

**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. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Attorney, 415-865-7535,
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DATE: September 12, 2007

SUBJECT: Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480–5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-010(A), ICWA-020, and ICWA-030; approve forms ICWA-005-INFO, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135) (Action Required)

Issue Statement

With the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), effective January 1, 2007, the federal Indian Child Welfare Act (ICWA) was substantially enacted as California law and placed in Family, Probate, and Welfare and Institutions Code provisions governing juvenile court proceedings, as well as some child custody matters in family law, adoptions, probate guardianships, certain probate conservatorships, and proceedings for termination of parental rights and the voluntary relinquishment of a child by a parent. Senate Bill 678 (SB 678) codifies ICWA into state law, tracking the key provisions in the Family, Probate, and Welfare and Institutions Codes. The new law also specifically applies the ICWA placement preferences, evidentiary burdens, notice requirements, inquiry

mandates, “active efforts” provisions, and “qualified expert witness” requirements to delinquency placements in Welfare and Institutions Code section 601 and 602 cases when a child is at risk of entering foster care or is in foster care.¹ These changes to state law have resulted in substantial duplicative language in rule 5.664 of the California Rules of Court, which is applicable to juvenile court proceedings, while at the same time they have created a gap in rules affecting family and probate proceedings. The proposed new rules, forms, and form revisions address these problems and clarify procedures in all three areas of the law.

Recommendation

The Family and Juvenile Law and Probate and Mental Health Advisory Committees recommend that the Judicial Council, effective January 1, 2008:

1. Adopt rules 5.480 through 5.487, which are applicable to family, probate, and juvenile court matters. These rules eliminate, where possible, language that is contained in the new statutes, and they improve on rule 5.664 by separating the ICWA provisions into eight rules, each addressing a different subject: application, inquiry and notice, proceedings after notice, transfer of case, placement of an Indian child, termination of parental rights, petition to invalidate orders, and adoption record keeping.
2. Adopt rule 7.1015, applicable to probate guardianships and certain conservatorships. This rule notes the applicability of proposed rules 5.480 through 5.487 to all probate proceedings, unless otherwise stated, when a proposed ward is an Indian child. The committees propose the adoption of rule 7.1015 to avoid confusion among probate practitioners who would not know to look for clarification on ICWA provisions in Title 5, a division of rules governing family and juvenile matters, and also to address specific issues unique to the probate guardianship and conservatorship context.
3. Repeal rule 5.664, which is now both duplicative of the new code provisions and obsolete in light of the broader scope of the ICWA state statutory provisions.
4. Revise existing juvenile and guardianship/conservatorship forms (GC-210(CA), JV-100, JV-101(A), JV-110, and JV-600) to address the required Indian child inquiry and notice procedures.
5. Adopt a new set of ICWA forms for mandatory use in family, probate, and juvenile court proceedings, i.e., ICWA-010(A), ICWA-020, and ICWA-030.
6. Approve a new set of ICWA forms for optional use in family, probate, and juvenile court proceedings, i.e., ICWA-005-INFO, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060.

¹ Welf. & Inst. Code, § 727.4(a)(2), (d)(5)(D) and new Welf. & Inst. Code, § 224.3.

7. Revoke forms ADOPT-226, JV-130, and JV-135, which have been replaced by the new proposed set of forms applicable to proceedings under all three affected codes.

The text of the proposed rules and forms, together with the revoked rule and forms is attached at pages 18–98.

Rationale for Recommendation

All of the proposed changes are required by passage of SB 678. The primary effect of the new legislation in each of the three affected areas of law is to codify (1) inquiry requirements when an Indian child is or may be involved in an adoption, certain custody proceedings, guardianships, conservatorships, or juvenile dependency or delinquency proceedings, including termination of parental rights and the voluntary relinquishment of a child by a parent; (2) notice requirements when it is known or there is reason to know the child is an Indian child; (3) placement preferences; (4) evidentiary burdens; (5) procedures for transfer of certain custody cases to tribal court; and (6) other minimum federal requirements such as “active efforts” and “qualified expert witness” testimony.

The proposed rules would eliminate provisions that were in rule 5.664, but now would be repetitive because they are adequately covered by statute, and would focus on those areas that need further procedural or substantive clarification. In addition, there are a number of statutory provisions that are addressed in detail in the Welfare and Institutions Code, but are only incorporated by reference in the Family and Probate Codes. The proposed rules address many of those statutory provisions in some detail for the convenience of the court, practitioners, and the public.

Alternative Actions Considered

Given the legislative mandate of implementing ICWA in three different disciplines of the law—family, probate, and juvenile—the committees did not consider the alternative of not drafting appropriate rules and forms. But during the drafting process, the committees considered a number of different approaches. For example, the committees considered drafting three different sets of rules, one for each of the three disciplines. This seemed unnecessary and unwieldy, so the detailed rule for probate proceedings was drafted because many practitioners in that area would not know to look in the family and juvenile section of the court rules for guidance. That rule incorporates by reference the more detailed and comprehensive rules that were drafted and placed in a chapter of the rules that includes both family and juvenile rules. A number of approaches to the forms were also considered, including forms for each discipline. The most practical solution seemed to be the development of a specific set of forms applicable to ICWA proceedings in all three disciplines.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 25, 2007 through June 20, 2007, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution includes appellate justices, trial court judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. In addition, the proposal was sent to probate and mental health professionals and practitioners, and to California Indian tribal representatives and practitioners.

The comments are summarized in the attached chart at pages 99–178. There were a total of thirty one (31) commentators. Eight of the 31 agreed with the proposal in its entirety, while another 14 agreed to the proposal if modifications were made. Nine commentators disagreed with the proposal in its entirety, 4 of them without specifying the substance of their disagreement. The committees reviewed and considered the public comments as well as recommendations from the committees' working groups and made many modifications in response to the comments.

In addition to many technical, grammatical, and formatting comments, the comments primarily fell into the following areas: application of ICWA to delinquency proceedings, organization and substance of rules, procedural concerns about the transfer of cases to tribal jurisdiction and tribal intervention, and the conflict between the mandatory continuance and speedy trial considerations in delinquency cases. These categories have been summarized and discussed in greater detail in the full report that is attached.

Implementation Requirements and Costs

In addition to standard reproduction costs, implementation of this proposal may create additional time demands and expense for the courts, particularly for aiding self-represented litigants.

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Issue Statement

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standard of proof, it did not incorporate ICWA provisions into the state codes. Senate Bill 678 (SB 678) codifies ICWA into state law, tracking the key provisions in the Family, Probate, and Welfare and Institutions Codes.¹ The new law also specifically applies the ICWA placement preferences, evidentiary burdens, notice requirements, inquiry mandates, “active efforts” provisions, and “qualified expert witness” requirements to delinquency placements in Welfare and Institutions Code section 601 and 602 cases when a child is at risk of entering foster care or is in foster care.² These changes to state law have resulted in substantial duplicative language in California Rules of Court, rule 5.664, which is applicable to juvenile court proceedings, while at the same time they have created a gap in rules affecting family and probate proceedings. The proposed new rules, forms, and form revisions address these problems and would clarify procedures in all three areas of the law.

Rationale for Recommendation

All of the proposed changes are required as a result of the passage of SB 678. The primary effect of the new legislation in each of the three affected areas of law is to codify (1) inquiry requirements when an Indian child is or may be involved in an adoption, certain custody proceedings, guardianships, conservatorships, or juvenile dependency and delinquency proceedings, including termination of parental rights and the voluntary relinquishment of a child by a parent; (2) notice requirements when it is known or there is reason to know the child is an Indian child; (3) placement preferences; (4) evidentiary burdens; (5) procedures for transfer of certain custody cases to tribal court; and (6) other minimum federal requirements such as “active efforts” and “qualified expert witness” testimony.

The proposed rules eliminate provisions that were in rule 5.664, but now would be repetitive because they are adequately covered by statute, and focus on those areas that need further procedural or substantive clarification. In addition, a number of statutory provisions that are addressed in detail in the Welfare and Institutions Code, are incorporated only by reference in the Family and Probate Codes. The proposed rules address many of those statutory provisions in some detail for the convenience of the court, practitioners, and the public.

Proposed new rules

Rule 5.480 (Application)

¹ The legislation specifically affected the three codes as follows: adopted Fam. Code §§ 170, 175, 177, 180, 185, 7892.5, 7907.3, 8606.5, 8619.5, 9208, and 9209; amended Fam. Code §§ 3041, 7821, 7822, 8616.5, 8620, 8710, and 9210; repealed Fam. Code section 7810; adopted Prob. Code §§ 1449, 1459, 1459.5, 1460.2, 1474, and 1500.1; amended Prob. Code §§ 1510, 1511, 1513, 1516.5, and 1601; repealed Prob. Code § 2112; adopted Welf. & Inst. Code §§ 110, 224, 224.1–224.6, 306.6, 361.31, and 361.7; amended Welf. & Inst. Code §§ 290.1, 290.2, 291–295, 297, 305.5, 317, 361, 366.26, 727.4, 10553.1, and 16507.4.

² Welf. & Inst. Code, § 727.4(a)(2), (d)(5)(D) and new Welf. & Inst. Code, § 224.3.

This rule clarifies that ICWA applies to all proceedings under Welfare and Institutions Code section 300 et seq. (juvenile dependency); all proceedings under Welfare and Institutions Code sections 601 and 602 (juvenile delinquency) in which the child is at risk of entering foster care or is in foster care; all proceedings for award of custody to a nonparent under Family Code section 3041; all proceedings under the Family Code that may result in adoption; all proceedings to terminate parental rights; all proceedings to declare a child free from the custody and control of one or both parents; all proceedings listed in Probate Code section 1459.5(a) (guardianship and conservatorship); probate guardianships of the person in which the proposed guardian is not the child's Indian custodian or a parent's nominee; and probate conservatorships of the person of a married or formerly married minor in which the proposed conservator is not a parent or Indian custodian and physical custody of the child would be changed from a parent or Indian custodian.

Rule 5.481 (Inquiry and notice)

This rule expands ICWA inquiry requirements to include the broader range of persons and entities who are involved in custody proceedings under the Family, Probate, and Welfare and Institutions Codes, rather than only those parties in juvenile proceedings as stated in rule 5.664.

It also conforms its language concerning the ICWA duty to inquire into a child's Indian status to the stricter standard of knowledge set forth in SB 678, specifically addressing a change in the trigger for a duty of further inquiry from "reason to believe" (in rule 5.664) to "reason to know" (in the new statutes) that a child is an Indian child. In addition, the proposed rule includes more specific inquiry requirements based on the statutory changes.

The notice provision of rule 5.664, as applied to juvenile cases, was amended as of February 23, 2007 to promptly comply with the new legislation and thereby avoid confusion in the courts by the possible application of two different notice standards, one in the statute and another in the rule. Although the committees are recommending in this proposal that rule 5.664 be repealed, the language in the notice section of proposed rule 5.481 is substantially the same as that adopted in February 2007 with two modifications.

This proposal to adopt rule 5.481 changes the notice language of the February amendment of rule 5.664(f) in two ways: (1) it includes the additional Family Code and Probate Code proceedings that are now affected as a result of the new statutory changes; and (2) it introduces a notice standard in juvenile delinquency cases that gives the probation officer discretion to wait to give notice under ICWA until the child is already in foster care or it is "probable" that the child will be entering foster care, instead of at an earlier stage of the proceedings when disposition is unclear and the child may be committed to a ranch or camp rather than foster care. Rule 5.481 makes no such distinction for the "inquiry" duty,

which attaches at the beginning of any case that may involve an Indian child. Under Welfare and Institutions Code, section 224.3, “the court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.”

Because the new statutory changes expressly apply to delinquency cases³ when the child is at risk of entering foster care or is in foster care, the committees wanted to shape a notice standard that is both consistent with the legislation and the realities of the juvenile delinquency system. A review of the legislative history of California’s delinquency foster care statutes underscores that California has consistently treated delinquent foster care children the same as dependent foster care children. With the passage of Assembly Bill 575 (Aroner; Stats. 1999, ch. 997) and Assembly Bill 1695 (Aroner; Stats. 2001, ch. 831), California codified in delinquency statutes the federal foster care requirements of the Adoption and Safe Families Act of 1997 (ASFA) (Pub.L. No. 105-89) applicable to dependent foster care children to ensure compliance with federal law as well as continued reimbursement to counties for the placement and administrative costs associated with delinquent foster care children. (See AB 575—Assem.Com. on Human Services, Analysis of Assem. Bill No. 575(1999–2000 Reg. Sess.) April 21, 1999, pp. 1–5.) The committees’ approach to the notice standard attempts to reflect both this long history and the reality that only some delinquency dispositions will result in foster care placements.

Rule 5.482 (Proceedings after notice)

This rule (1) expands the *Proceedings after notice* subdivision of rule 5.664 to clarify the ICWA timelines (rule 5.482(a)); (2) clarifies the requirements for proof of notice (rule 5.482(b)); (3) clarifies the court’s responsibility for proceeding if it knows or has reason to know that the child is an Indian child, the procedures to follow if a tribal response requires additional steps, and the procedures to follow in the absence of a response after notice (rule 5.482(c), (d)); (4) clarifies a procedure

³ SB 678 clarified that the ICWA applies to delinquency cases by amending the Welfare and Institutions Code under Division 2 *Children*, Part 1 *Delinquents and Wards of the Juvenile Court*, Chapter 2 Juvenile Court Law in Articles 1 and 18. See Article 1 General Provisions, new Welf. & Inst. Code, §§ 224 (Legislative findings and declarations; Indian child custody proceedings); 224.1 (Definitions; Indian child membership in more than one tribe); 224.2 (Matters involving a child of Indian ancestry; notice to interested parties; time to notify; proof); 224.3 (Determination whether child is an Indian child; considerations; scope of inquiry); 224.4 (Intervention in proceedings by tribe); 224.5 (Full faith and credit to tribal proceedings and records); and 224.6 (Testimony of qualified expert witnesses; qualifications; participation at hearings; written reports and recommendations). See also Article 18 *Wards- Judgments and Orders*, amended Welf. & Inst. Code, § 727.4 (Notice of hearings; filing and copy of social study report; definitions).

for tribal intervention in the proceedings (rule 5.482(e)); (5) clarifies the ICWA procedures to follow for any change in placement of an Indian child (rule 5.482(f)); and (7) clarifies the procedures to follow when seeking a placement of an Indian child or to access tribal services (rule 5.482(g)). Under rule 5.482(d), the court must proceed as though the child is an Indian child whenever it knows or has reason to know the child is an Indian child. This provision is included because under ICWA (25 U.S.C. § 1914; Welf. & Inst. Code § 224(e)) any parent, Indian Custodian or tribe can petition the court to invalidate a proceeding if it can show that any provision of ICWA was violated. The committees included this provision to avoid invalidation of a proceeding in which the court has reason to know that the child is an Indian child because invalidation of a child custody proceeding is difficult for all parties involved and is time consuming for the parties and courts alike.

Rule 5.483 (Transfer of case)

This proposed rule includes detailed procedures for transferring cases to tribal jurisdiction, including information on the proper forms for optional and mandatory use, along with information on discretionary and mandatory reasons the court may or must deny a request to transfer.

Consistent with new Welfare and Institutions Code section 305.5, the proposed rule allows the state court discretion to deny a request for transfer of a case to tribal jurisdiction for good cause.

Rule 5.484 (Placement of an Indian child)

The proposed rule specifies evidentiary burdens and procedures for placement of Indian children in foster care. Although the procedures are specified in detail in the Welfare and Institutions Code, they are incorporated only by reference in the Family and Probate Codes. The procedures are included in the rule for the convenience of the courts, practitioners, and the public.

In addition, the proposed rule provides standards and preferences in the placement of an Indian child, but does not include information that is adequately covered in the statutes. The proposed rule includes information on evidentiary burdens and procedures for modification and adds a procedure to address the situation when no preferred placement is available.

Finally, the proposed rule describes the requirement that the court make a finding that active efforts have been made to prevent the breakup of the Indian family before placement of an Indian child out of the custody of a parent or Indian custodian or before terminating parental rights. Though the requirement is specified in the Welfare and Institutions Code, it is incorporated only by reference in the Family and Probate Codes. The active efforts provision is included in the rule for the convenience of the courts, practitioners, and the public.

Rule 5.485 (Termination of parental rights)

The proposed rule tracks the new statutory language of both the Family and Welfare and Institutions Codes concerning the courts' responsibility prior to terminating parental rights to an Indian child. This procedure does not exist in probate proceedings.

Rule 5.486 (Petition to invalidate orders)

This proposed rule specifies the rights of an Indian child, parent, Indian custodian, or the child's tribe to request that the court invalidate a foster placement, guardianship, or termination of parental rights when ICWA applies to the proceeding. It also gives guidance on requesting a return of custody of an Indian child after a final decree of adoption has been set aside.

Rule 5.487 (Adoption record keeping)

This rule details the record-keeping procedures the court must follow after granting a decree of adoption of an Indian child.

