Current rule requires notice to tribes in which the child “may be” a member or “may be” eligible for membership.</p> <p>13. Would specify that copies of notice, certified or registered mail receipt, and any responses received be provided to court. Would specify that, in the absence of timely objection or challenge in juvenile court, failure to provide specified copies would not, in and of itself, require a finding that notice was defective or reversal of a finding that the act does not apply.</p> <p>14. Would remove the requirement in (f)(6) that court must wait at least 60 days after notice is given to make a finding that the act does not apply.</p>	<p>temporarily follow the act. Substantive change was not proposed to this section. and the suggested change would be a major policy shift.</p> <p>12. It is not clear that the rule states a different standard than the act. However, if the rule is deemed to be more inclusive, the rule’s procedure may prevent later invalidation of juvenile court decisions. State procedure may be more stringent than the act if not in conflict with the act’s purpose. A substantive change to this policy was not proposed.</p> <p>13. Agree that responses should be provided to the court. Further definition of consequences of failure to file documents as required by this rule is unnecessary.</p> <p>14. Currently, there is no guideline at all regarding the time when a court may find that the act does not apply. This proposal balances the need for a determination to be made when warranted with the tribe’s and BIA’s</p>

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				<p>15. Would revise (g) to clarify that only the juvenile court determines whether the act applies and would further specify factors relevant to the court's determination.</p> <p>16. Would change statutory reference in (h).</p> <p>17. Would clarify circumstances in (i), (j) and (m) in which the court may deem rights under the act waived.</p> <p>18. Would change heading in (l) to refer to "Active efforts" rather than "Reasonable efforts."</p>	<p>need for a reasonable time to respond to notice.</p> <p>15. No change was proposed to this section and the recommendation is likely to be controversial and would have to be circulated for comment in the future.</p> <p>16. Although no change was proposed to (h), this is a technical change that should be made.</p> <p>17. These changes could be seen as substantive changes that were not sent out for comment. They should be considered at a later time.</p> <p>18. Although no change was proposed to (l), this is a technical change that should be made.</p>
13.	Ms. Janet G. Sherwood Attorney Corte Madera	AM	N	<p>1. Rule should specify who is responsible for filing JV-130 form and require service on all parties.</p> <p>2. Proper notice under ICWA should be required whether or not the proper box is checked on</p>	<p>1. This form is designed to be a convenience for the court and parties to facilitate a required inquiry at the first appearance. Further procedural requirements should be considered at a later time if problems develop.</p> <p>2. Proper notice under ICWA is still required regardless of which box is</p>

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				<p>petition form. Can giving notice be avoided by checking incorrect box?</p> <p>3. County should be required to file any responses received from tribe or BIA.</p> <p>4. In (f)(6) the term “determinative” is too vague. If response is received that tribe or BIA requires more information, county should be required to exercise due diligence to obtain information and send updated notice. Court should continue to provide notice of hearings in the meantime.</p> <p>5. Rule should specify that notice forms should be filed with the court and served on the parties.</p> <p>6. Suggest that CFCC web site contain annually updated list of tribal chairpersons and designated agents for service of notice.</p>	<p>checked on petition form. Only a verified petition may be filed.</p> <p>3. Agree to modify rule accordingly.</p> <p>4. Court should retain discretion to decide when information received is sufficient to make a finding that the act does or does not apply to the case and what further investigative efforts need to be made.</p> <p>5. Directions on the form require filing it with the court. Further procedural requirements should be considered at a later date if problems develop.</p> <p>6. AOC staff will implement this suggestion if feasible.</p>
14.	Ms. Anne Smith ICWA Specialist California Department of Social Services	A	N	<p>1. Conform “reason to know” in (e)(1) and (e)(2) to (f)(5) standard of “reason to believe.”</p> <p>2. Add space for address of persons described in JV-135.</p> <p>3. Add space for date of death (if deceased) to persons described in JV-135.</p> <p>4. Add check box to indicate “unknown” for information requested in JV-135.</p>	<p>1. Agree to modify text accordingly.</p> <p>2. Agree to modify form accordingly.</p> <p>3. Agree to modify form accordingly.</p> <p>4. Agree to modify form accordingly.</p>

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				5. Indicate certain questions in JV-135 are optional. 6. Add relevant tribes to those listed in question 14(a) on JV-135.	5. Agree to modify form accordingly. 6. Agree to modify form accordingly.

UNITED STATES CODE
TITLE 25. INDIANS
CHAPTER 21--INDIAN CHILD WELFARE ACT

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.
(Pub.L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.
(Pub.L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term--

(1) "child custody proceeding" shall mean and include--

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant

contacts;

(6) "Indian custodian" means 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 has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior, and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub.L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.)

