



JUDICIAL COUNCIL OF CALIFORNIA

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

Indian Child Welfare Act (ICWA) Information Sheet – ICWA Inquiry (DEPENDENCY)

1. Initial Inquiry

In every dependency case, the court and child welfare agency share an affirmative and continuing duty to inquire whether the child is or may be an Indian child. (WIC 224.3(a).) ICWA inquiry can be thought of as having two stages: (1) initial inquiry which is done in each and every case in which a dependency petition is filed or may be filed, and (2) further inquiry which is required in those cases in which initial inquiry gives “reason to know” that an Indian child may be involved.

Initial inquiry is fairly simple. It consists of asking the following people: (1) the child (if old enough); (2) the parents; (3) guardians; and (4) custodians whether the child is or may be an Indian child. (CRC 5.481 (a)(1)). Newly issued Bureau of Indian Affairs “Guidelines for State Courts and Agencies in Indian Child Custody Proceedings” suggest that the court ask each party to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.¹ Although not explicitly required by statute, it is best practice to ask about Indian ancestry from all available family members. This helps lessen the chance that ICWA information could emerge late in the case and delay permanency.

2. Document Initial Inquiry in Case File

The initial ICWA inquiry must be documented in the juvenile court case file in a number of ways: (1) the appropriate box should be checked on the petition; (2) a completed judicial council form ICWA-010(A) *Indian Child Inquiry Attachment* should either be attached to the petition, or if not available when the petition is filed, completed and submitted to the court separately; and (3) Judicial Council form ICWA-020 *Parental Notification of Indian Status* for

¹ These guidelines are published in the Federal Register/Vol. 80, No. 37/Wednesday, February 25, 2015 at page 10146. You can view them here http://www.courts.ca.gov/documents/Tribal_2015_federal_register.pdf

each of the child's parents, completed and signed by the parents should be in the court file. If one or both parents are not available to complete and sign the ICWA-020, the file should clearly document this. If one parent is not available, the other parent and other available family members should be asked about the missing parent's possible Indian ancestry and this noted in the court file.

Note : the duty of ICWA inquiry is affirmative and continuing. This means that whatever stage in the case a parent or family member becomes available they should be asked about Indian status. As soon as there is information suggesting that the child is or may be an Indian child, there is an obligation to comply with ICWA requirements.

3. Further Inquiry /Do you have "reason to know"?

According to WIC 224.3, information "suggesting" that the child is or may be an Indian child is sufficient to give you "reason to know the child is an Indian child". This information can come from any source. It can come as the result of the initial inquiry conducted by the agency and the court, or it can come from a relative, other individual, caretaker or agency interested in the child. Where ever the information comes from, a "reason to know" triggers the duty to do further inquiry.

Further inquiry requires at a minimum interviewing the following people: (1) the parents; (2) extended family members; and (3) any other person that reasonably can be expected to have information regarding the child's membership status or eligibility (i.e. extended family) and contacting the following: (1) California Department of Social Services; (2) Bureau of Indian Affairs; and (3) tribe(s) (WIC§ 224.3, subd. (c); see also Cal. Rules of Court, rule 5.481(a)(4).) The purpose and goal of further inquiry is to obtain the information required by WIC 224.2 (a) and the ICWA-030 form.

Caution –the court and the social workers have the duty of further inquiry; the court can order the parties to cooperate with ICWA inquiry, but cannot shift the duty to complete ICWA inquiry to another party (WIC 224.3(c).) It is fine to provide them with a questionnaire to complete as part of "further inquiry". However, the duty of further inquiry belongs to the court and the agency and cannot be entirely shifted to the parents. If extended family members and other sources of information are available to you, parent's failure to return a questionnaire or provide information does not excuse failure to obtain information from other available sources..²

Very little information is required in order to trigger the obligation to do further inquiry.