Rule 7.1015 (Indian Child Welfare Act in guardianship and certain conservatorship proceedings)⁴

The proposed rule identifies the proceedings under the Probate Code to which ICWA applies, although these matters are also listed in new Probate Code section 1459.5. Their identification in the rule as well as the statute is intended to emphasize to probate departments, parties, and probate practitioners when they must consider ICWA. The rule also expressly applies rules 5.480 through 5.487 to probate matters when an Indian child is involved. This cross-reference is intended to ensure that parties involved in probate matters will receive the proper guidance on the application of ICWA to the matters before the court.

The proposed rule also prescribes unique requirements for service of notice under ICWA in probate matters. Such matters, unlike the juvenile court cases where most ICWA issues arise, usually do not involve governmental-entity petitioners with staffs who may have expertise and experience in handling the entity's responsibilities under ICWA. Virtually all guardianship petitioners are private citizens and are generally not represented by counsel. For this reason, the rule would place responsibility for service of the ICWA notice on either the petitioner's or appointed fiduciary's attorney, or if self-represented, on the court clerk. The petitioner or appointed fiduciary would be responsible for completing

⁴ In the fall and winter of 2006, in response to SB 678, the Probate and Mental Health Advisory Committee developed and circulated for public comment a proposal for adoption, effective July 1, 2007, of a rule of court applying ICWA to probate proceedings as well as two forms to be used to serve notices required by ICWA in a guardianship or conservatorship. This separate proposal was withdrawn before being submitted to the Judicial Council at that time, to merge with this more comprehensive proposal. Proposed rule 7.1015 has been rewritten in light of the current proposal.

the notice form in all cases, but service would be completed by the court clerk for self-represented petitioners or fiduciaries.

Proposed form revisions

This proposal would revise forms GC-210(CA), JV-100, JV-101(A), JV-110, and JV-600 to address required Indian child inquiry and notice procedures.

The juvenile court forms would include a statement indicating that the petitioner had conducted the required Indian child inquiry for every child and had completed and attached the Indian Child Inquiry Attachment (proposed new form ICWA-010(A)) to the petition. The forms that would be affected by this change include Juvenile Dependency Petition (Version One) (JV-100), Additional Children Attachment (JV-101(A)), Juvenile Dependency Petition (Version Two) (JV-110), and Juvenile Wardship Petition (JV-600).

The guardianship form proposed for revision, *Guardianship Petition—Child Information Attachment* (GC-210(CA)), is a new form that was adopted effective January 1, 2007. A separate copy of the form must be attached to every general guardianship petition for each child for whom a guardian is requested. This proposal expands the form's ICWA inquiry to ask the guardianship petitioner specific questions about the proposed ward's Indian background and instruct the petitioner that the *Notice of Child Custody Proceeding for Indian Child* (proposed form ICWA-030) must be completed and served if the child named in the attachment is or may be an Indian child.

Proposed new forms

This proposal recommends adoption of a new mandatory form set and approval of a new optional form set, "Indian Child Welfare Act," abbreviation "ICWA," in which unified forms for all ICWA proceedings under the Family, Probate, and Welfare and Institutions Codes are placed.

The new forms recommended for adoption for mandatory use are:

- *Indian Child Inquiry Attachment* (ICWA-010(A))
This form is the proposed mandatory Indian child inquiry attachment for use with revised juvenile forms described above: JV-100, JV-101(A), JV-110, and JV-600.
- *Parental Notification of Indian Status* (ICWA-020)
This is a proposed mandatory form to be filled out by the parent, Indian custodian, or guardian in every proceeding covered by ICWA during the ICWA inquiry process. The form would replace *Parental Notification of Indian Status* (JV-130), which was limited in its use to juvenile court proceedings.

- *Notice of Child Custody Proceeding for Indian Child (ICWA-030)*
This proposed mandatory form is used for giving notice to tribes and others about proceedings involving Indian children. It would also serve as the mandatory ICWA notice form for all proceedings covered by the new statutory provisions. The form replaces the revoked *Notice of Involuntary Child Custody Proceedings for an Indian Child (JV-135)* and *Notice of Adoption Proceedings for a Possible Indian Child (ADOPT-226)*

The new forms recommended for approval for optional use are:

- *Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceedings for Indian Child (ICWA-005-INFO)*
This form is an information sheet to help petitioners and others fill out the forms.
- *Attachment to Notice of Child Custody Proceeding for Indian Child (ICWA-030(A))*
This proposed optional attachment form would be used when additional space is needed to list tribes or bands that must be served with the notice.
- *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child (ICWA-040)*
This proposed optional form is for use by a tribe or band to intervene in a child custody proceeding covered by ICWA.
- *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (ICWA-050)*
This is a proposed optional form for use when a parent, Indian custodian, or the child's tribe wishes to request transfer of a child custody case covered by ICWA to tribal jurisdiction.
- *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (ICWA-060)*
This is a proposed optional form for the court to issue its final order on a request to transfer a case to tribal jurisdiction.

Revoked forms

This proposal revokes forms *Notice of Adoption Proceedings for a Possible Indian Child*, (ADOPT-226), *Parental Notification of Indian Status (JV-130)*, and *Notice of Involuntary Child Custody Proceedings for an Indian Child (JV-135)*, all three

of which are replaced by equivalent forms in the proposed new ICWA set of forms.

Alternative Actions Considered

Given the legislative mandate of implementing ICWA in three different disciplines of the law—family, probate, and juvenile—the committees did not consider the alternative of not drafting appropriate rules and forms. But during the drafting process, the committees considered a number of different approaches to handling the task. For example, the committees considered drafting three different sets of rules, one for each of the three disciplines. This seemed unnecessary and unwieldy, so the detailed rule for probate proceedings was drafted because many practitioners in that area would not know to look in the family and juvenile section of the court rules for guidance. That rule incorporates by reference the more detailed and comprehensive rules that were drafted and placed in a chapter of the rules that includes both family and juvenile rules. A number of approaches to the forms were also considered, including forms for each discipline. The most practical solution seemed to be the development of a specific family of forms applicable to ICWA proceedings in all three disciplines.

Comments From Interested Parties

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The comments are summarized in the attached chart at pages 99–178. There were a total of 31 commentators. Eight of the 31 agreed with the proposal in its entirety, while another 14 agreed to the proposal if modifications were made. Nine commentators disagreed with the proposal in its entirety, 4 of them without specifying the substance of their disagreement. The committees reviewed and considered the comments from the public as well as recommendations from their working groups and made many changes in response to the comments. A summary of the key comments follows, organized by category.

Application of ICWA to delinquency proceedings

As anticipated, many commentators disagreed with the application of ICWA to delinquency proceedings. SB 678 specifically applies the ICWA placement preferences, evidentiary burdens, notice requirements, inquiry mandates, “active efforts” provisions, and “qualified expert witness” requirements to delinquency

placements when a child is at risk of entering foster care or is in foster care.⁵ The committees believe that the rules should be consistent with state legislation, which some argue may be at variance with federal ICWA. Federal ICWA explicitly exempts from ICWA protections placements “based upon an act which if committed by an adult, would be deemed a crime.” (25 U.S.C. § 1903(1).)

The ICWA expressly provides that the state can provide a higher degree of protection for Indian families than is provided in the ICWA. (25 U.S.C. § 1921.) It is reasonable to conclude that the intent of SB 678 is to provide a higher standard of protection to the rights of Indian families because it specifically included in the definition of “Indian child custody proceeding” those proceedings listed in federal ICWA (25 U.S.C. § 1903), but did not specifically exclude delinquency proceedings as does federal ICWA. In fact, the Legislature specifically includes delinquency procedures when a child is at risk of entering foster care or in foster care. (See Welf. & Inst. Code, § 224.1(c); 25 U.S.C. § 1921.) And the Legislature did exclude from ICWA protections voluntary foster care or guardianship placements if the parent or Indian custodian retains the right to have the child returned upon demand. (Welf. & Inst. Code, § 224.1(c).) If it had intended to exclude delinquency proceedings from coverage under the bill, it could have done so explicitly. But instead, the bill specifically applies its protections to delinquency proceedings under Welfare and Institutions Code sections 601 and 602 et seq. where the minor is in foster care or is at risk of entering foster care. (Welf. & Inst. Code, § 727.4(a)(2), (d)(5)(D) and Welf. & Inst. Code, § 224.3.)

The U.S. House of Representatives report (House Report No. 95–1386 § 111 (July 1978)), written at the time of ICWA’s passage, made clear that if the state affords a higher degree of protection to Indian families, the state’s standard will be applied in lieu of the relevant provision of the ICWA. SB 678 explicitly applies the ICWA protections to delinquency cases under Welfare and Institutions Code sections 601 and 602 et seq. Therefore, to the extent that the new statutory provisions and proposed rules provide a higher standard of protection to the rights of the Indian child, parent, Indian custodian, and child’s tribe than the rights provided under the ICWA, the ICWA expressly provides that the state can provide such a higher standard, and that it should be followed. (25 U.S.C. § 1921.)

Regardless of whether the state law and the federal law may be inconsistent as some commentators argue, the committees believe that the rules of court must follow the state statutes until those statutes are declared invalid by an appellate court. Any challenge to a state statute on the basis that it is inconsistent with federal law can only be resolved by the courts and not a rule of court that would be inconsistent with the state statute.

⁵ Welf. & Inst. Code, § 727.4(a)(2), (d)(5)(D) and new Welf. & Inst. Code, § 224.3.

Tribal representatives and one public defender questioned the rule's standard for notice in delinquency cases. They contend that the rule's standard, when "the probation officer has assessed that it is probable the child will be entering foster care" would be a dilution of the statutory language of when "the child is at risk of entering foster care or is in foster care." The committees crafted the "probability" standard for three reasons: (1) in response to the request by probation officers and courts for guidance on when a child is at risk of entering foster care; (2) to acknowledge the burden that would fall to the courts and probation if notice was required in every delinquency case that involved an Indian child; and (3) to reflect the fact that only a small percentage of delinquency cases result in foster care.

To comply with the statute's notice requirement (Welf. and Inst. Code, § 224.2) and the reality that only a small percentage of delinquency cases will involve an Indian child who is at risk of entering foster care or who is in foster care, rule 5.481(b)(2)) has been crafted to reflect this reality. Under the rule, notice is triggered in delinquency cases in which the probation officer assesses that it is probable that the child will be entering foster care or is in foster care and knows or has reason to know the child is or may be an Indian child. In conclusion, this notice standard should not result in a dilution of ICWA provisions, is consistent with statute, and recognizes that casting a wider net for notice of delinquency cases would reach non-ICWA cases and place an undue burden on probation and the court since only a small percentage of delinquency cases result in a foster care placement.

Organization and substance of rules

A few commentators disagreed with both having a separate probate rule and applying the Title 5 rules to probate proceedings. One wanted a separate rule in each discipline. After long thought and discussion, the committees structured the rules in the proposed form. The committees thought that those who practice in the probate field would look for guidance in the probate section of the rules rather than family or juvenile. Because the statutory scheme that is the underpinning for this rule proposal is most detailed in the Welfare and Institutions Code, which is then incorporated by reference into the Family and Probate Codes, the probate rules provide more details from the statutes for ease of use and understanding.

Transfer of cases to tribal jurisdiction and tribal intervention

One commentator was concerned about the provisions for tribal intervention and transfer of cases to tribal jurisdiction, and also suggested that application of the ICWA requirements in delinquency cases may interfere with the court taking the more lenient course of sending a minor to a group home (which would require ICWA findings) and instead lead the court to choose a locked facility (which would not require ICWA findings). But tribal intervention is an absolute right at

any time in all involuntary child custody proceedings involving an Indian child and does not rely on any special provisions by way of state statute or rule of court. The additional resources and support that are brought to bear in any case where a tribe intervenes are a benefit to the child. Also, transfer of a delinquency case to tribal jurisdiction does not occur until disposition, at which point, in most cases, the state court will maintain concurrent jurisdiction, and again will benefit from the additional resources and services that a tribe might provide. And finally, in delinquency cases as in dependency cases, the court is required to order the least restrictive placement for a child, regardless of whether that child is an Indian child or not; therefore placement priority will be given to relatives first, foster care second, and group home third. Only if secured confinement is warranted would the court look to a locked facility.

Mandatory continuance conflict in delinquency cases

Two commentators pointed out the conflict between rule 5.482(a)(2), which mandates a continuance of up to 20 days for a parent, Indian custodian, or tribe to prepare for a proceeding other than the detention hearing, and the right to a speedy trial in delinquency proceedings. The commentators were concerned that delays in delinquency proceedings could lead to lengthier stays in juvenile hall for children affected by the ICWA provisions. In response to this comment, the committees modified the rule to give the court discretion in delinquency cases to deny a continuance in a case where there has not been a waiver of time, or to tailor the continuance to conform to speedy trial timelines.

Implementation Requirements and Costs

In addition to standard reproduction costs, implementation of this proposal may create additional time demands, training obligations, and expense for the courts, particularly for aiding self-represented litigants.

Recommendation

The Family and Juvenile Law and Probate and Mental Health Advisory

Committees recommend that the Judicial Council, effective January 1, 2008:

1. Adopt rules 5.480 through 5.487, which are applicable to family, probate and juvenile court matters. These rules eliminate, where possible, language that is contained in the new statutes, and they improve on rule 5.664 by separating the ICWA provisions into eight rules, each addressing a different subject: application, inquiry and notice, proceedings after notice, transfer of case, placement of an Indian child, termination of parental rights, petition to invalidate orders, and adoption record keeping.
2. Adopt rule 7.1015, applicable to probate guardianships and certain conservatorships. This rule notes the applicability of proposed rules 5.480 through 5.487 to all probate proceedings, unless otherwise stated, when a proposed ward is an Indian child. The committees propose the adoption of

- rule 7.1015 to avoid confusion among probate practitioners who would not know to look for clarification on ICWA provisions in Title 5, a division of rules governing family and juvenile matters, and also to address specific issues unique to the probate guardianship and conservatorship context.
3. Repeal rule 5.664, which is now both duplicative of the new code provisions and obsolete in light of the broader scope of the ICWA state statutory provisions.
 4. Revise existing juvenile and guardianship/conservatorship forms (GC-210(CA), JV-100, JV-101(A), JV-110, and JV-600) to address the required Indian child inquiry and notice procedures.
 5. Adopt a new set of ICWA forms for mandatory use in family, probate, and juvenile court proceedings, i.e., ICWA-010(A), ICWA-020, and ICWA-030.
 6. Approve a new set of ICWA forms for optional use in family, probate, and juvenile court proceedings, i.e., ICWA-005-INFO, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060.
 7. Revoke forms ADOPT-226, JV-130, and JV-135, which have been replaced by the new family of ICWA forms applicable to proceedings under all three affected codes.

The text of the proposed rules and forms, together with the revoked rule and forms is attached at pages 18–98.

Attachments

Rules 5.480–5.487 and 7.1015 of the California Rules of Court are adopted, and rule 5.664 is repealed, effective January 1, 2008 to read as follows:

1 **Title 5. Family and Juvenile Rules**
2 **Division 2. Rules Applicable in Family and Juvenile Proceedings**

3
4 **Chapter 1. Contact and Coordination**

5
6 **Rules 5.400–5.475 *****

7
8 **Chapter 2. Indian Child Welfare Act**

9
10 **Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5;**
11 **Welf. & Inst. Code, §§ 224, 224.1)**

12
13 This chapter addressing the Indian Child Welfare Act (25 United States Code
14 section 1901 et seq.) as codified in various sections of the California Family,
15 Probate, and Welfare and Institutions Codes, applies to all proceedings involving
16 Indian children that may result in an involuntary foster care placement;
17 guardianship or conservatorship placement; custody placement under Family Code
18 section 3041; declaration freeing a child from the custody and control of one or
19 both parents; termination of parental rights; or adoptive placement, including:

- 20
21 (1) Proceedings under Welfare and Institutions Code section 300 et seq., and
22 under Welfare and Institutions Code sections 601 and 602 et seq. in which
23 the child is at risk of entering foster care or is in foster care, including
24 detention hearings, jurisdiction hearings, disposition hearings, review
25 hearings, hearings under section 366.26, and subsequent hearings affecting
26 the status of the Indian child;
27
28 (2) Proceedings under Family Code section 3041;
29
30 (3) Proceedings under the Family Code resulting in adoption or termination of
31 parental rights; and
32
33 (4) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

34
35 This chapter does not apply to voluntary foster care and guardianship placements
36 where the child can be returned to the parent or Indian custodian on demand.