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub.L. 95-608, Title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(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.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

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

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, 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.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, 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.
(Pub.L. 95-608, Title I, § 102, Nov. 8, 1978, 92 Stat. 3071.)

§ 1913. Parental rights, voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.
(Pub.L. 95-608, Title I, § 103, Nov. 8, 1978, 92 Stat. 3072.)

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.
(Pub.L. 95-608, Title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Pub.L. 95-608, Title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Pub.L. 95-608, Title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Pub.L. 95-608, Title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title. (Pub.L. 95-608, Title I, § 108, Nov. 8, 1978, 92 Stat. 3074).

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise. (Pub.L. 95-608, Title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child; danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. (Pub.L. 95-608, Title I, § 110, Nov. 8, 1978, 92 Stat. 3075.)

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard. (Pub.L. 95-608, Title I, § 111, Nov. 8, 1978, 92 Stat. 3075.)

§ 1922. Emergency removal or placement of child; termination appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Pub.L. 95-608, Title I, § 112, Nov. 8, 1978, 92 Stat. 3075.)

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Pub.L. 95-608, Title I, § 113, Nov. 8, 1978, 92 Stat. 3075.)

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to--

- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
- (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
- (4) home improvement programs;
- (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
- (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
- (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
- (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under Titles IV-B and XX of the Social Security Act [42 U.S.C.A. §§ 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under Titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

(Pub.L. 95-608, Title II, § 201, Nov. 8, 1978, 92 Stat. 3075.)

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to--

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.
(Pub.L. 95-608, Title II, § 202, Nov. 8, 1978, 92 Stat. 3076.)

§ 1933. Funds for on and off reservation programs

- (a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

- (b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.
(Pub.L. 95-608, Title II, § 203, Nov. 8, 1978, 92 Stat. 3076; Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.
(Pub.L. 95-608, Title II, § 204, Nov. 8, 1978, 92 Stat. 3077.)

§ 1951. Information availability to and disclosure by Secretary

- (a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show--

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

- (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.
(Pub.L. 95-608, Title III, § 301, Nov. 8, 1978, 92 Stat. 3077.)

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.
(Pub.L. 95-608, Title III, § 302, Nov. 8, 1978, 92 Stat. 3077.)

§ 1961. Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Pub.L. 95-608, Title IV, § 401, Nov. 8, 1978, 92 Stat. 3078; Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

§ 1962. Omitted

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby. (Pub.L. 95-608, Title IV, § 403, Nov. 8, 1978, 92 Stat. 3078.)

Senate Bill No. 947

CHAPTER 469

An act to amend Section 6086.7 of the Business and Professions Code, and to amend Sections 7810 and 7950 of, and to add Section 8620 to, the Family Code, and to amend Section 10553.1 of the Welfare and Institutions Code, relating to Native American children.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 947, Ducheny. Indians: child welfare services: adoptions.

(1) Existing federal law, contained in the Indian Child Welfare Act, specifies that an Indian tribe shall have exclusive jurisdiction, except in certain cases, over any custody proceeding involving an Indian child, as defined, and specifies procedures and rights applicable to state court proceedings involving an Indian child. Among other things, these provisions authorize an Indian child's tribe to intervene in state court proceedings to determine the foster care placement of, or termination of parental rights to, an Indian child.

Existing California law directs the courts to strive to promote the stability and security of Indian tribes and families and to comply with the federal Indian Child Welfare Act in all Indian child custody proceedings, as specified, and requires that the federal act be applied in those proceedings if the tribe determines that an unmarried person, who is under 18 years of age, is a member of the tribe or is eligible for membership and is a biological child of a member of a tribe.

Existing law includes findings and declarations regarding these provisions.

This bill would revise those findings and declarations.

(2) Existing law requires state and local authorities to provide notice of, and to transfer child custody proceedings to, an Indian tribe within a specified period in cases in which an Indian child has been removed from parental custody by those authorities and the tribe has exclusive jurisdiction, as specified.

Existing law also requires that diligent efforts be made to locate an appropriate relative when placing a child in foster care.