² See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

4. Required Extent of Inquiry

The goal of ICWA inquiry is to obtain all of the information necessary to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child* (<http://www.courts.ca.gov/documents/icwa030.pdf>) It is rare that you will be able to gather all of the information to complete the form entirely. The question then in each case is whether the inquiry was sufficient. This is very fact specific. The court and the agency are not required to “cast about” after vague information, but must make all “reasonable efforts” to obtain complete information. The agency does not need to do genealogical research or order birth or death records, but does need to ask for contact information for relatives or others who might have information and make reasonable efforts to contact them. At a minimum the agency must: interview parents; Indian custodian; relatives; extended family members and others who might reasonably be able to provide the information required to complete the ICWA-030 (WIC 224.3 (c)).

5. Document Further Inquiry in the Court file

Efforts at further inquiry should be documented in the court file. This can be done as part of court reports or separate declarations or other filings. It is best practice to clearly document in court reports the name of the people who have been contacted, the exact information provided and the date(s). It is important to remember that Indian Child Welfare Act findings must be based on proper evidence contained in the court file.

6. Judicial Findings

Once ICWA has been raised as a possible issue by a parent or other interest person saying the child may have Indian ancestry, it is important for the court to ensure that the matter is properly resolved and the correct judicial findings are made based on evidence in the court file or on the record.

The proper outcome of the ICWA issues, will depend upon the results of the “further inquiry”. If, as a result of inquiry, there is only vague information that some distant ancestor “may” have had Indian ancestry, such that the information falls more into the category of “family lore”, and no specific tribe can be identified, then ICWA notice may not be required. However, before making such a finding, the court should ask whether all available relatives have been questioned. The court should also ask both parents and their counsel whether any further information is available.

Based on the results of further inquiry, the judicial officer may consider doing any of the following:

- a) Decide that no notice is necessary and that ICWA does not apply.

This situation should be rare and only appropriate if nothing emerged during further inquiry to support tribal affiliation and no specific tribal information could be identified. If you believe this is the appropriate option best practice dictates the following:

- Tell all parties that, based on the available information, the claim of Indian ancestry is too vague and speculative. There is no specific tribal information. Accordingly based on this information ICWA notice is not required.
- Confirm with parties that they have no further information and there are no other individuals who could be contacted for information.
- Order that without further information, there is no need for ICWA notice and ICWA does not apply.

Note – because the duty of inquiry is affirmative and continuing, if more information emerges at a later point, the ICWA issue may have to be revisited.

b) Decide that ICWA notice is required and that ICWA may apply.

This will be the usual outcome where a claim of Indian ancestry is made on initial inquiry. Notice itself is discussed in a separate information sheet. However, inquiry and notice are closely linked. As a final piece of “inquiry” the court should ensure that when notice is sent, all parties, particularly parents and their counsel (per *In re S.B.* 174 Cal.App.4th 808, 94 Cal. Rptr.3d 645 appointed counsel should be able to review ICWA notice and advise the court of any defects) are asked to confirm that the contents of the notice are accurate and complete and that they have no further information to add.

Tip – in these cases you must apply all of the ICWA’s procedural, evidentiary and substantive provisions until the ICWA issues are resolved.

c) Decide that ICWA notice is required and that ICWA does apply.

Sometimes you will know that ICWA applies even before notice has been sent and a response received from a tribe. In these cases, you should immediately apply ICWA. Such cases include situations where the child’s tribal enrollment card³ is produced or the court has previously found ICWA applicable to the child. In these cases, notice must be sent to the child’s tribe.

Caution- If you wait until after receiving a tribal response to notice before treating the case as an ICWA case you may cause delays in permanency.

³ Note that not all tribes issue such cards, but where they do it is *prima facie* proof of tribal membership.