37
38 **Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§**
39 **1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)**

1 **(a) Inquiry (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst.**
2 **Code, § 224.3)**
3

4 The court, court-connected investigator, and party seeking a foster care
5 placement, guardianship, conservatorship, custody placement under Family
6 Code section 3041, declaration freeing a child from the custody or control of
7 one or both parents, termination of parental rights, or adoption have an
8 affirmative and continuing duty to inquire whether a child is or may be an
9 Indian child in all proceedings identified in rule 5.480. The court, court-
10 connected investigator, and party include the county welfare department,
11 probation department, licensed adoption agency, adoption service provider,
12 investigator, petitioner, appointed guardian or conservator of the person, and
13 appointed fiduciary.
14

15 (1) The party seeking a foster care placement, guardianship,
16 conservatorship, custody placement under Family Code section 3041,
17 declaration freeing a child from the custody or control of one or both
18 parents, termination of parental rights, or adoption must ask the child, if
19 the child is old enough, and the parents, Indian custodian, or legal
20 guardians whether the child is or may be an Indian child and must
21 complete the *Indian Child Inquiry Attachment* (form ICWA-010(A))
22 and attach it to the petition unless the party is filing a subsequent
23 petition, and there is no new information.
24

25 (2) At the first appearance by a parent, Indian custodian, or guardian in any
26 dependency case; or in juvenile wardship proceedings in which the
27 child is at risk of entering foster care or is in foster care; or at the
28 initiation of any guardianship, conservatorship, proceeding for custody
29 under Family Code section 3041, proceeding to terminate parental
30 rights proceeding to declare a child free of the custody and control of
31 one or both parents, or adoption proceeding; the court must order the
32 parent, Indian custodian, or guardian if available, to complete *Parental*
33 *Notification of Indian Status* (form ICWA-020).
34

35 (3) If the parent, Indian custodian, or guardian does not appear at the first
36 hearing, or is unavailable at the initiation of a proceeding, the court
37 must order the person or entity that has the inquiry duty under this rule
38 to use reasonable diligence to find and inform the parent, Indian
39 custodian, or guardian that the court has ordered the parent, Indian
40 custodian, or guardian to complete *Parental Notification of Indian*
41 *Status* (form ICWA-020).
42

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

5
6 (A) Interviewing the parents, Indian custodian, and “extended family
7 members” as defined in 25 United States Code section 1901
8 1903(2), to gather the information listed in Welfare and
9 Institutions Code section 224.2(a)(5), Family Code section
10 180(b)(5), or Probate Code section 1460.2(b)(5), which is
11 required to complete the *Notice of Child Custody Proceeding for*
12 *Indian Child* (form ICWA-030);

13
14 (B) Contacting the Bureau of Indian Affairs and the California
15 Department of Social Services for assistance in identifying the
16 names and contact information of the tribes in which the child
17 may be a member or eligible for membership; and

18
19 (C) Contacting the tribes and any other person that reasonably can be
20 expected to have information regarding the child’s membership
21 status or eligibility.

22
23 (5) The circumstances that may provide reason to know the child is an
24 Indian child include the following:

25
26 (A) The child or a person having an interest in the child, including an
27 Indian tribe, an Indian organization, an officer of the court, a
28 public or private agency, or a member of the child’s extended
29 family, informs or otherwise provides information suggesting that
30 the child is an Indian child to the court, the county welfare
31 agency, the probation department, the licensed adoption agency or
32 adoption service provider, the investigator, the petitioner, or any
33 appointed guardian or conservator;

34
35 (B) The residence or domicile of the child, the child’s parents, or an
36 Indian custodian is or was in a predominantly Indian community;
37 or

38
39 (C) The child or the child’s family has received services or benefits
40 from a tribe or services that are available to Indians from tribes or
41 the federal government, such as the U.S. Department of Health
42 and Human Services, Indian Health Service, or Tribal Temporary
43 Assistance to Needy Families benefits.

1
2 **(b) Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, §**
3 **224.2)**
4

5 (1) If it is known or there is reason to know that an Indian child is involved
6 in a proceeding listed in rule 5.480, except for a wardship proceeding
7 under Welfare and Institutions Code sections 601 and 602 et seq., the
8 social worker, petitioner, or in probate guardianship and
9 conservatorship proceedings, if the petitioner is unrepresented, the
10 court must send *Notice of Child Custody Proceeding for Indian Child*
11 (form ICWA-030) to the parent or legal guardian and Indian custodian
12 of an Indian child, and the Indian child's tribe, in the manner specified
13 in Welfare and Institutions Code section 224.2, Family Law Code
14 section 180, and Probate Code section 1460.2.
15

16 (2) If it is known or there is reason to know that an Indian child is involved
17 in a wardship proceeding under Welfare and Institutions Code sections
18 601 and 602 et seq., and the probation officer has assessed that it is
19 probable the child will be entering foster care, or if the child is already
20 in foster care, the probation officer must send *Notice of Child Custody*
21 *Proceeding for Indian Child* (form ICWA-030) to the parent or legal
22 guardian, Indian custodian, if any, and the child's tribe, in accordance
23 with Welfare and Institutions Code section 727.4(a)(2).
24

25 (3) The circumstances that may provide reason to know the child is an
26 Indian child include the circumstances specified in (a)(5).
27

28 (4) Notice to an Indian child's tribe must be sent to the tribal chairperson
29 unless the tribe has designated another agent for service.
30

31 **Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob.**
32 **Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d);**
33 **25 U.S.C. § 1916(b))**
34

35 **(a) Timing of Proceedings (Fam. Code, § 180(d), (e); Prob. Code, §**
36 **1460.2(d), (e); Welf. & Inst. Code, § 224.2(c), (d))**
37

38 (1) If it is known or there is reason to know that a child is an Indian child,
39 the court hearing must not proceed until at least 10 days after the
40 parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have
41 received notice, except as stated in sections (a)(2) and (3).
42

1 (2) The detention hearing in dependency cases and in delinquency cases in
2 which the probation officer has assessed that the child is in foster care
3 or it is probable the child will be entering foster care may proceed
4 without delay, provided that:

5
6 (A) Notice of the detention hearing must be given as soon as possible
7 after the filing of the petition initiating the proceeding; and

8
9 (B) Proof of notice must be filed with the court within 10 days after
10 the filing of the petition.

11
12 (3) The parent, Indian custodian, or tribe must be granted a continuance, if
13 requested, of up to 20 days to prepare for the proceeding, except for
14 specified hearings in the following circumstances:

15
16 (A) The detention hearing in dependency cases and in delinquency
17 cases in which the probation officer has assessed that the child is
18 in foster care or it is probable the child will be entering foster;

19
20 (B) The jurisdiction hearing in a delinquency case in which the court
21 finds the continuance would not conform to speedy trial
22 considerations under Welfare and Institutions Code section 657;
23 and

24
25 (C) The disposition hearing in a delinquency case in which the court
26 finds good cause to deny the continuance under Welfare and
27 Institutions Code section 682. A good cause reason includes
28 when probation is recommending the release of a detained child
29 to his or her parent or to a less restrictive placement. The court
30 must follow the placement preferences under rule 5.484 when
31 holding the disposition hearing.

32
33 **(b) Proof of notice (Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. &**
34 **Inst. Code, § 224.2(c))**

35
36 Proof of notice filed with the court must include *Notice of Child Custody*
37 *Proceeding for Indian Child* (form ICWA-030), return receipts, and any
38 responses received from the Bureau of Indian Affairs and tribes.

39
40 **(c) When there is information or a response from a tribe that requires**
41 **additional steps**

1 If after notice has been provided as required by federal and state law a tribe
2 responds indicating that the child is eligible for membership if certain steps
3 are followed, the court must proceed as if the child is an Indian child and
4 direct the appropriate individual or agency to provide active efforts under
5 rule 5.484(c) to secure tribal membership for the child.

6
7 **(d) When there is no information or response from a tribe (Fam. Code, §**
8 **177(a); Prob. Code, § 1459.5(b); Welf. & Inst., Code § 224.3(e)(3))**

9
10 (1) If after notice has been provided as required by federal and state law
11 and neither the tribe nor the Bureau of Indian Affairs has provided a
12 determinative response within 60 days after receiving that notice, then
13 the court may determine that the Indian Child Welfare Act does not
14 apply to the proceedings, provided that the court must reverse its
15 determination of the inapplicability of the act and must apply it
16 prospectively if a tribe or the Bureau of Indian Affairs subsequently
17 confirms that the child is an Indian child.

18
19 (2) If at any time, based on the petition or other information, the court
20 knows or has reason to know the child is an Indian child, the court must
21 proceed as if the child were an Indian child.

22
23 (3) The court is not required to delay proceedings until a response to notice
24 is received.

25
26 **(e) Intervention (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &**
27 **Inst. Code, § 224.4)**

28
29 The Indian child's tribe and Indian custodian may intervene, orally or in
30 writing, at any point in the proceedings and may, but are not required to, file
31 with the court the *Notice of Designation of Tribal Representative and Notice*
32 *of Intervention in a Court Proceeding Involving an Indian Child* (form
33 ICWA-040) to give notice of their intent to intervene.

34
35 **(f) Posthearing actions (25 U.S.C. § 1916(b))**

36
37 Whenever an Indian child is removed from a guardian, conservator, other
38 custodian, foster home, or institution for placement with a different guardian,
39 conservator, custodian, foster home, institution, or preadoptive or adoptive
40 home, the placement must comply with the placement preferences and
41 standards specified in Welfare and Institutions Code section 361.31.
42

1 **(g) Consultation with tribe**

2
3 Any person or court involved in the placement of an Indian child must use
4 the services of the Indian child's tribe, whenever available through the tribe,
5 in seeking to secure placement within the order of placement preference
6 specified in rule 5.484.
7

8 **Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b);**
9 **Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child**
10 **Custody Proceedings, 44 Fed. Reg. 67584 (Nov. 26, 1979) Bureau of**
11 **Indian Affairs Guideline C.)**
12

13 **(a) Mandatory transfer of case to tribal court with exclusive jurisdiction.**

14
15 The court must order transfer of a case to the tribal court of the child's tribe
16 if:

- 17
18 (1) The Indian child is a ward of the tribal court; or
19
20 (2) The Indian child is domiciled or resides within a reservation of an
21 Indian tribe that has exclusive jurisdiction over Indian child custody
22 proceedings under section 1911 or 1918 of Title 25 of the United States
23 Code.
24

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

27
28 Unless the court finds good cause under subdivision (d), the court must order
29 transfer of a case to the tribal court of the child's tribe if the parent, the
30 Indian custodian, or the child's tribe requests.
31

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

33
34 The parent, the Indian custodian, or the child's tribe may request transfer of
35 the case, either orally or in writing or by filing *Notice of Petition and*
36 *Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
37 (form ICWA-050).
38

39 If the request is made orally, the court must document the request and make
40 it part of the record.
41

1 **(d) Cause to deny a request to transfer to tribal court with concurrent state**
2 **and tribal jurisdiction under subdivision (b)**
3

4 (1) One or more of the following circumstances constitutes mandatory
5 good cause to deny a request to transfer:
6

7 (A) One or both of the child’s parents objects to the transfer in open
8 court or in an admissible writing for the record;
9

10 (B) The child’s tribe does not have a “tribal court” or any other
11 administrative body as defined in section 1903 of the Indian Child
12 Welfare Act: “a court with jurisdiction over child custody
13 proceedings and which is either a Court of Indian Offenses, a
14 court established and operated under the code or custom of an
15 Indian tribe, or any other administrative body of a tribe which is
16 vested with authority over child custody proceedings;” or
17

18 (C) The tribal court of the child’s tribe declines the transfer.
19

20 (2) One or more of the following circumstances may constitute
21 discretionary good cause to deny a request to transfer:
22

23 (A) The evidence necessary to decide the case cannot be presented in
24 the tribal court without undue hardship to the parties or the
25 witnesses, and the tribal court is unable to mitigate the hardship
26 by making arrangements to receive and consider the evidence or
27 testimony by use of remote communication, by hearing the
28 evidence or testimony at a location convenient to the parties or
29 witnesses, or by use of other means permitted in the tribal court’s
30 rules of evidence or discovery;
31

32 (B) The proceeding was at an advanced stage when the request to
33 transfer was received and the petitioner did not make the request
34 within a reasonable time after receiving notice of the proceeding,
35 provided the notice complied with statutory requirements.
36 Waiting until reunification efforts have failed and reunification
37 services have been terminated before filing a request to transfer
38 may not, by itself, be considered an unreasonable delay;
39

40 (C) The Indian child is over 12 years of age and objects to the
41 transfer; or
42

1 (D) The parents of a child over five years of age are not available and
2 the child has had little or no contact with his or her tribe or
3 members of the child’s tribe.

4
5 (3) If it appears that there is good cause to deny a transfer, the court must
6 hold an evidentiary hearing on the transfer and make its findings on the
7 record.

8
9 **(e) Evidentiary considerations under subdivision (b)**

10
11 The court may not consider socioeconomic conditions and the perceived
12 adequacy of tribal social services, tribal probation, or the tribal judicial
13 systems in its determination that good cause exists to deny a request to
14 transfer to tribal court with concurrent state and tribal jurisdiction.

15
16 **(f) Evidentiary burdens under subdivision (b)**

17
18 (1) The burden of establishing good cause to deny a request to transfer is
19 on the party opposing the transfer.

20
21 (2) If the court believes, or any party asserts, that good cause to deny the
22 request exists, the reasons for that belief or assertion must be stated in
23 writing, in advance of the hearing, and made available to all parties
24 who are requesting the transfer, and the petitioner must have the
25 opportunity to provide information or evidence in rebuttal of the belief
26 or assertion.

27
28 **(g) Order on request to transfer**

29
30 The court must issue its final order on the *Order on Petition to Transfer Case*
31 *Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

32
33 **(h) Proceeding after transfer**

34
35 When, under Welfare and Institutions Code section 305.5, Family Code
36 section 177(a), or Probate Code section 1459.5(b), the court transfers any
37 proceeding listed in rule 5.480, the court must proceed as follows:

38
39 (1) Dismiss the proceeding or terminate jurisdiction if the court has
40 received proof that the tribal court has accepted the transfer of
41 jurisdiction;

- 1 (2) Make an order transferring the physical custody of the child to a
2 designated representative of the tribal court (not necessarily the same
3 “designated representative” identified in the *Notice of Designation of*
4 *Tribal Representative and Notice of Intervention in a Court*
5 *Proceeding Involving an Indian Child* (form ICWA-040)); and
6
- 7 (3) Include in the *Order on Petition to Transfer Case Involving an Indian*
8 *Child to Tribal Jurisdiction* (form ICWA-060) all contact information
9 for the designated tribal court representative.

10
11 **Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, §**
12 **1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

13
14 **(a) Evidentiary burdens (Fam. Code, § 177(a); Prob. Code, § 1459.5(b);**
15 **Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

16
17 In any child custody proceeding listed in rule 5.480, the court may not order
18 placement of an Indian child unless it finds by clear and convincing evidence
19 that continued custody with the parent or Indian custodian is likely to cause
20 the Indian child serious emotional or physical damage and it considers
21 evidence regarding prevailing social and cultural standards of the child’s
22 tribe, including that tribe’s family organization and child-rearing practices.

- 23
- 24 (1) Testimony by a “qualified expert witness,” as defined in Welfare and
25 Institutions Code section 224.6, Family Code section 177(a), and
26 Probate Code section 1459.5(b), is required before a court orders a
27 child placed in foster care or terminates parental rights.
- 28
- 29 (2) Stipulation by the parent, Indian custodian, or tribe, or failure to object,
30 may waive the requirement of producing evidence of the likelihood of
31 serious damage only if the court is satisfied that the person or tribe has
32 been fully advised of the requirements of the Indian Child Welfare Act
33 and has knowingly, intelligently, and voluntarily waived them. Any
34 such stipulation must be agreed to in writing.
- 35
- 36 (3) Failure to meet non-Indian family and child-rearing community
37 standards, or the existence of other behavior or conditions that meet the
38 removal standards of Welfare and Institutions Code section 361, will
39 not support an order for placement absent the finding that continued
40 custody with the parent or Indian custodian is likely to cause serious
41 emotional or physical damage.
- 42

1 **(b) Standards and preferences in placement of an Indian child (Fam. Code,**
2 **§ 177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)**
3

4 (1) Unless the court finds good cause to the contrary, all placements of
5 Indian children in any proceeding listed in rule 5.480 must follow the
6 specified placement preferences in Family Code section 177(a). Probate
7 Code section 1459(b), and Welfare and Institutions Code section
8 361.31.
9

10 (2) The court may deviate from the preference order only for good cause,
11 which may include the following considerations:
12

13 (A) The requests of the parent or Indian custodian;

14 (B) The requests of the Indian child, when of sufficient age;

15 (C) The extraordinary physical or emotional needs of the Indian child
16 as established by a qualified expert witness; or

17 (D) The unavailability of suitable families based on a documented
18 diligent effort to identify families meeting the preference criteria.
19

20 (3) The burden of establishing good cause for the court to deviate from the
21 preference order is on the party requesting that the preference order not
22 be followed.
23

24 (4) The tribe, by resolution, may establish a different preference order,
25 which must be followed if it provides for the least restrictive setting.
26

27 (5) The preferences and wishes of the Indian child, when of sufficient age,
28 and the parent must be considered, and weight given to a consenting
29 parent's request for anonymity.
30

31 (6) When no preferred placement is available, active efforts must be made
32 and documented to place the child with a family committed to enabling
33 the child to have visitation with "extended family members," as defined
34 in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial
35 events of the child's tribe.
36

37 **(c) Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. &**
38 **Inst. Code, § 361.7)**
39

1 In addition to any other required findings to place an Indian child with
2 someone other than a parent or Indian custodian, or to terminate parental
3 rights, the court must find that active efforts have been made, in any
4 proceeding listed in rule 5.480, to provide remedial services and
5 rehabilitative programs designed to prevent the breakup of the Indian family,
6 and must find that these efforts were unsuccessful.