This bill would, among other things, require the State Department of Social Services, a licensed adoption agency, or the adoption service provider, as applicable, to ask whether a child is or may be a member of, or eligible for membership in, an Indian tribe, as defined, when a parent

seeks to relinquish a child for adoption or to execute an adoption placement agreement, as specified. The bill would require those entities to obtain additional information if there is information indicating that the child is or may be an Indian child, and to send a notice, including that additional information, to any Indian tribe, as defined, of which the child is or may be a member or eligible for membership. The bill would also impose specified civil penalties upon a person, other than a birth parent, who knowingly and willfully makes false claims in the required notice. The bill would require the State Department of Social Services to adopt regulations to ensure that the parent of an Indian child who is being voluntarily relinquished for adoption is advised of his or her right to withdraw his or her consent at any time prior to the entry of a final decree of termination of parental rights or adoption, as specified. The bill would require that a child be placed in the home of a relative for purposes of foster care, except as specified. The bill would specifically authorize an Indian tribe, as defined, to intervene in certain adoption proceedings and proceedings to determine the foster care placement of an Indian child on behalf of a tribal member relative, as specified. The bill would also require that there be a court finding that diligent efforts have been made to locate an appropriate relative before placing a child in foster care including, but not be limited to, requesting information about appropriate Indian tribes, as defined, and evaluation of each relative whose name is submitted. An Indian tribe that has received the required notices would be encouraged to provide notice regarding whether or not it intends to intervene, as specified.

(3) Existing law authorizes an agency responsible for the placement of a foster child to take into consideration in placing the child the cultural, ethnic, or racial background of the child and the capacity of the prospective foster parents to meet the needs of a child of this background.

This bill would delete those provisions and, instead, would provide that specified provisions of existing law with respect to the placement of children in foster care shall not be construed to affect the application of the Indian Child Welfare Act.

(4) Existing law requires a court to notify the State Bar when specified sanctions are imposed upon an attorney.

This bill would require a court to notify the State Bar when the civil penalties described in (2) above are imposed upon an attorney.

(5) Existing law provides that the Director of the State Department of Social Services may enter into an agreement with any California Indian tribe for the delegation to the tribe of the responsibility, that would otherwise be that of a county, for the provision of child welfare services or assistance payments.

This bill would also preclude construction of the implementation of the director's agreements with Indian tribes to delegate county child welfare responsibilities as imposing liability upon, or requiring indemnification by, the participating county or the State of California for any act or omission performed by an officer, agent, or employee of the participating tribe.

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

SECTION 1. Section 6086.7 of the Business and Professions Code is amended to read:

6086.7. (a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

SEC. 2. Section 7810 of the Family Code is amended to read:

7810. (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.

(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.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), 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.

(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 (25 U.S.C. Sec. 1901 et seq.) to the proceedings.

SEC. 3. Section 7950 of the Family Code is amended to read:

7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used:

(1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made by an agency or entity to which this subdivision applies, to locate an appropriate relative. Before any child may be placed in long-term foster care, the court shall find that the agency or entity to which this subdivision applies has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted to the agency or entity as a possible caretaker, either by himself or herself or by other persons, has been evaluated as an appropriate placement resource.

(2) No agency or entity that receives any state assistance and is involved in foster care placements may do either of the following:

(A) Deny to any person the opportunity to become a foster parent on the basis of the race, color, or national origin of the person or the child involved.

(B) Delay or deny the placement of a child into foster care on the basis of the race, color, or national origin of the foster parent or the child involved.

(b) Subdivision (a) shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

(c) Nothing in this section precludes a search for an appropriate relative being conducted simultaneously with a search for a foster family.

SEC. 4. Section 8620 is added to the Family Code, to read:

8620. (a) (1) If a parent is seeking to relinquish a child pursuant to Section 8700 or execute an adoption placement agreement pursuant to Section 8801.3, the department, licensed adoption agency, or adoption service provider, as applicable, shall ask the child and the child's parent

or custodian whether the child is, or may be, a member of, or eligible for membership in an Indian tribe or whether the child has been identified as a member of an Indian organization. The department, licensed adoption agency, or adoption service provider, as applicable, shall complete the forms provided for this purpose by the department and shall make this completed form a part of the file.

(2) If there is any oral or written information that indicates that the child is, or may be, an Indian child, the department, licensed adoption agency, or adoption service provider, as applicable, shall obtain the following information:

(A) The name of the child involved, and the actual date and place of birth of the child.

(B) The name, address, date of birth, and tribal affiliation of the birth parents, maternal and paternal grandparents, and maternal and paternal great-grandparents of the child.

(C) The name and address of extended family members of the child who have a tribal affiliation.

(D) The name and address of the Indian tribes or Indian organizations of which the child is, or may be, a member.

(E) A statement of the reasons why the child is, or may be, an Indian.

(3) (A) The department, licensed adoption agency, or adoption service provider, as applicable, shall send a notice, which shall include information obtained pursuant to paragraph (2) and a request for confirmation of the child's Indian status, to any parent and any custodian of the child, and to any Indian tribe of which the child is, or may be, a member or eligible for membership. If any of the information required under paragraph (2) cannot be obtained, the notice shall indicate that fact.