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

Judicial ICWA (Indian Child Welfare Act) Step 1: Initial Inquiry Checklist¹

1. Have the parties certified on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child? yes no
2. Is the ICWA-010(A) *Indian Child Inquiry Attachment* completed and in the file? yes no
3. Does the completed ICWA-010(A) indicate who was questioned regarding the child's possible Indian status? yes no
4. Do the persons questioned (as shown in the ICWA-010(A) and any attachments to it) include:
 - a. the child(ren)'s parent 1? yes no
 - b. the child(ren)'s parent 2? yes no
 - c. the child(ren)'s Indian custodian (if there is one)? yes no
 - d. the child(ren)'s available relatives? yes no
5. Is there a completed and signed ICWA-020 for parent 1? yes no
6. Is there a completed and signed ICWA-020 for parent 2? yes no

¹ The above list represents the basic requirements of "Initial Inquiry". If you answered no to any of the above, you should either ensure that the step is completed, or that the record reflects the reason this step was not completed before moving forward with an ICWA determination. For instance there may be no completed ICWA-020 for a parent because the parent is unknown or unavailable. You will want this on the record and will also want the record to reflect the efforts made to locate the parent and have the parent complete the ICWA-020. For instance if the parent is incarcerated, was there an effort to have the parent complete the ICWA-020? Was it sent to the parent in prison with a return, stamped envelope?

Judicial ICWA (Indian Child Welfare Act) Checklist

Step 2: Assessing whether you have “Reason to Know”²

1. Is there any information suggesting:
 - a. The child is a member of a tribe or eligible for membership in a tribe?
 yes no
 - b. One of the child’s biological parents is or was a member of a tribe?
 yes no
 - c. One of the child’s grandparents is or was a member of a tribe?³
 yes no
2. Is the residence or domicile of the child, the child’s parents, or Indian custodian in a predominantly Indian community? yes no
3. Has the child or the child’s family received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service? yes no

If you checked yes to any one of the above, then you have “reason to know” that the child is an Indian child and you should:

- find that ICWA may apply; AND
- order the agency to complete “further inquiry” is completed as soon as possible.⁴

If you did not check yes to any one of the above, then you should rule that based on current information ICWA does not apply. NOTE – later information could give you “reason to know” and require further ICWA compliance.

² WIC 224.3 (b) defines the circumstances that may provide reason to know the child is an Indian.

³ Remember that information “suggesting” is a fairly low threshold. Further “membership” does not require “enrollment” unless the tribe specifically states that enrollment is required. WIC 224.3(e)(1). Further, whether someone is a member or eligible for membership is a legal conclusion that many litigants may not know the answer to. The best course is to do thorough inquiry – in other words father the information necessary to have an expert – the tribe – determine eligibility and send that information to the tribe via the ICWA-030 Notice.

⁴ NOTE – per WIC 224.3 (c) the duty of further inquiry falls on the social worker or probation officer. In a family law or probate code case, it is the petitioner who is primarily responsible for inquiry. You may not shift this burden of further inquiry to another party to the case. See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

Judicial ICWA (Indian Child Welfare Act) Checklist

Step 3: Further Inquiry

CAUTION – If you have “reason to know” then the social worker or probation officer is required to make further inquiry.⁵ You cannot shift this duty to another party in the case.⁶

TIP – You should require the agency to submit evidence as to the further inquiry efforts made including names and dates of relatives and others contacted and the results of those contacts. Be particularly careful to ensure that all relatives who are in any way participating in the case or otherwise known to be available are interviewed.

1. Does the record support a finding that the agency interviewed the mother to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

2. Does the record support a finding that the agency interviewed the father to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

3. Does the record support a finding that the agency interviewed the Indian custodian (if there is one) to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no not applicable

4. Does the record support a finding that the agency interviewed available relatives to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

⁵ Welf. & Inst. Code 224.3(c). In cases governed by the *Family Code* or *Probate Code* per *Family Code* § 177 (b) and *Probate Code* § 1459.5(b) the duty of inquiry falls to the petitioner

⁶ See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

5. Does the record support a finding that the agency interviewed other individuals who might have this information to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

TIP – Many cases turn on failure to make full inquiry of available relatives and other individuals. There are cases where an agency was in touch with relatives about placement but failed to ask them questions related to ICWA inquiry. There are cases where relatives were in touch with the agency or appeared in Court but no one asked them questions related to ICWA inquiry. All these failures can result in a case being overturned on appeal based on inadequate ICWA inquiry and notice.