7
8 (1) The court must consider whether active efforts were made in a manner
9 consistent with the prevailing social and cultural conditions and way of
10 life of the Indian child’s tribe.

11
12 (2) Efforts to provide services must include pursuit of any steps necessary
13 to secure tribal membership for a child if the child is eligible for
14 membership in a given tribe, as well as attempts to use the available
15 resources of extended family members, the tribe, tribal and other Indian
16 social service agencies, and individual Indian caregivers.

17
18 **Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. &**
19 **Inst. Code, §§ 361.7, 366.26(c)(2)(B))**

20
21 **(a) Evidentiary burdens**

22
23 The court may only terminate parental rights to an Indian child or declare an
24 Indian child free of the custody and control of one or both parents if at the
25 hearing terminating parental rights or declaring the child free of the custody
26 and control of one or both parents, the court:

27
28 (1) Finds by clear and convincing evidence that active efforts to provide
29 remedial services and rehabilitative programs designed to prevent the
30 breakup of the Indian family were made; and

31
32 (2) Makes a determination, supported by evidence beyond a reasonable
33 doubt, including testimony of one or more “qualified expert witnesses”
34 as defined in Welfare and Institutions Code section 224.6 and Family
35 Code section 177(a), that the continued custody of the child by the
36 parent is likely to result in serious emotional or physical damage to the
37 child.

38
39 **(b) When parental rights may not be terminated**

40
41 The court may not terminate parental rights to an Indian child or declare a
42 child free from the custody and control of one or both parents if the court

1 finds a compelling reason for determining that termination of parental rights
2 would not be in the child’s best interest. Such a reason may include:

- 3
4 (1) Termination of parental rights would substantially interfere with the
5 child’s connection to his or her tribal community or the child’s tribal
6 membership rights; or
7
8 (2) The child’s tribe has identified guardianship, long-term foster care with
9 a fit and willing relative, or another planned permanent living
10 arrangement for the child.

11
12 **Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, §**
13 **1459(e); Welf. & Inst. Code, § 224(e))**

14
15 **(a) Who may petition**

16
17 Any Indian child who is the subject of any action for foster care placement,
18 guardianship placement, or termination of parental rights; any parent or
19 Indian custodian from whose custody such child was removed; and the
20 Indian child’s tribe may petition the court to invalidate the action on a
21 showing that the action violated the Indian Child Welfare Act.

22
23 **(b) Court of competent jurisdiction**

24
25 If the Indian child is a dependent child or ward of the juvenile court or the
26 subject of a pending petition, the juvenile court is a court of competent
27 jurisdiction with the authority to hear the request to invalidate the foster
28 placement or termination of parental rights.

29
30 **(c) Request to return custody of the Indian child**

31
32 If a final decree of adoption is vacated or set aside, or if the adoptive parents
33 voluntarily consent to the termination of their parental rights, a biological
34 parent or prior Indian custodian may request a return of custody of the Indian
35 child.

- 36
37 (1) The court must reinstate jurisdiction.
38
39 (2) In a juvenile case, the juvenile court must hold a new disposition
40 hearing in accordance with 25 United States Code section 1901 et seq.
41 where the court may consider all placement options as stated in Welfare
42 and Institutions Code sections 361.31(b), (c), (d), and (h).
43

1 (3) The court may consider placement with a biological parent or prior
2 Indian custodian if the biological parent or prior Indian custodian can
3 show that placement with him or her is not detrimental to the child and
4 that the placement is in the best interests of the child.

5
6 (4) The hearing on the request to return custody of an Indian child must be
7 conducted in accordance with statutory requirements and the relevant
8 sections of this rule.

9
10 **Rule 5.487. Adoption record keeping (Fam. Code, § 9208)**

11
12 **(a) Copies of adoption decree and other information to the Secretary of the**
13 **Interior**

14
15 After granting a decree of adoption of an Indian child, the court must provide
16 the Secretary of the Interior with a copy of the decree and the following
17 information:

18
19 (1) The name and tribal affiliation of the Indian child;

20
21 (2) The names and addresses of the biological parents;

22
23 (3) The names and addresses of the adoptive parents; and

24
25 (4) The agency maintaining files and records regarding the adoptive
26 placement.

27
28 **(b) Affidavit of confidentiality to the Bureau of Indian Affairs**

29
30 If a biological parent has executed an affidavit requesting that his or her
31 identity remain confidential, the court must provide the affidavit to the
32 Bureau of Indian Affairs, which must ensure the confidentiality of the
33 information.

34
35 **Advisory Committee Comment**

36
37 This chapter was adopted, effective January 1, 2008, as the result of the passage of Senate Bill
38 678 (Ducheny; Stats. 2006, ch. 838), which codified the federal Indian Child Welfare Act into
39 California's Family, Probate, and Welfare and Institutions Codes affecting all proceedings listed
40 in rule 5.480. Rule 5.664, which applied the Indian Child Welfare Act but was limited in its effect
41 to juvenile proceedings, was repealed effective January 1, 2008, and was replaced by this chapter.

42
43 As of January 1, 2008, only the Washoe Tribe of Nevada and California is authorized under the
44 Indian Child Welfare Act to exercise exclusive jurisdiction as discussed in rule 5.483.

1 Title 7. Probate Rules

2
3 Chapter 21. Guardianships

4
5 **Rule 7.1015. Indian Child Welfare Act in guardianship and certain**
6 **conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)**

7
8 **(a) Definitions**

9
10 As used in this rule, unless the context or subject matter otherwise requires:

- 11
12 (1) “Act” means the Indian Child Welfare Act (25 United States Code
13 sections 1901–1963).
14
15 (2) “Petitioner” means and refers to a petitioner for the appointment of a
16 guardian of the person of a child or a petitioner for the appointment of a
17 conservator of the person of a formerly married minor child.

18
19 **(b) Applicability of this rule and rules 5.480 through 5.487**

- 20
21 (1) This rule applies to the following proceedings under division 4 of the
22 Probate Code when the proposed ward or conservatee is an Indian
23 child, within the meaning of the act:
24
25 (A) A guardianship of the person or the person and estate in which the
26 proposed guardian of the person is not the proposed ward’s
27 natural parent or Indian custodian within the meaning of the act;
28
29 (B) A conservatorship of the person or the person and estate of a
30 formerly married minor in which the proposed conservator is not
31 a natural parent or Indian custodian of the minor and is seeking
32 physical custody of the proposed conservatee.
33
34 (2) Unless the context otherwise requires, rules 5.480 through 5.487 apply
35 to the proceedings listed in (1).
36
37 (3) When applied to the proceedings listed in (1), references in rules 5.480
38 through 5.487 to social workers, probation officers, county probation
39 departments, or county social welfare departments are references to the
40 petitioner or petitioners for the appointment of a guardian or
41 conservator of the person of an Indian child and to an Indian child’s
42 appointed temporary or general guardian or conservator of the person.

1
2 (4) If the court appoints a temporary or general guardian or conservator of
3 the person of the child involved in a proceeding listed in (1), the duties
4 and responsibilities of a petitioner under this rule are transferred to and
5 become the duties and responsibilities of the appointed guardian or
6 conservator. The petitioner must cooperate with and provide any
7 information the petitioner has concerning the child to the appointed
8 guardian or conservator.
9

10 **(c) Notice**

11
12 If, at any time after the filing of a petition for appointment of a guardian or
13 conservator for a minor child, the court or petitioner knows or has reason to
14 know, within the meaning of Probate Code sections 1449 and 1459.5 and
15 Welfare and Institutions Code section 224.3(b), that an Indian child is
16 involved, the petitioner and the court must notify the child's parents or legal
17 guardian and Indian custodian, and the Indian child's tribe, of the pending
18 proceeding and the right of the tribe to intervene, as follows:
19

20 (1) Notice to the Indian child's parents, Indian custodian, and Indian tribe
21 of the commencement of a guardianship or conservatorship must be
22 given by serving copies of the completed *Notice of Child Custody*
23 *Proceeding for Indian Child* (form ICWA-030), the petition for
24 appointment of a guardian or conservator, and all attachments, by
25 certified or registered mail, fully prepaid with return receipt requested.
26

27 (2) The petitioner and his or her attorney, if any, must complete the *Notice*
28 and the petitioner must date and sign the declaration. If there is more
29 than one petitioner, the statements about the child's ancestors and
30 background provided in the *Notice of Child Custody Proceeding for*
31 *Indian Child* (form ICWA-030) must be based on all information
32 known to each petitioner, and all petitioners must sign the declaration.
33

34 (3) When the petitioner is represented by an attorney in the proceeding, the
35 attorney must serve copies of the *Notice of Child Custody Proceeding*
36 *for Indian Child* (form ICWA-030) in the manner described in (1) and
37 sign the declaration of mailing on the *Notice*.
38

39 (4) When the guardianship or conservatorship petitioner or petitioners are
40 not represented by an attorney in the proceeding, the clerk of the court
41 must serve the *Notice* in the manner described in (1) and sign the
42 certificate of mailing on the *Notice*.
43

- 1 (5) The original of all *Notices of Child Custody Proceeding for Indian*
2 *Child* (form ICWA-030) served under the act, and all return receipts
3 and responses received, must be filed with the court before the hearing.
4
- 5 (6) Notice to an Indian child’s tribe must be sent to the tribal chairperson
6 unless the tribe has designated another agent for service.
7
- 8 (7) Notice must be served on all tribes of which the child may be a member
9 or eligible for membership. If there are more tribes or bands to be
10 served than can be listed on the last page of the *Notice*, the additional
11 tribes or bands may be listed on an *Attachment to Notice of Child*
12 *Custody Proceeding for Indian Child* (form ICWA-030(A)).
13
- 14 (8) Notice under the act must be served whenever there is any reason to
15 know that the child is or may be an Indian child and for every hearing
16 after the first hearing unless and until it is determined that the act does
17 not apply to the proceeding.
18
- 19 (9) If, after a reasonable time following the service of notice under the
20 act—but in no event less than 60 days—no determinative response to
21 the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-
22 030) is received, the court may determine that the act does not apply to
23 the proceeding unless further evidence of its applicability is later
24 received.
25
- 26 (10) If an Indian child’s tribe intervenes in the proceeding, service of the
27 *Notice of Child Custody Proceeding for Indian Child* (form ICWA-
28 030) is no longer required and subsequent notices to the tribe may be
29 sent to all parties in the form and in the manner required under the
30 Probate Code and these rules. All other provisions of the act, this rule,
31 and rules 5.480 through 5.487 continue to apply.
32
- 33 (11) Notice under the act must be served in addition to all notices otherwise
34 required for the particular proceeding under the provisions of the
35 Probate Code.
36

37 **(d) Duty of inquiry**
38

- 39 (1) The court, a court investigator or county officer appointed to conduct
40 an investigation under Probate Code section 1513 or 1826, a petitioner,
41 and an appointed temporary or general guardian or conservator of the
42 person of a minor child each have an affirmative and continuing duty to

1 inquire whether the child involved in the matters identified in (b)(1) is
2 or may be an Indian child.

3
4 (2) Before filing his or her petition, the petitioner must ask the child
5 involved in the proceeding, if the child is old enough, and the parents or
6 any other legal guardian, whether the child is or may be an Indian child,
7 and must complete the *Indian Child Inquiry Attachment* (form ICWA-
8 010(A)) and attach it to his or her petition.

9
10 (3) At the first personal appearance by a parent or previously appointed
11 legal guardian at a hearing in a guardianship or conservatorship, the
12 court must if requested by petitioner, or may on its own motion, order
13 the parent or legal guardian to complete a *Parental Notification of*
14 *Indian Status* (form ICWA-020) and deliver the completed form to the
15 petitioner.

16
17 (4) If the parent, Indian custodian, or guardian does not personally appear
18 at a hearing in a proceeding identified in (b)(1), the court may order the
19 petitioner to use reasonable diligence to find and ask the parent, Indian
20 custodian, or legal guardian to complete and deliver to petitioner a
21 *Parental Notification of Indian Status* (form ICWA-020).

22
23 (5) If the court or county investigator, petitioner, appointed guardian or
24 conservator, or the attorney for a petitioner or appointed guardian or
25 conservator, knows or has reason to know that an Indian child is
26 involved in the proceeding, he or she must make further inquiry as soon
27 as practicable by:

28
29 (A) Interviewing the parents, Indian custodian, and “extended family
30 members” as defined in 25 United States Code section 1903(2), to
31 gather the information listed in Probate Code section 1460.2(b)(5)
32 that is required to complete the *Notice of Child Custody*
33 *Proceeding for Indian Child* (form ICWA-030);

34
35 (B) Contacting the U.S. Department of the Interior, Bureau of Indian
36 Affairs and the California Department of Social Services for
37 assistance in identifying the names and contact information of the
38 tribes of which the child may be a member or eligible for
39 membership; and

40
41 (C) Contacting the tribes and any other person who reasonably can be
42 expected to have information regarding the child’s tribal
43 membership status or eligibility for membership.

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(6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.

(7) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child’s extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);

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

(C) The child or the child’s family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

1 Title 5. Family and Juvenile Rules
2 Division 3. Juvenile Rules
3 Chapter 12. Indian Child Welfare Act
4

5 ~~Rule 5.664. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)~~
6

7 ~~(a) Definitions; 25 U.S.C. § 1903~~
8

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

10
11 ~~(1) “Indian child” means an unmarried person under the age of 18 who:~~

12
13 ~~(A) Is a member of an Indian tribe; or~~

14
15 ~~(B) Is eligible for membership in an Indian tribe and is the biological~~
16 ~~child of a member of an Indian tribe.~~

17
18 ~~(2) “Indian child’s tribe” means:~~

19
20 ~~(A) The Indian tribe in which the child is a member or is eligible for~~
21 ~~membership; or~~

22
23 ~~(B) In the case of an Indian child who is a member of or eligible for~~
24 ~~membership in more than one tribe, the Indian tribe with which~~
25 ~~the Indian child has more significant contacts.~~

26
27 ~~(3) “Indian custodian” means any Indian person who has:~~

28
29 ~~(A) Legal custody of an Indian child under tribal law or custom, or~~
30 ~~under state law; or~~

31
32 ~~(B) Temporary physical care, custody, and control of an Indian child~~
33 ~~whose parent or parents have transferred custody to that person.~~

34
35 ~~(4) “Parent of an Indian child” means the biological parent of an Indian~~
36 ~~child or any Indian person who has lawfully adopted an Indian child,~~
37 ~~including adoptions under tribal law or custom. (This definition does~~
38 ~~not include a non-Indian adoptive parent or an unwed alleged father~~
39 ~~where paternity has not been determined or acknowledged.)~~

40
41 ~~(5) “Custody” means legal or physical custody or both as provided under~~
42 ~~state law or tribal law or custom.~~
43

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

6
7 (7) ~~“Extended family” means those persons defined by the law or custom~~
8 ~~of the Indian child’s tribe or, in the absence of such law or custom, an~~
9 ~~adult grandparent, aunt, uncle, brother, sister, sister in law, brother in~~
10 ~~law, niece, nephew, first or second cousin, or stepparent of the Indian~~
11 ~~child.~~

12
13 (8) ~~“Child custody proceeding” means and includes a proceeding at which~~
14 ~~the court considers foster care placement, appointment of a guardian,~~
15 ~~termination of parental rights, preadoptive placement, or adoptive~~
16 ~~placement.~~

17
18 (9) ~~“Foster care placement” means any temporary placement from which a~~
19 ~~child may not be removed by the parent or Indian custodian on demand,~~
20 ~~including a shelter care home, a foster home, or an institution or the~~
21 ~~home of a guardian or conservator.~~

22
23 (10) ~~“Qualified expert witness” means a person qualified to address the~~
24 ~~issue of whether continued custody by a parent or Indian custodian is~~
25 ~~likely to result in serious physical or emotional damage to the child.~~
26 ~~Persons most likely to be considered such experts are:~~

27
28 (A) ~~A member of a tribe with knowledge of Indian family~~
29 ~~organization and child rearing;~~

30
31 (B) ~~A lay expert with substantial experience in Indian child and~~
32 ~~family services and extensive knowledge of the social and cultural~~
33 ~~standards and child rearing practices of Indian tribes, specifically~~
34 ~~the child’s tribe, if possible;~~

35
36 (C) ~~A professional person with substantial education and experience~~
37 ~~in Indian child and family services and in the social and cultural~~
38 ~~standards of Indian tribes, specifically the child’s tribe, if~~
39 ~~possible; or~~

40
41 (D) ~~A professional person having substantial education and~~
42 ~~experience in the area of his or her specialty.~~

1 (11) ~~“Act” means the Indian Child Welfare Act (25 U.S.C. §§ 1901–1963).~~

2
3 (12) ~~“Tribal court” means a court with jurisdiction over child custody~~
4 ~~proceedings, identified as a Court of Indian Offenses, a court~~
5 ~~established and operated under the code or custom of an Indian tribe, or~~
6 ~~any other administrative body of a tribe that is vested with authority~~
7 ~~over child custody proceedings. If applicable, the tribal court has met~~
8 ~~the requirements for resumption of jurisdiction over child custody~~
9 ~~proceedings as approved by the Department of the Interior.~~

10
11 **(b) — Applicability of rule; 25 U.S.C. §§ 1911, 1912**

12
13 ~~This rule applies to all proceedings under section 300 et seq. and to~~
14 ~~proceedings under section 601 and section 602 et seq. in which the child is at~~
15 ~~risk of entering foster care or is in foster care, including detention hearings,~~
16 ~~jurisdiction hearings, disposition hearings, reviews, hearings under section~~
17 ~~366.26, and subsequent hearings affecting the status of the Indian child.~~

18
19 **(e) — Jurisdiction; 25 U.S.C. § 1911**

20
21 (1) ~~If the Indian child resides or is domiciled on an Indian reservation that~~
22 ~~exercises exclusive jurisdiction under the act over child custody~~
23 ~~proceedings, the petition under section 300 must be dismissed.~~

24
25 (A) ~~If the Indian child is temporarily off a reservation that exercises~~
26 ~~exclusive jurisdiction, the juvenile court must exercise temporary~~
27 ~~jurisdiction if there is an immediate threat of serious physical~~
28 ~~harm to the child.~~

29
30 (B) ~~Absent extraordinary circumstances, temporary emergency~~
31 ~~eustody must terminate within 90 days, unless the court~~
32 ~~determines by clear and convincing evidence, including the~~
33 ~~testimony of at least one qualified expert witness, that return of~~
34 ~~the child is likely to cause serious damage to the child.~~

35
36 (C) ~~The child must be returned immediately to the parent or Indian~~
37 ~~eustodian when the emergency placement is no longer necessary~~
38 ~~to prevent serious harm to the child.~~

39
40 (2) ~~If the Indian child is not domiciled or residing on a reservation that~~
41 ~~exercises exclusive jurisdiction, the tribe, parent, or Indian custodian~~
42 ~~may petition the court to transfer the proceedings to the tribal~~

1 jurisdiction, and the juvenile court must transfer the proceedings to
2 tribal jurisdiction unless there is good cause not to do so.