(B) The notice sent pursuant to subparagraph (A) shall describe the nature of the proceeding and advise the recipient of the Indian tribe's right to intervene in the proceeding on its own behalf or on behalf of a tribal member relative of the child.

(b) The department shall adopt regulations to ensure that if a child who is being voluntarily relinquished for adoption, pursuant to Section 8700, is an Indian child, the parent of the child shall be advised of his or her right to withdraw his or her consent and thereby rescind the relinquishment of an Indian child for any reason at any time prior to entry of a final decree of termination of parental rights or adoption, pursuant to Section 1913 of Title 25 of the United States Code.

(c) If a child who is the subject of an adoption proceeding after being relinquished for adoption pursuant to Section 8700, is an Indian child, the child's Indian tribe may intervene in that proceeding on behalf of a tribal member relative of the child.

(d) Any notice sent under this section shall, consistent with subdivision (f) of Rule 1439 of the California Rules of Court, as it read on January 1, 2003, comply with all of the following:

(1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended.

(2) Notice to the tribe shall be to the tribal chairman, 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.

(4) If the identity or location of an Indian relative or Indian custodian or the tribe cannot be determined, notice shall be sent to the office of the Secretary of the Interior, which has 15 days to provide notice as required.

(5) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which the final adoption order is to be granted.

(e) If all prior notices required by this section have been provided to an Indian tribe, the Indian tribe receiving those prior notices is encouraged to provide notice to the department and to the licensed adoption agency or adoption service provider, not later than five calendar days prior to the date of the hearing to determine whether or not the final adoption order is to be granted, indicating whether or not it intends to intervene in the proceeding required by this section, either on its own behalf or on behalf of a tribal member who is a relative of the child.

(f) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with an Indian tribe. Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, an Indian tribe, and the child, from voluntarily entering into a written agreement to permit continuing contact between the Indian tribe and the child, if the agreement is found by the court to have been entered into voluntarily and to be in the best interest of the child at the time the adoption petition is granted.

(g) With respect to giving notice to Indian tribes in the case of voluntary placements of Indian children pursuant to this section, a person, other than a birth parent of the child, shall be subject to a civil penalty if that person knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether the child is an Indian child or the parent is an Indian.

(2) Makes any false, fictitious, or fraudulent statement, omission, or representation.

(3) Falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact.

(4) Assists any person in physically removing a child from the State of California in order to obstruct the application of notification.

(h) Civil penalties for a violation of subdivision (g) by a person other than a birth parent of the child are as follows:

(1) For the initial violation, a person shall be fined not more than ten thousand dollars (\$10,000).

(2) For any subsequent violation, a person shall be fined not more than twenty thousand dollars (\$20,000).

(i) For purposes of this section, the terms "Indian tribe," "Indian organization," and "Indian child" are defined in Section 1903 of Title 25 of the United States Code.

SEC. 5. Section 10553.1 of the Welfare and Institutions Code is amended to read:

10553.1. (a) Notwithstanding any other provision of law, the director may enter into an agreement, in accordance with Section 1919 of Title 25 of the United States Code, with any California Indian tribe or any out-of-state Indian tribe, as defined in Section 1903 of Title 25 of the United States Code, that has reservation lands that extend into this state.

(b) (1) An agreement under subdivision (a) shall provide for the delegation to the tribe or tribes of the responsibility that would otherwise be the responsibility of the county for the provision of child welfare services or assistance payments under the AFDC-FC program, or both.

(2) An agreement under subdivision (a) concerning the provision of child welfare services shall ensure that a tribe meets current service delivery standards provided for under Chapter 5 (commencing with Section 16500) of Part 4, and provides the local matching share of costs required by Section 10101.

(3) An agreement under subdivision (a) concerning assistance payments under the AFDC-FC program shall ensure that a tribe meets current foster care standards provided for under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and provides the local matching share of costs required by Section 15200.

(c) Upon the implementation date of an agreement authorized by subdivision (a), the county that would otherwise be responsible for providing the child welfare services or AFDC-FC payments specified in the agreement as being provided by the tribe shall no longer be subject to that responsibility to children served under the agreement.

(d) Upon the effective date of an agreement authorized by subdivision (a), the tribe shall comply with fiscal reporting requirements specified

by the department for federal and state reimbursement child welfare or AFDC-FC services.

(e) An Indian tribe that is a party to an agreement under subdivision (a) shall, in accordance with the agreement, be eligible to receive allocations of child welfare services funds pursuant to Section 10102.

(f) Implementation of an agreement under subdivision (a) may not be construed to impose liability upon, or to require indemnification by, the participating county or the State of California for any act or omission performed by an officer, agent, or employee of the participating tribe pursuant to this section.

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