3
4 (A) ~~Either parent may object to the transfer.~~

5
6 (B) ~~The tribe may decline the transfer of the proceedings.~~

7
8 (3) ~~If the tribe does not intervene or the tribal court does not request
9 transfer to tribal jurisdiction, the court should proceed to exercise its
10 jurisdiction regarding the Indian child under section 300 et seq., in
11 accordance with the procedures and standards of proof as required by
12 both juvenile court law and the act.~~

13
14 **(d) ~~Inquiry~~**

15
16 ~~The court, the county welfare department, and the probation department have
17 an affirmative and continuing duty to inquire whether a child for whom a
18 petition under section 300, 601, or 602 is to be, or has been, filed is or may
19 be an Indian child.~~

20
21 (1) ~~In juvenile wardship proceedings, if the probation officer believes that
22 the child is at risk of entering foster care or is in foster care, he or she
23 must ask the child, if the child is old enough, and the parents or legal
24 guardians whether the child may be an Indian child or may have Indian
25 ancestors.~~

26
27 (2) ~~In dependency cases, the social worker must ask the child, if the child
28 is old enough, and the parents or legal guardians whether the child may
29 be an Indian child or may have Indian ancestors.~~

30
31 (3) ~~At the first appearance by a parent or guardian in any dependency case,
32 or in juvenile wardship proceedings in which the child is at risk of
33 entering foster care or is in foster care, the parent or guardian must be
34 ordered to complete *Parental Notification of Indian Status (Juvenile
35 Court)* (form JV 130).~~

36
37 (4) ~~The circumstances that may provide probable cause for the court to
38 believe the child is an Indian child include, but are not limited to, the
39 following:~~

40
41 (A) ~~A person having an interest in the child, including the child, an
42 Indian tribe, an Indian organization, an officer of the court, or a
43 public or private agency, informs the court or the county welfare~~

1 agency or the probation department or provides information
2 suggesting that the child is an Indian child;

3
4 (B) The residence of the child, the child's parents, or an Indian
5 eustodian is in a predominantly Indian community; or

6
7 (C) The child or the child's family has received services or benefits
8 from a tribe or services that are available to Indians from tribes or
9 the federal government, such as the Indian Health Service.

10
11 ~~(e) Petition~~

12
13 (1) Section 1(l) or 1(m) on either the initial or an amended *Juvenile*
14 *Dependency Petition (Version One)* (form JV 100) or section 1(i) or
15 1(j) of the initial or an amended *Juvenile Dependency Petition (Version*
16 *Two)* (form JV 110) must be checked if the county welfare department
17 knows or has reason to know that the child may be a member of or
18 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 (2) Section 1(m) or 1(n) on either the initial or an amended *Juvenile*
23 *Wardship Petition* (form JV 600) must be checked if the county
24 probation department knows or has reason to know that the child may
25 be a member of or eligible for membership in a federally recognized
26 Indian tribe or if there is reason to believe the child may be of Indian
27 ancestry, as appropriate.

28
29 (3) If section 1(l) of the *Juvenile Dependency Petition (Version One)* (form
30 JV 100) or section 1(i) of the *Juvenile Dependency Petition (Version*
31 *Two)* (form JV 110) or section 1(m) of the *Juvenile Wardship Petition*
32 (form JV 600) is checked, or if, on inquiry, or based on other
33 information, the court has reason to know the child may be an Indian
34 child, the court must proceed as if the child were an Indian child and
35 must proceed with all dependency and wardship hearings, observing
36 the Welfare and Institutions Code timelines while complying with the
37 act and this rule.

38
39 (A) A determination by the identified tribe or tribes that the child is or
40 is not an Indian child is definitive.

1 ~~(B) If no particular tribe can be reasonably identified, a determination~~
2 ~~by the Bureau of Indian Affairs (BIA) that the child is not an~~
3 ~~Indian child is definitive.~~

4
5 ~~(4) If section 1(m) of the *Juvenile Dependency Petition (Version One)*~~
6 ~~(form JV 100) is checked and section 1(l) is not, or section 1(j) of the~~
7 ~~*Juvenile Dependency Petition (Version Two)* (form JV 110) is checked~~
8 ~~and section 1(i) is not, or if section 1(n) of the *Juvenile Wardship*~~
9 ~~*Petition* (form JV 600) is checked and section 1(m) is not, notice of the~~
10 ~~proceedings to the Bureau of Indian Affairs and further inquiry~~
11 ~~regarding the possible Indian status of the child are the only~~
12 ~~requirements.~~

13
14 ~~(f) Notice; 25 U.S.C. § 1912~~

15
16 ~~If there is reason to know that an Indian child is involved, the social~~
17 ~~worker or probation officer must send *Notice of Involuntary Child*~~
18 ~~*Custody Proceedings for an Indian Child (Juvenile Court)* (form JV-~~
19 ~~135) to the parent or legal guardian and Indian custodian of an Indian~~
20 ~~child, and the Indian child's tribe, in accordance with Welfare and~~
21 ~~Institutions Code section 224.2.~~

22 ~~(g) Determination of status; 25 U.S.C. § 1911 (Welf. & Inst. Code, §~~
23 ~~360.6(e))~~

24
25 ~~Determination of tribal membership or eligibility for membership is made~~
26 ~~exclusively by the tribe.~~

27
28 ~~(1) A tribe's determination that the child is or is not a member of or~~
29 ~~eligible for membership in the tribe is conclusive.~~

30
31 ~~(2) Information that the child is not enrolled in the tribe is not~~
32 ~~determinative of Indian child status.~~

33
34 ~~(3) The tribe must be a federally recognized tribe, group, or community as~~
35 ~~defined by the Bureau of Indian Affairs of the Department of the~~
36 ~~Interior as eligible for services provided to Indians by the Secretary of~~
37 ~~the Interior because of their status as Indians, including any Alaskan~~
38 ~~Native Villages as defined by section 1602(c) of title 43 of the United~~
39 ~~States Code.~~

40
41 ~~(4) Absent a contrary determination by the tribe, a determination by the~~
42 ~~BIA that a child is or is not an Indian is conclusive.~~

1
2 (5) ~~The Indian Child Welfare Act applies when a tribe determines that an~~
3 ~~unmarried minor is:~~

4
5 (A) ~~A member of an Indian tribe; or~~

6
7 (B) ~~Eligible for membership in an Indian tribe and a biological child~~
8 ~~of a member of an Indian tribe.~~

9
10 **~~(h) Proceedings after notice; 25 U.S.C. § 1911~~**

11
12 ~~If it is determined that the act applies, the juvenile court hearing must not~~
13 ~~proceed until at least 10 days after those entitled to notice under the act have~~
14 ~~received notice. If requested, the parent, Indian custodian, or tribe must be~~
15 ~~granted a continuance of up to 20 days to prepare for the proceeding. The~~
16 ~~tribe may intervene at any point in the proceeding.~~

17
18 (1) ~~An indigent parent and an indigent Indian custodian have a right to~~
19 ~~court appointed counsel.~~

20
21 (2) ~~All parties, including the parent, Indian child, Indian custodian, and~~
22 ~~tribe, and their respective attorneys, have the right to examine all court~~
23 ~~documents related to the dependency case.~~

24
25 **~~(i) Required procedures, findings, and orders for foster care placement and~~**
26 **~~guardianships; 25 U.S.C. § 1912~~**

27
28 ~~The court may not order foster care placement of an Indian child, or establish~~
29 ~~a guardianship of an Indian child, unless the court finds by clear and~~
30 ~~convincing evidence that continued custody with the parent or Indian~~
31 ~~custodian is likely to cause the Indian child serious emotional or physical~~
32 ~~damage.~~

33
34 (1) ~~Testimony by a qualified expert witness is required.~~

35
36 (2) ~~Stipulation by the parent or Indian custodian or failure to object may~~
37 ~~waive the requirement of producing evidence of the likelihood of~~
38 ~~serious damage only if the court is satisfied that the party has been fully~~
39 ~~advised of the requirements of the act and has knowingly, intelligently,~~
40 ~~and voluntarily waived them.~~

41
42 (3) ~~Failure to meet non Indian family and community child rearing~~
43 ~~standards, or the existence of other behavior or conditions that meet the~~

1 removal standards of section 361, will not support an order for
2 placement absent the finding that continued custody with the parent or
3 Indian custodian is likely to cause serious emotional or physical
4 damage.

5
6 ~~(4) In addition to the findings required under section 361, in order to place~~
7 ~~an Indian child out of the custody of a parent or Indian custodian, the~~
8 ~~court must find that active efforts have been made to provide remedial~~
9 ~~services and rehabilitative programs designed to prevent the breakup of~~
10 ~~the Indian family, and that these efforts were unsuccessful. Stipulation~~
11 ~~by the parent or Indian custodian or failure to object may waive the~~
12 ~~requirement of this finding only if the court is satisfied that the party~~
13 ~~has been fully advised of the requirements of the act and has~~
14 ~~knowingly, intelligently, and voluntarily waived them.~~

15
16 ~~(A) The court must consider all available information regarding the~~
17 ~~prevailing social and cultural conditions of the Indian child's~~
18 ~~tribe.~~

19
20 ~~(B) Efforts to provide services must include attempts to use the~~
21 ~~available resources of extended family members, the tribe, Indian~~
22 ~~social service agencies, and individual Indian caregivers.~~

23
24 ~~(j) **Placement of an Indian child in a foster care placement; 25 U.S.C. §**~~
25 ~~**1912**~~

26
27 ~~If it is determined that the act applies, the court may not order foster care~~
28 ~~placement of an Indian child unless the court finds by clear and convincing~~
29 ~~evidence that continued custody with the parent or Indian custodian is likely~~
30 ~~to cause the Indian child serious emotional or physical damage.~~

31
32 ~~(1) Testimony by a qualified expert witness is required.~~

33
34 ~~(2) Stipulation by the parent, Indian custodian, or tribe or failure to object~~
35 ~~may waive the requirement of producing evidence of the likelihood of~~
36 ~~serious damage only if the court is satisfied that the party has been fully~~
37 ~~advised of the requirements of the act and has knowingly, intelligently,~~
38 ~~and voluntarily waived them.~~

39
40 ~~(3) If it is determined that the act applies, failure to meet non-Indian family~~
41 ~~and child rearing community standards, or the existence of other~~
42 ~~behavior or conditions that meet the removal standards of section 361,~~
43 ~~will not support an order for placement absent the finding that~~

1 continued custody with the parent or Indian custodian is likely to cause
2 serious emotional or physical damage.

3
4 ~~(k) Standards and preferences in placement of an Indian child; 25 U.S.C. §~~
5 ~~1915~~

6
7 Foster and adoptive placements of Indian children must follow a specified
8 order in the absence of good cause to the contrary. Placement standards must
9 be the prevailing social and cultural standards of the Indian community in
10 which the parent or extended family member resides, or with which the
11 parent or extended family member maintains social and cultural contacts.
12 The foster or preadoptive placement must be in the least restrictive setting,
13 within reasonable proximity to the Indian child's home, and capable of
14 meeting any special needs of the Indian child.

15
16 (1) ~~In a foster or preadoptive placement, preference must be given in the~~
17 ~~following order:~~

18
19 ~~(A) To a member of the Indian child's extended family;~~

20
21 ~~(B) To a foster home licensed or approved by the Indian child's tribe;~~

22
23 ~~(C) To a state or county licensed or certified Indian foster home; or~~

24
25 ~~(D) To a children's institution approved by the tribe or operated by an~~
26 ~~Indian organization and offering a program to meet the Indian~~
27 ~~child's needs.~~

28
29 (2) ~~In an adoptive placement, preference must be given in the following~~
30 ~~order:~~

31
32 ~~(A) To a member of the Indian child's extended family;~~

33
34 ~~(B) To other members of the Indian child's tribe; or~~

35
36 ~~(C) To other Indian families.~~

37
38 (3) ~~An Indian child may be placed in a non Indian home only if the court~~
39 ~~finds that a diligent search has failed to locate a suitable Indian home.~~

40
41 (4) ~~The court may modify the preference order only for good cause, which~~
42 ~~may include the following considerations:~~

- 1 (A) ~~The requests of the parent or Indian custodian;~~
2
3 (B) ~~The requests of the Indian child;~~
4
5 (C) ~~The extraordinary physical or emotional needs of the Indian child~~
6 ~~as established by a qualified expert witness; or~~
7
8 (D) ~~The unavailability of suitable families based on a diligent effort to~~
9 ~~identify families meeting the preference criteria.~~
10
11 (5) ~~The burden of establishing good cause for the court to alter the~~
12 ~~preference order is on the party requesting that a different order be~~
13 ~~considered.~~
14
15 (6) ~~The tribe, by resolution, may establish a different preference order,~~
16 ~~which, absent good cause, must be followed if it provides for the least~~
17 ~~restrictive setting.~~
18
19 (7) ~~The preferences and wishes of the Indian child and the parent must be~~
20 ~~considered, and weight given to a consenting parent's request for~~
21 ~~anonymity.~~

22
23 ~~(l) Active efforts; 25 U.S.C. § 1912~~
24

25 ~~In addition to the findings required under section 361, in order to place an~~
26 ~~Indian child out of the custody of a parent or Indian custodian, or to issue~~
27 ~~orders under section 366.26, the court must find that active efforts have been~~
28 ~~made to provide remedial services and rehabilitative programs designed to~~
29 ~~prevent the breakup of the Indian family, and that these efforts were~~
30 ~~unsuccessful.~~

- 31
32 (1) ~~The court must consider the prevailing social and cultural conditions of~~
33 ~~the Indian child's tribe.~~
34
35 (2) ~~Efforts to provide services must include attempts to use the available~~
36 ~~resources of extended family members, the tribe, Indian social service~~
37 ~~agencies, and individual Indian caregivers.~~
38

39 ~~(m) Termination of parental rights; 25 U.S.C., § 1912~~
40

41 ~~The court may not terminate parental rights to an Indian child unless there is~~
42 ~~proof beyond a reasonable doubt that continued custody by the parent or~~

1 ~~Indian custodian is likely to result in serious emotional or physical damage to~~
2 ~~the child.~~

3
4 (1) ~~The evidence must be supported by the testimony of a qualified expert~~
5 ~~witness.~~

6
7 (2) ~~Stipulation by the parent or Indian custodian or failure to object may~~
8 ~~waive the requirement of producing evidence of the likelihood of~~
9 ~~serious damage only if the court is satisfied that the party has been fully~~
10 ~~advised of the requirements of the act and has knowingly, intelligently,~~
11 ~~and voluntarily waived them.~~

12
13 (3) ~~Consent to a voluntary termination of parental rights, relinquishment of~~
14 ~~parental rights, or consent to adoption must be executed in writing and~~
15 ~~recorded before a judicial officer of competent jurisdiction. The court~~
16 ~~must certify that the terms and consequences of the consent were~~
17 ~~explained in detail, in the language of the parent or Indian custodian,~~
18 ~~and fully understood by the parent or Indian custodian. If~~
19 ~~confidentiality is requested or appropriate, the consent may be executed~~
20 ~~in chambers.~~

21
22 (4) ~~In order to terminate parental rights to an Indian child, the court must~~
23 ~~find that active efforts have been made to provide remedial services and~~
24 ~~rehabilitative programs designed to prevent the breakup of the Indian~~
25 ~~family, and that these efforts were unsuccessful. Stipulation by the~~
26 ~~parent or Indian custodian or failure to object may waive the~~
27 ~~requirement of this finding only if the court is satisfied that the party~~
28 ~~has been fully advised of the requirements of the act and has~~
29 ~~knowingly, intelligently, and voluntarily waived them.~~

30
31 ~~(n) **Petition to invalidate orders of removal or termination of parental**~~
32 ~~**rights; 25 U.S.C., § 1914**~~

33
34 ~~If it is determined that the act applies, the Indian child, a parent, an Indian~~
35 ~~custodian, or the child's tribe may petition any court of competent~~
36 ~~jurisdiction to invalidate a foster placement or termination of parental rights.~~

37
38 (1) ~~If the Indian child is a dependent child of the juvenile court or the~~
39 ~~subject of a pending petition, the juvenile court is the only court of~~
40 ~~competent jurisdiction with the authority to hear the petition to~~
41 ~~invalidate the foster placement or termination of parental rights.~~

- 1 jurisdiction can be found on the Web site of the Administrative Office of the Courts, Center for
- 2 Families, Children & the Courts at www.courtinfo.ca.gov/programs/cfcc.

1
2
3
4
5
6
7

Chapter ~~13~~12. Cases Petitioned Under Section 300

Articles 1–4. ***

Chapter ~~14~~13. Cases Petitioned Under Sections 601 and 602

Articles 1–5. ***

GC-210(CA)

Guardianship Petition—Child Information Attachment

Case Number: _____

Guardianship of (*all children's names*): _____

This child's name: _____

Fill out a separate copy of this form for **each** child for whom you want the court to appoint a guardian.

This form is attached to the Petition, item 2 of form GC-210, or item 8 of form GC-210(P).

The Petition asks for the appointment of a guardian of this child's (*specify*): person estate person and estate

1 Tell the court about this child

a. Child's full legal name: _____ Date of birth: _____
First Middle Last Month/Day/Year

b. Child's current address: _____

c. (*Answer the questions in item c only if the Petition to which this form is attached asks for the appointment of a guardian of this child's person or this child's person and estate.*)

(1) Is this child a member of, or eligible for membership in, an Indian tribe recognized by the federal government? No Not sure Yes, (*specify tribe*): _____

(If you checked "Yes" to item (1), this guardianship case is subject to the Indian Child Welfare Act ("ICWA") (25 U.S.C. § 1901, et seq.). If you checked "Not sure" or "No" to item 1, answer item (2)).

(2) Do you know or have reason to know (within the meaning of Prob. Code, § 1460.2, Welf. & Inst. Code, § 224.3, and rule 7.1015 of the Cal. Rules of Court), that this child may be an Indian child?

No Yes (*If you checked "Yes" to either item (1) or item (2), you must fill out a Notice of Child Custody Proceeding for Indian Child (Form ICWA-030) ("Notice"). Your attorney must serve copies of the Notice, together with copies of your petition and all attachments, including this form, on the child's parents; any Indian custodian (as defined in ICWA, at 25 U.S.C. § 1903, and Probate Code section 1449); any Indian tribe that may have a connection to the child; the Bureau of Indian Affairs; and possibly the U. S. Secretary of the Interior, by certified or registered U. S. Mail, return receipt requested. If you are not represented by an attorney in this case, the court will serve copies of these papers, but you must first fill out the original Notice and deliver it to the court. After service, the original Notice and all return receipts must be filed with the court. Service of the Notice is in addition to service of any other notices required in this case.*)

d. Is this child married? Yes No Never married If you checked "No," was this child formerly married but the marriage was dissolved or ended in divorce? Yes No
(The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)

e. Is this child receiving public assistance? Yes No Unknown (*If you checked "Yes," fill out below.*)

Type of Aid	Monthly Benefit	Type of Aid	Monthly Benefit
<input type="checkbox"/> TANF (Temporary Asst. for Needy Families)	\$ _____	<input type="checkbox"/> Other (<i>explain</i>):	\$ _____
<input type="checkbox"/> Social Security	\$ _____	<input type="checkbox"/> Other (<i>explain</i>):	\$ _____
<input type="checkbox"/> Dept. Veterans Affairs Benefits	\$ _____		

f. Name and address of the person with *legal* custody of this child: _____



Guardianship of (all children's names): _____

Case Number:

This child's name: _____

1 Tell the court about this child (continued)

g. (Check this box and fill out below if the person the child lives with is not the person with legal custody.)
 Name and address of the person this child lives with (has the care of the child): _____

h. (Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, custody, or other similar court case.) Describe the court case below:

Type of Case	Court District or County and State	Case Number (if known)

i. (Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of Mental Health.) Write the name of the institution here: _____

2 List the names and addresses of this child's relatives and other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Father	_____	_____
Mother	_____	_____
Grandfather (Father's father)	_____	_____
Grandmother (Father's mother)	_____	_____
Grandfather (Mother's father)	_____	_____
Grandmother (Mother's mother)	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

2 Names and addresses of this child's relatives and other persons (continued):

Relationship	Name	Home Address (Street, City, State, Zip)
Brother/Sister	_____	_____
Brother/Sister	_____	_____

Check here if this child has additional brothers or sisters, including half-brothers and half-sisters, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Item 2:—Other Siblings" at the top of the paper and attach it to this form.

Spouse (Guardianship of the estate only)	_____	_____
Person nominated as guardian of this child (Other than a proposed guardian listed in 3)	_____	_____

3 Information about the proposed guardian:

a. Name (name all proposed guardians if more than one): _____

b. Relationship(s) to the child named in 1 (check all that apply):

Relative (specify relationships of all proposed guardians to the child): _____

Not a relative (explain interest in or connection to this child): _____

4 Explain why appointing the person in 3 guardian would be best for this child: _____

Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4:—Best Interest of Child" at the top of the paper and attach it to this form.



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

5 Do one or both of this child's parents agree that the person in 3 can be the child's guardian?
a. Father: Yes No Not known at this time.
b. Mother: Yes No Not known at this time.
(You may file a filled-out Consent to Appointment of Guardian and Waiver of Notice (form GC-211, item 4) signed by the child's parent or parents (or any adult relative listed in 2) who agree. The court may excuse you from having to give notice of the court hearing on your request for appointment of a guardian to a parent or other relative who signs that form.)

6 Suitability for guardianship of this child
a. Does this child live with the person in 3 now? Yes No
b. If the court approves the guardianship, will this child live with the person in 3? Yes No
c. Does the person in 3 plan to adopt this child now? Yes No

7 Check this box if you (the petitioner) are not the person in 3, and fill in below.
Your relationship to this child:
 Relative (specify): _____
 Not a relative (explain your interest in or connection to this child): _____

8 Except as otherwise stated in this form, the statements made in the Petition to which this form is attached fully apply to this child.

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 09/20/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE DEPENDENCY PETITION (VERSION ONE) (Welf. & Inst. Code, § 300 et seq.) <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	CASE NUMBER: RELATED CASES (<i>if any</i>):

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code (<i>check applicable boxes; see attachment 1a for concise statements of facts</i>): <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <input type="checkbox"/> (e) <input type="checkbox"/> (f) <input type="checkbox"/> (g) <input type="checkbox"/> (h) <input type="checkbox"/> (i) <input type="checkbox"/> (j)			
b. Child's name:	c. Age:	d. Date of birth:	e. Sex:
f. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	g. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		
h. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	i. Other (<i>state name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
j. Prior to intervention, child resided with <input type="checkbox"/> parent (<i>name</i>): <input type="checkbox"/> parent (<i>name</i>): <input type="checkbox"/> guardian (<i>name</i>): <input type="checkbox"/> Indian custodian (<i>name</i>): <input type="checkbox"/> other (<i>state name, address, and relationship to child</i>):	k. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: Current place of detention (<i>address</i>): <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other		

2. I have asked about Indian ancestry for this child and have completed and attached the required *Indian Child Inquiry Attachment*, form ICWA-010(A). (*If this is a subsequent filing and there is no new information, the ICWA-010(A) is not required.*)

(See important notice on page 2.)

CHILD'S NAME: _____	CASE NUMBER:
----------------------------	----------------------

3. Petitioner requests that the court find these allegations to be true.

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

Date:

_____  _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number (if different person signing than listed in caption above):

Number of pages attached: _____ Other children are listed on *Additional Children Attachment* (form JV-101)

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

**TO PARENTS OR OTHERS LEGALLY RESPONSIBLE
FOR THE SUPPORT OF THE CHILD**

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<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 9 09/20/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	CASE NUMBER: _____
JUVENILE DEPENDENCY PETITION (VERSION TWO) (Welf. & Inst. Code, § 300 et seq.) <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	RELATED CASES (<i>If any</i>): _____

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code (<i>check applicable subdivisions for each child; see attachment 1a for concise statements of facts</i>):																															
b. <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Child's name</u></th> <th style="text-align: left;"><u>Age</u></th> <th style="text-align: left;"><u>Date of birth</u></th> <th style="text-align: left;"><u>Sex</u></th> <th style="text-align: left;"><u>Section 300 subdivisions (<i>check all that apply</i>):</u></th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j</td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j</td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j</td> </tr> <tr> <td>4.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j</td> </tr> <tr> <td>5.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j</td> </tr> </tbody> </table>	<u>Child's name</u>	<u>Age</u>	<u>Date of birth</u>	<u>Sex</u>	<u>Section 300 subdivisions (<i>check all that apply</i>):</u>	1.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j	2.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j	3.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j	4.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j	5.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j	
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4.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j																											
5.				<input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j																											
c. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	d. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged																														
e. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	f. Other (<i>state name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.																														
g. Prior to intervention, child resided with <input type="checkbox"/> parent (<i>name</i>): _____ <input type="checkbox"/> parent (<i>name</i>): _____ <input type="checkbox"/> guardian (<i>name</i>): _____ <input type="checkbox"/> Indian custodian (<i>name</i>): _____ <input type="checkbox"/> other (<i>state name, address and relationship to child</i>): _____	h. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: _____ Current place of detention (<i>address</i>): _____ <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other																														

2. I have asked about Indian ancestry for each child and have completed and attached the required *Indian Child Inquiry Attachment*, form ICWA-010(A).

(See important notice on page 2.)

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

3. Petitioner requests that the court find these allegations to be true.

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

Date:

_____ (TYPE OR PRINT NAME)	 _____ (SIGNATURE OF PETITIONER)
-------------------------------	----------------------------------------------------------------------------------------------------------------------

Address and telephone number (if different person signing than listed in caption above):

Number of pages attached: _____

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

**TO PARENTS OR OTHERS LEGALLY RESPONSIBLE
FOR THE SUPPORT OF THE CHILD**

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. (Optional): _____</p> <p style="text-align: center;">E-MAIL ADDRESS (Optional): _____</p> <p style="text-align: center;">ATTORNEY FOR (Name): _____</p>	FOR COURT USE ONLY Draft 10 09/20/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
JUVENILE WARDSHIP PETITION <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) <input type="checkbox"/> § 602(a)	CASE NUMBER:

1. Petitioner on information and belief alleges the following:

a. <input type="checkbox"/> The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code (check applicable boxes; see attachments for concise statements of facts): <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a) Violation (specify code section):			
b. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a).			
c. Child's name and address:	d. Age:	e. Date of birth:	f. Sex:
g. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	h. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		
i. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	j. Other (state name, address, and relationship to child): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
k. Attorney for child (if known): Address: _____ Phone number: _____	l. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained. Date and time of detention (custody): _____ Current place of detention (address): _____		

2. I have asked about Indian ancestry for this child because he or she is either at risk of entering foster care or is in foster care, and have completed and attached the required *Indian Child Inquiry Attachment*, form ICWA-010(A). (If this is a subsequent filing and there is no new information, the ICWA-010(A) is not required.)

(See important notice on page 2.)

CHILD'S NAME: _____	CASE NUMBER:
------------------------	--------------

3. Petitioner requests that the court find these allegations to be true.

4. Petitioner requests a hearing to determine whether the child is a fit and proper subject under juvenile court law under Welfare and Institutions Code section 707(a)(1) 707(a)(2) 707(c).

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

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

Number of pages attached: _____

— NOTICE —

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for your child or you by a public defender or other attorney, the cost of supervision of your child by order of the juvenile court, and the cost of any restitution owed to the victim.

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out forms ICWA-010(A), *Indian Child Inquiry Attachment*, and ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment*. These are important responsibilities because if the child is an Indian child, you and the court will need to take specific steps to prevent the breakup of the child's Indian family. Also, if the child is an Indian child, he or she has a right to receive resources and services that are culturally specific to the Indian child's family. The court will check to make sure that the child is receiving these services.

Tips on how to fill out ICWA-010(A), *Indian Child Inquiry Attachment*

1. Try to find contact information for the child's parents, child's Indian custodian if the child is living with an Indian person, the child's grandparents, and great-grandparents.
2. Contact the child's parents, child's Indian custodian if the child is living with an Indian person, the child's grandparents, and great-grandparents and ask them these questions:
 - a. Is the child a member of a tribe, and if they think he or she might be, then which tribe or tribes?
 - b. Are they members of a tribe, and if they think they might be, which tribes?
 - c. Does the child or his or her parents live in Indian country?
 - d. Does the child or any of his or her relatives receive services or benefits from a tribe, and if yes, which tribe?
 - e. Does the child or any of his or her relatives receive services or benefits available to Indians from the federal government?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out and attached to the petition form ICWA-010(A), *Indian Child Inquiry Attachment*. This does not apply to a petition filed under Welf. & Inst. Code, sections 601 or 602.

ICWA-030, *Notice of Child Custody Proceeding for Indian Child*

After taking the steps to find out if the child is an Indian child, if you have reason to know that the child is an Indian child, then you (or the court investigator if you are related to the child and you are asking the court to appoint you as the child's guardian) must let the child's tribe or tribes know about the case. If you let the tribe or tribes know, they can investigate and let you and the court know if the child is in fact an Indian child and can then decide whether to get involved in the case or assume tribal jurisdiction.

Some tips to help you figure out if there is reason to know the child is an Indian child

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
3. If the child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

These are just a few of the reasons to know or give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

If you have reason to know that the child is an Indian child, then you must give notice to the following:

1. Child's parents, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom or under state law, or if the parent asked the Indian custodian to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tip on how to find the address for the child's tribe or tribes:

The Secretary of the Interior periodically updates and publishes in the Federal Register (21 CFR 23.12) a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. Another source is a list maintained by the California Department of Social Services on their Web site at:

www.childsworld.ca.gov/Res/pdf/alphatribe.doc. That list is very helpful, but not official, nor is there any authority to use the addresses in the state list over different agents for services listed in the Federal Register.

Be sure to complete ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and file the form with the court.

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe(s), then when you send notice to the parent, Indian custodian, and the tribe(s), you must also send a copy of the notice to The Secretary of the Interior at 1849 C Street, N.W., Washington, D.C. 20240 and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do not know the identity and location of the parent, Indian custodian, and the tribe(s), then you must send a copy of the notice to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. In order to establish tribal identity, provide as much information as possible, including name of child, birthdate, and birth place; name of tribe(s); all known relatives with addresses and other identifying information; and a copy of the petition.

How do you notify everyone and prove to the court that you have?

If you do not have an attorney and are representing yourself, the court clerk will do this for you.

If you do have an attorney, it is important that your attorney or you follow these steps exactly:

1. Someone over 18—not you or anyone else who signed the petition—needs to go to the post office and send by registered or certified mail, with return receipt requested the following forms:
 - a. Petition;
 - b. ICWA-010(A), *Indian Child Inquiry Attachment*; and
 - c. ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who did step (1) above, must fill out the information requested on page 7 of form, ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
3. Go to the clerk's office and file with the court your proof that you have given notice to everyone listed above and on page 10 of ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
 - a. Copies of what you sent (the petition, ICWA-010(A), *Indian Child Inquiry Attachment*, and ICWA-030, *Notice of Child Custody Proceeding for Indian Child*);
 - b. All return receipts both given to you by the post office and returned from the mailing; and
 - c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or counsel a party to do so. (Welf. & Inst. Code, § 224.2(e).)

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

1. Name of child:

Indian child inquiry made not made and (check all that apply):

a. The child is or may be a member of or eligible for membership in a tribe.

Name of tribe(s): _____

Name of band (if applicable): _____

b. The child's parents, grandparents, or great-grandparents are or were members of a tribe.

Name of tribe(s): _____

Name of band (if applicable): _____

c. The residence or domicile of the child, child's parents, or Indian custodian is in a predominantly Indian community.

d. The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).

e. The child may have Indian ancestry.

f. The child has no known Indian ancestry.

g. Other reason to know the child may be an Indian child: _____

Person(s) questioned:

Name: _____

Address: _____

City, state, zip: _____

Telephone: _____

Date questioned: _____

Means of communication: _____

Relationship to child: _____

Summary of information: _____

Person(s) questioned:

Name: _____

Address: _____

City, state, zip: _____

Telephone: _____

Date questioned: _____

Means of communication: _____

Relationship to child: _____

Summary of information: _____

h. Information about other persons questioned is attached.

2. If this is a delinquency proceeding under Welfare and Institutions Code, § 601 or 602:

The child is in foster care.

It is probable the child will be entering foster care.

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 8 08/09/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
CHILD'S NAME:	
PARENTAL NOTIFICATION OF INDIAN STATUS	CASE NUMBER: _____

To the parent, Indian custodian, or guardian of the above-named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.

1. Name: _____
2. Relationship to child: Parent Indian custodian Guardian Other _____
3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe(s) (name each): _____
 Name of band (if applicable): _____
- b. I may have Indian ancestry. _____
 Name of tribe(s): _____
 Name of band (if applicable): _____
- 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): _____
 Name of band (if applicable): _____
- d. I have no Indian ancestry as far as I know.
- e. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
 Name of tribe (name each): _____
 Name of band (if applicable): _____
 Name and relationship of ancestor(s): _____
4. A previous form ICWA-020 has has not been filed with the court.

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

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE)

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 16 08/28/07 xyz Not Approved by the Judicial Council		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: TELEPHONE NO.:			
CASE NAME:			
NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD (check all that apply): <input type="checkbox"/> JUVENILE <input type="checkbox"/> Dependency <input type="checkbox"/> Delinquency <input type="checkbox"/> ADOPTION <input type="checkbox"/> CONSERVATORSHIP* <input type="checkbox"/> CUSTODY (Fam. Code, § 3041) <input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS <input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT	CASE NUMBER: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%; padding: 2px;">HEARING DATE:</td> <td style="padding: 2px;">DEPT.:</td> </tr> </table>	HEARING DATE:	DEPT.:
HEARING DATE:	DEPT.:		

NOTICE TO (check all that apply):

- Parents or Legal Guardians Tribes Indian Custodians Sacramento Area Director, BIA
 Secretary of the Interior

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child (a separate notice must be filed for each child):

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
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2. HEARING INFORMATION

a. Date:	Time:	<input type="checkbox"/>	Dept.:	<input type="checkbox"/>	Room:
<input type="checkbox"/> Type of hearing:					

b. Address and telephone number of court same as noted above is (specify):

3. The child is or may be eligible for membership in the following Indian tribes (list each):

*Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.

CASE NAME:	CASE NUMBER:
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4. **Under the Indian Child Welfare Act (ICWA) and California law:**
- a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
 - b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
 - c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
 - d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
 - e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible adoption of the child.
 - f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
 - g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
 - h. An Indian custodian is any person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

5. **INFORMATION ON THE CHILD NAMED IN 1**
- a. The child's birth certificate is attached unavailable
 - b. A copy of the tribal registration card of the child the parent is attached.
 - c. Biological relative information is listed below. *(Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)*

Biological Mother	Biological Father
Name <i>(include maiden, married, and former names or aliases)</i> :	Name <i>(include former names or aliases)</i> :
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:

CASE NAME:	CASE NUMBER:
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5. c. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Mother (Child's Maternal Grandmother)	Father's Biological Mother (Child's Paternal Grandmother)
Name <i>(include maiden, married, and former names or aliases):</i>	Name <i>(include maiden, married, and former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Father (Child's Maternal Grandfather)	Father's Biological Father (Child's Paternal Grandfather)
Name <i>(include former names or aliases):</i>	Name <i>(include former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. d. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Grandmother (Child's Maternal Great-grandmother)	Mother's Biological Grandmother (Child's Maternal Great-grandmother)
Name <i>(include maiden, married, and former names or aliases):</i>	Name <i>(include maiden, married, and former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Mother's Biological Grandfather (Child's Maternal Great-grandfather)	Mother's Biological Grandfather (Child's Maternal Great-grandfather)
Name <i>(include former names or aliases):</i>	Name <i>(include former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. e. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Father's Biological Grandmother (Child's Paternal Great-grandmother)	Father's Biological Grandmother (Child's Paternal Great-grandmother)
Name <i>(include maiden, married, and former names or aliases):</i>	Name <i>(include maiden, married, and former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

Father's Biological Grandfather (Child's Paternal Great-grandfather)	Father's Biological Grandfather (Child's Paternal Great-grandfather)
Name <i>(include former names or aliases):</i>	Name <i>(include former names or aliases):</i>
Current address:	Current address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

CASE NAME:	CASE NUMBER:
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5. f. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	Indian Custodian Information
Name <i>(include maiden, married, and former names or aliases):</i>	Name <i>(include maiden, married, and former names or aliases):</i>
Current address:	Current former address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:

6. ADDITIONAL INFORMATION ON CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown.)

- a. Biological birth father is named on birth certificate. Unknown
- b. Biological birth father has acknowledged parentage. Unknown
- c. There has been a judicial declaration of parentage. Unknown
- d. Other alleged father *(name each):*

Unknown

The following optional questions may be helpful in tracing the ancestry of the child in 1.

7. Has the child in 1 or any members of his or her family ever *(if "yes," provide the information requested below):*

- a. Attended an Indian school? Yes No Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

CASE NAME:	CASE NUMBER:
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b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?

Yes No Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given

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

Name/relationship to child	Name/description of property and address	Dates of residence

d. Other relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)

Name/relationship to child	Current and former address	Birth date and place	Tribe, band, and location

8. Tribal affiliation and location of child in 1 (check all that apply):

a. 1906 Final Roll Name of relative listed on roll:

Relationship to child in 1:

b. Roll of 1924 Name of relative listed on roll:

Relationship to child in 1:

c. California Judgment Roll. Roll number, if known:

CASE NAME:	CASE NUMBER:
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9. Additional party information (list the name, mailing address, and telephone number of all parties notified) :

<u>Name</u>	<u>Mailing Address</u>	<u>Telephone Number</u>
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DECLARATION

(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5–9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

CASE NAME:	CASE NUMBER:
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CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS

(To be completed by social worker or probation officer.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:
on *(date)*:

Date:	Title:	Department:
(TYPE OR PRINT NAME)	(SIGNATURE)	

DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS

(To be completed by the attorney for Petitioner if Petitioner is represented.)

I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter. I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:
on *(date)*:

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

Date:	
(TYPE OR PRINT NAME)	(SIGNATURE OF ATTORNEY)

CERTIFICATE OF MAILING—PROBATE PROCEEDINGS

(To be completed by the clerk of the court if Petitioner is unrepresented.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:
on *(date)*:

Date:	Title:	Department:
(TYPE OR PRINT NAME)	(SIGNATURE)	

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

CASE NAME:	CASE NUMBER:
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**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS,
TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED**

<p>1. <input type="checkbox"/> Parent (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>	<p>2. <input type="checkbox"/> Parent (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>
<p>3. <input type="checkbox"/> Guardian (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>	<p>4. <input type="checkbox"/> Guardian (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>
<p>5. <input type="checkbox"/> Indian Custodian (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>	<p>6. <input type="checkbox"/> Indian Custodian (<i>Name</i>): </p> <p style="margin-left: 20px;">Street address: Mailing address: City, state and zip code: Telephone number:</p>
<p>7. <input type="checkbox"/> Sacramento Area Director Bureau of Indian Affairs</p> <p style="margin-left: 20px;">Street address: 2800 Cottage Way City and zip code: Sacramento, CA 95825 Telephone number:</p>	<p>8. <input type="checkbox"/> Secretary of the Interior U.S. Department of the Interior</p> <p style="margin-left: 20px;">Street address: 1849 C Street, N.W. City, state and zip code: Washington D.C. 20240 Telephone number:</p>
<p>9. <input type="checkbox"/> Tribe (<i>Name</i>): </p> <p style="margin-left: 20px;">Addressee (<i>Name</i>): Title: Street address: Mailing address: City, state and zip code: Telephone number:</p>	<p>10. <input type="checkbox"/> Tribe (<i>Name</i>): </p> <p style="margin-left: 20px;">Addressee (<i>Name</i>): Title: Street address: Mailing address: City, state and zip code: Telephone number:</p>
<p>11. <input type="checkbox"/> Tribe (<i>Name</i>): </p> <p style="margin-left: 20px;">Addressee (<i>Name</i>): Title: Street address: Mailing address: City, state and zip code: Telephone number:</p>	<p>12. <input type="checkbox"/> Tribe (<i>Name</i>): </p> <p style="margin-left: 20px;">Addressee (<i>Name</i>): Title: Street address: Mailing address: City, state and zip code: Telephone number:</p>

Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.

Additional tribes served listed on attached form ICWA-030(A)

CASE NAME:	CASE NUMBER:
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ATTACHMENT TO NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

(This attachment may be used with form ICWA-030 to show additional tribes or bands served with the Notice)

**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS, TRIBES,
OR AGENCIES TO WHOM NOTICE WAS MAILED (Continued)**

<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:
<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:
<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:
<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:	<input type="checkbox"/> Tribe (Name): Addressee (Name): Title: Street address: Mailing address: City, state and zip code: Telephone number:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT 11 08/24/07 xyz Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF DESIGNATION OF TRIBAL REPRESENTATIVE AND NOTICE OF INTERVENTION IN A COURT PROCEEDING INVOLVING AN INDIAN CHILD	CASE NUMBER: RELATED CASES (if any):

TO ALL PARTIES:

1. I represent the (name of tribe): _____, which is a federally recognized Indian tribe listed in the Federal Register.
2. The above named child or children are:
 - Members of this tribe
 - Eligible for membership in this tribe and their Mother Father is a member of this tribe.
3. Under the Indian Child Welfare Act, the tribe designates (specify name and title): _____ as the tribe's representative and authorizes that person under the attached tribal resolution other official tribal document (e.g. letter, declaration, or other document from the office of the chairperson or president of the tribe or ICWA office) for the following purposes:
 - a. to receive notice of hearings;
 - b. to be present at hearings;
 - c. to address the court;
 - d. to examine all court documents relating to the case (at the court's discretion, if tribe does not intervene);
 - e. to submit written reports and recommendations to the court;
 - f. to request transfer of the case to the tribe's jurisdiction; and
 - g. to intervene at any point in a proceeding when it is determined the act applies.
4. The tribe is formally intervening as a party and is entitled to be treated in the same manner as counsel.

5. If the tribe is not formally intervening, but wants permission to exercise powers listed in Cal. Rules of Court, rule 5.534(i)(2), this section must be completed and presented to the court for signature prior to service and filing.

- a. The tribe does not formally intervene at this time but requests that notice of all proceedings continue to be sent to the tribe.
- b. Though not intervening, the tribe requests permission for a representative to exercise the following powers (Cal. Rules of Court, rule 5.534(i)(2)):
 - (1) Be present at the hearings;
 - (2) Address the court;
 - (3) Receive notice of hearing;
 - (4) Examine all court documents relating to the case;
 - (5) Submit written reports and recommendations to the courts; and
 - (6) Perform other duties and responsibilities as requested or approved by the court.

IT IS SO ORDERED:
 DATE: _____ JUDGE (OR JUDICIAL OFFICER)

CHILD'S NAME: _____	CASE NUMBER:
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6. The tribe requests that notice of all proceedings be sent to the above named tribal representative at the contact information below:

Name:
 Title:
 Address:
 City, state, zip code:
 Telephone: _____ Fax: _____

7. The tribe requests does not request an additional notice be sent to the tribal council at the contact information below:

Name:
 Title:
 Address:
 City, state, zip code:
 Telephone: _____ Fax: _____

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

CHILD'S NAME: _____	CASE NUMBER: _____
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PROOF OF SERVICE

ICWA-040, the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* must be served on the other parties or attorneys for the parties. Anyone at least 18 years of age EXCEPT A PARTY in this action may personally serve or mail the notice. The person who serves the notice must fill out and sign this proof of service. ICWA-040, the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* may not be filed with the court until all the parties or attorneys are served.

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served a copy of form ICWA-040 and all attachments as follows (*check either a or b below for each person served*):
 - a. **Personal service.** I personally delivered a copy of form ICWA-040 and all attachments as follows:

<input type="checkbox"/> (1) Name of child's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (2) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (3) Name of Court Appointed Special Advocate (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (4) Name of <input type="checkbox"/> social worker (<i>dependency only</i>) or <input type="checkbox"/> probation officer (<i>delinquency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (5) Name of <input type="checkbox"/> child's caregiver or <input type="checkbox"/> Indian custodian served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (6) Attorney for child welfare services agency (<i>dependency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (7) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (8) District Attorney (<i>delinquency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:

CHILD'S NAME: 	CASE NUMBER:
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b. **Mail.** I deposited a copy of form ICWA-040 and all attachments in the United States mail, in a sealed envelope with postage fully prepaid, addressed as follows:

(1) Name of child's attorney (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(3) Name of Appointed Special Advocate (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(5) Name of child's caregiver or Indian custodian served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(7) Name of parent (if self-represented) or parent's attorney (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(2) Name of parent (if self-represented) or parent's attorney (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(4) Name of social worker (dependency only) or probation officer (delinquency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(6) Attorney for child welfare services agency (dependency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(8) District Attorney (delinquency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

c. **Attachment.** If there are additional persons to serve, attach a separate piece of paper to form ICWA-040, write the child's name and case number on the top, and list additional persons' names, mailing addresses or location of personal service, dates of delivery or deposit, times of delivery or deposit, and whether service was made personally or by mail.

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON WHO SERVED NOTICE)

ATTORNEY OR PARTY WITHOUT ATTORNEY <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 08/24/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF PETITION AND PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	CASE NUMBER: RELATED CASES <i>(if any):</i>

TO ALL PARTIES:

1. A hearing on this petition will be held as follows:

a. Date:	Time:	Dept.:	Room:
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b. Address of court: same as noted above other *(specify):*

2. Child's name: _____ Date of birth: _____

3. On behalf of the parent Indian custodian child's tribe, I ask the court to transfer jurisdiction over the above named child's case to the jurisdiction of the tribe listed below:

Name of federally recognized tribe:
 Name of tribal court or tribal administrative body:
 Street address:
 Mailing address of court:
 City, state, and zip code:
 Telephone: _____ Fax: _____

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

Date:

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF DECLARANT)

CHILD'S NAME: 	CASE NUMBER:
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PROOF OF SERVICE

*Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction ICWA-050 must be served on all other parties or attorneys for the parties. After getting a hearing date from the court clerk and completing the form, anyone at least 18 years of age EXCEPT A PARTY in this action may personally serve or mail the request. The person who serves the notice must fill out and sign the proof of service. This form may not be filed with the court until all the parties or their attorneys are served. A request to transfer cannot be heard for juvenile dependency cases until after the JV-100 or JV-110, *Juvenile Dependency Petition* has been filed, for juvenile delinquency cases not until after the jurisdiction hearing, and for probate cases not until after the jurisdictional hearing.*

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served a copy of form ICWA-050 and all attachments as follows (*check either a or b below for each person served*):
 - a. **Personal service.** I personally delivered a copy of form ICWA-050 and all attachments as follows:

<input type="checkbox"/> (1) Name of child's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (2) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (3) Name of Appointed Special Advocate (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (4) Name of <input type="checkbox"/> social worker (<i>dependency only</i>) or <input type="checkbox"/> probation officer (<i>delinquency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (5) Name of <input type="checkbox"/> child's caregiver or <input type="checkbox"/> Indian custodian served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (6) Attorney for child welfare services agency (<i>dependency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:
<input type="checkbox"/> (7) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:	<input type="checkbox"/> (8) District Attorney (<i>delinquency only</i>) served: (a) Address: (b) Date of delivery: (c) Time of delivery:

CHILD'S NAME: _____	CASE NUMBER: _____
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b. **Mail.** I deposited a copy of form ICWA-050 and all attachments in the United States mail, in a sealed envelope with postage fully prepaid, addressed as follows:

(1) Name of child's attorney (if applicable) served: (2) Name of parent (if self-represented) or parent's attorney (if applicable) served:

(a) Address: (a) Address:

(b) Date of deposit: (b) Date of deposit:

(c) Place of deposit: (c) Place of deposit:

(3) Name of Appointed Special Advocate (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(4) Name of social worker (dependency only) or probation officer (delinquency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(5) Name of child's caregiver or Indian custodian served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(6) Attorney for child welfare services agency (dependency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(7) Name of parent (if self-represented) or parent's attorney (if applicable) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

(8) District Attorney (delinquency only) served:

(a) Address:

(b) Date of deposit:

(c) Place of deposit:

c. **Attachment.** If there are additional persons to serve, attach a separate piece of paper to form ICWA-050, write the child's name and case number on the top, and list additional persons' names, addresses, dates of delivery or deposit, times of delivery or deposit, and whether service was made personally or by mail.

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

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON WHO SERVED NOTICE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<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 12 08/24/07 xyz Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	CASE NUMBER: RELATED CASES (<i>if any</i>):

1. Child's name: _____ Date of birth: _____

2. a. Date of hearing: _____ Time: _____ Dept.: _____ Room: _____
- b. Persons present:

<input type="checkbox"/> Child	<input type="checkbox"/> Parent (<i>name</i>):	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Child's attorney	<input type="checkbox"/> Parent (<i>name</i>):	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Probation officer/social worker	<input type="checkbox"/> Guardian	<input type="checkbox"/> CASA
<input type="checkbox"/> Deputy county counsel	<input type="checkbox"/> Deputy district attorney	<input type="checkbox"/> Other:
<input type="checkbox"/> Tribal representative: _____	Name	

3. The court has read and considered the
 - ICWA-050, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
 - Other relevant evidence (*specify*):

4. The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.

5. **THE COURT FINDS AND ORDERS** under Family Code, § 177(a); Probate Code, § 1459.5(b); Welfare and Institutions Code, § 305.5; 25 U.S.C. § 1911(a) (Exclusive Jurisdiction)
 - a. The child's case is ordered transferred to the jurisdiction of the tribe listed below:
 - Name of tribe:
 - Address:

 - b. Physical custody of the child is transferred to a designated representative of the tribal court listed below:
 - Name:
 - Title:
 - Address:
 - City, state, zip code:
 - Telephone number:

 - c. The petition to transfer is denied because one of the following circumstances exist:
 - (1) One or both of the child's parents opposes the transfer.
Name of opposing parent:
 - (2) The child's tribe has informed this court that it does not have a tribal court or other administrative body as defined in 25 U.S.C. § 1903.
 - (3) The tribal court or other administrative body of the child's tribe declines the transfer.

CHILD'S NAME: _____	CASE NUMBER: _____
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- d. The petition to transfer is denied because good cause exists not to transfer the case.
- (1) Name of opposing party: _____ has submitted information or evidence in writing to the court and all parties.
- (2) Petitioner has had the opportunity to provide information or evidence in rebuttal.
- (3) The party opposing the transfer has established that good cause not to transfer the proceeding exists as follows:
- (a) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.
- (b) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding. The notice complied with:
- Family Code section 180 or
- Probate Code section 1460.2 or
- Welfare and Institutions Code section 224.2
- (Note: The fact that a party waited until after reunification efforts failed and reunification services were terminated is not good cause to deny transfer.)*
- (c) The Indian child is over 12 years of age and objects to the transfer.
- (d) The parents of the child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.
- (e) Other (specify): _____
- (4) The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.

6. Proof that tribe has accepted transfer is attached and jurisdiction is terminated.
7. Hearing is set for (Date): _____ (Time): _____ (Dept.): _____ to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date: _____

JUDICIAL OFFICER

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 TO BE REVOKED 01/01/08 mc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF <input type="checkbox"/> AGENCY <input type="checkbox"/> INDEPENDENT ADOPTION PROCEEDINGS FOR A POSSIBLE INDIAN CHILD	

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 this page.

NOTICE is mailed to the following (*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 may be eligible for membership in the following tribe or band (*name each*):
3. Please provide confirmation of child's membership or eligibility for membership to the following:
 - a. Name:
 - b. Organization:
 - c. Street address:
 - d. City, state, zip code:

Adoption agency Adoption service provider Attorney for (*specify*):
4. a. Indian custodian (*name each*):
 b. Tribe (*name each*):
5. Social worker or service provider who has witnessed relinquishment or consent:

a. Name:	d. Telephone number:
b. Address:	e. E-mail address:
c. City, state, zip code:	

6. NOTICE OF HEARING

a. Date:	Dept.:	Time:	Type of hearing:
b. Location: <input type="checkbox"/> the above court address <input type="checkbox"/> another address (<i>specify</i>):			

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

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 shown on the first page of this form.
- e. If all other notices required by law have been given to an Indian tribe, that Indian tribe is encouraged to notify the Department of Social Services and the licensed adoption agency or adoption service provider, no later than five calendar days before the date of the final adoption hearing, whether 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.

INFORMATION ON CHILD WHO IS THE SUBJECT OF A VOLUNTARY ADOPTION PROCEEDING

Indicate if any of the information in items 8–18 is unknown or nonapplicable. Attach any information that may be of assistance in determining the child's Indian status, including names and addresses of extended family members who may have Indian heritage.

8. a. <input type="checkbox"/> Mother <input type="checkbox"/> Father	b. <input type="checkbox"/> Mother <input type="checkbox"/> Father
Name (include maiden name, married names, and former names or aliases):	Name (include maiden name, married names, and former names or aliases):
Current or last address known:	Current or last address known:
Date and place of birth:	Date and place of birth:
Tribe, band, and location:	Tribe, band, and location:
If available, enrollment number or BIA/tribal agency:	If available, 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. a. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather	b. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather
Name (include maiden name, married names, and former names or aliases):	Name (include maiden name, married names, and former names or aliases):
Current or last address known:	Current or last address known:
Date and place of birth:	Date and place of birth:
Tribe, band, and location:	Tribe, band, and location:
If available, enrollment number or BIA/tribal agency:	If available, enrollment number or BIA/tribal agency:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:
c. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather	d. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather
Name (include maiden name, married names, and former names or aliases):	Name (include maiden name, married names, and former names or aliases):
Current or last address known:	Current or last address known:
Date and place of birth:	Date and place of birth:
Tribe, band, and location:	Tribe, band, and location:
If available, enrollment number or BIA/tribal agency:	If available, 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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10. a. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather	b. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather
Name (include maiden name, married names, and former names or aliases):	Name (include maiden name, married names, and former names or aliases):
Current or last address known:	Current or last address known:
Date and place of birth:	Date and place of birth:
Tribe, band, and location:	Tribe, band, and location:
If available, enrollment number or BIA/tribal agency:	If available, enrollment number or BIA/tribal agency:
If deceased, date and place of death:	If deceased, date and place of death:
Additional information:	Additional information:
c. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather	d. <input type="checkbox"/> Maternal <input type="checkbox"/> Paternal <input type="checkbox"/> grandmother <input type="checkbox"/> grandfather
Name (include maiden name, married names, and former names or aliases):	Name (include maiden name, married names, and former names or aliases):
Current or last address known:	Current or last address known:
Date and place of birth:	Date and place of birth:
Tribe, band, and location:	Tribe, band, and location:
If available, enrollment number or BIA/tribal agency:	If available, 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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11. Birth father is named on birth certificate. Unknown
12. Birth father has acknowledged paternity. Unknown
13. There has been a judicial declaration of parentage. Unknown
14. Other alleged parent (*name each*):

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

15. Have you or any members of your family ever attended an Indian school? Yes No Unknown

Name and relationship to child	Type of school	Dates attended	Location of school

16. Have you or any members of your family ever received medical treatment at an Indian health clinic or U.S. Public Health Service hospital? Yes No Unknown

Name and relationship to child	Type of treatment	Dates treatment received	Location of treatment

17. Have you or any members of your family ever lived on federal trust land, a reservation or rancheria, or an allotment? Yes No Unknown

Name and relationship to child	Name and address	Dates living at this address

18. 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 the Final Roll of 1906.

- 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 Agency or Independent Adoption Proceedings for a Possible 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, and bureau 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, and agencies that were provided notice, with their full mailing addresses *(attach extra sheets if necessary)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY REVOKED January 1, 2008
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	<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 (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):
Current and former addresses:			
Birthdate and place:	Birthdate and place:	Birthdate and place:	Birthdate and place:
Tribe, band, and location:			
If available, provide enrollment number or BIA/tribal agency:	If available, provide enrollment number or BIA/tribal agency:	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:			
Additional information:	Additional information:	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 (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):	Name (include maiden, married, and former or aliases):
Current and former addresses:			
Birthdate and place:	Birthdate and place:	Birthdate and place:	Birthdate and place:
Tribe, band, and location:			
If available, provide enrollment number or BIA/tribal agency:	If available, provide enrollment number or BIA/tribal agency:	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:			
Additional information:	Additional information:	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:

Department:

Title:

(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)*:

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
1	Sandy Almansa Supervising Legal Clerk II Superior Court of Stanislaus County	A	Y	No narrative comments.	No response required.
2	Grace Andres Court Services Program Manager Superior Court of Solano County	N	AM	See comments below.	See response below.
3	Michael Bays Chief Deputy Sacramento County Probation Dept.	N	Y	No narrative comments.	No response required.
4	Jacqueline Carey-Wilson Deputy County Counsel San Bernardino County Counsel	N	N	See comments below.	See response below.
5	L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel	AM	Y	See comments below.	See response below.
6	Joseph Chairez President Orange County Bar Association	A	Y	No narrative comments.	No response required.
7	Hon. Tari L. Cody Juvenile Dependency Judge	N	Y	See comments below.	See response below.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
	Superior Court of Ventura County				
8	Rolanda Pierre Dixon Assistant District Attorney Santa Clara County District Attorney	A	Y	No narrative comments.	No response required.
9	Wesley M. Forman Chief Probation Officer Mendocino County Probation Dept.	N	N	See comments below.	See response below.
10	Dennis B. Jones Court Executive Officer Superior Court of Sacramento County	AM	Y	See comments below.	See response below.
11	Robert E. Kalunian Chief Deputy Public Defender Los Angeles Co. Public Defender	AM	Y	See comments below.	See response below.
12	Devon R. Lomayesva Tribal Attorney Santa Ysabel Band of Diegueno Indians	AM	Y	See comments below.	See response below.
13	Superior Court of Los Angeles	A	Y	No specific comments submitted.	No response required.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
14	Adrienne McMillan Staff Attorney, Access Center Superior Court of San Francisco	AM	N	See comments below.	See response below.
15	Frank Mecca Executive Director County Welfare Directors Assn.	AM	Y	See comments below.	See response below.
16	Andrea Nelson Director of Operations Superior Court of Butte County	A	N	See comments below.	See response below.
17	Joanne Willis Newton Law Office of Joanne Willis Newton, APC San Diego County	AM	N	See comments below.	See response below.
18	Kathleen A. O'Connor Assistant County Counsel Sacramento Dept. of Health & Human Services	N	Y	No narrative comments.	No response required.
19	Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe)	AM	Y	See comments below.	See response below.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
	San Diego				
20	James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	AM	N	See comments below.	See response below.
21	Hon. Kenneth G. Peterson Juvenile Court Judge Superior Court of Sacramento County	AM	Y	See comments below.	See response below.
22	Mark Radoff Directing Attorney California Indian Legal Services	AM	Y	See comments below.	See response below.
23	Valerie Ranche Assistant County Counsel Contra Costa County Counsel	N	N	No narrative comments.	No response required.
24	Mike Roddy Executive Officer Superior Court of San Diego County	AM	Y	See comments below.	See response below.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
25	Karen Roebuck Deputy County Counsel Humboldt County Probation Dept.	A	Y	See comments below.	See response below.
26	Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	AM	Y	See comments below.	See response below.
27	D. Sanz-David Legal Research Attorney Access Center Superior Court of San Francisco	A	N	See comments below.	See response below.
28	Patricia C. Strickland Deputy District Attorney Solano County District Attorney	A	Y	No narrative comments.	No response required.
29	Hon. Robert W. Weir Judge of the Juvenile Court Superior Court of Del Norte County	N	N	See comments below.	See response below.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL POSITIONS AND COMMENTS					
List of All Commentators and Their Overall Positions on the Proposal					
	Commentator	Position	Comment on behalf of group?	Comment Excerpt or Summary	Committees Response
30	Cynthia J. Wojan Juvenile Court Coordinator Superior Court of Solano County	N	A	No narrative comments.	No response required.
31	Jacqueline Y. Woode Deputy County Counsel Contra Costa County Counsel	AM	N	See comments below.	See response below.

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel	Generally agrees with proposal because changes are for the better even though it will be a change for the social worker staff. Main change is use of different forms, but doesn't appear to increase the workload.	No response required.
Wesley M. Forman Chief Probation Officer Mendocino County Probation Dept.	While SB 678 codifies ICWA into state law, it doesn't clarify the issue of whether ICWA applies to all 601 and 602 proceedings. Under	SB 678 applies ICWA in section 601 and 602 proceedings by explicitly applying the ICWA placement preferences, evidentiary burdens, notice requirements, inquiry mandates, "active efforts"

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	its own terms, ICWA applies only to cases that fit within the definition of Indian child custody proceedings. Placements based on an act which, if committed by an adult would be deemed a crime are explicitly excluded. Disagree with the application to all 601 and 602 cases in this rule proposal.	provisions, and “qualified expert witness” requirements to delinquency placements when a child is at risk of entering foster care or is in foster care (See Welf. & Inst. Code, § 727.4(a)(2), (d)(5)(D) and new Welf. & Inst. Code, § 224.3.) Federal ICWA provides that a state can provide a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under ICWA. (25 U.S.C. § 1921.) The U.S. House of Representatives report, written at the time of ICWA’s passage, made clear that if a state affords a higher degree of protection to Indian families, the state’s standard will be applied in lieu of the relevant provision of the ICWA. (H.R. Rep. No. 597, 95th Cong., 1st Sess. 16 (1977).) Since state law applies ICWA to all section 601 and 602 proceedings when the child is at risk of entering foster care or is in foster care, the rules of court must be consistent.
Robert E. Kalunian Chief Deputy Public Defender Los Angeles Co. Public Defender Los Angeles County	A change of the notice standard in juvenile delinquency cases from when the youth is “at risk of” entering foster care to when it is “probable” that the child will be entering foster care (proposed rule 5.481(b)(2)) dilutes some of the ICWA protections for no justifiable reason. This approach will delay resolution of these cases while notice is given. It is expedient to have any inquiry conducted and any notice sent out at the earliest possible opportunity.	This proposed rule should not result in a dilution of ICWA provisions because the rule's notice requirement in delinquency cases acknowledges that only a small percentage of these cases result in a foster care placement, and thus to cast a wider net of delinquency cases for notice would reach non-ICWA cases. With respect to concerns about delays in proceedings, the probation officer is required to ask about Indian heritage at the first contact with the child (i.e. at the filing of the petition (rule 5.481(a)) and notice is triggered as soon as the probation officer assesses that it is probable that the child will be entering foster care or is in foster care (rule

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
		5.481(b)(2)) AND knows or has reason to know the child is or may be an Indian child. (See WIC 727.4(a)(2).) Certainly when it is known at an early stage in the proceedings that the child will probably be going to foster care, notice will be required early.
Andrea Nelson Director of Operations Superior Court of Butte County	Dislikes plain language format.	While the committees attempted to simplify the language of both the rules and the forms for ease of use and understanding, the format does not follow a “plain language formatting” style.
Joanne Willis Newton Law Office of Joanne Willis Newton, APC San Diego County	<p>a. One set of rules applicable to all Indian child custody proceedings would be better than splitting family and juvenile off from probate. Alternatively, the probate rule could simply very briefly incorporate by reference the family and juvenile rules. If there are to be two separate sets of rules, the references in the family and juvenile rules to the Probate Code citations (in the headings) should be deleted, as should references to conservators.</p> <p>b. Some of the statute citations in the headings are incorrect or incomplete. These should be reviewed more carefully and corrected. For example, rule 5.480 should refer to Fam. Code § 170, not 177, to WIC 224.1, not 224.3, and to Prob. Code 1449, not 1459.5 (if Probate Code cites are to remain).</p>	<p>a. After long thought and discussion, the committees structured the rules in the proposed form. They thought that those who practice in the probate field would look for guidance in the probate section of the rules rather than family or juvenile, and because the statutory scheme that is the underpinning for this rule proposal is most detailed in the Welfare and Institutions Code, which is then incorporated by reference into the Family and Probate Codes, it made sense to provide more details from the statutes in the probate rules for ease of use and understanding.</p> <p>b. The committees modified the headings as necessary for accuracy and consistency. The committees disagree that Family Code § 177 and Probate Code § 1459.5 should not be noted in the title since these sections reference governing law in ICWA proceedings.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>c. In many places throughout the proposed rules, including the Probate rules, reference is made to the “parents or legal guardian” without including the Indian custodian (the Indian custodian is referenced occasionally, but not consistently.) For example, see rule 5.481(a)(1)-(3). The rules should be carefully reviewed and amended to read “parents, Indian custodian or legal guardian”.</p> <p>d. In some areas the rules go on at length simply repeating what is in the statute. This is not the preferred approach to rulemaking.</p>	<p>c. The committees modified the rules to include “Indian custodian” as appropriate.</p> <p>d. Where the rules repeat the language of the statutes, it is generally to make them more user friendly because many of the statutory changes were made in great detail in the Welfare and Institutions Code, but just incorporated by reference into the Family and Probate Codes. Rather than have practitioners or other users have to refer to two or three codes, the committees have, where they felt it was appropriate, provided detailed guidance in the rules, even if it sometimes tracks the language of the statutes.</p>
<p>Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego</p>	<p>Reference to Probate Code in Rules 5.480-5.487 is redundant and confusing in light of separate Rule 7.1015 specific to probate guardianship and conservatorship proceedings. “Tribe suggests that reference to probate proceedings either be deleted from Rules 5.480-5.487, . . . or</p>	<p>After long thought and discussion, the committees structured the rules in the proposed form. They thought that those who practice in the probate field would look for guidance in the probate section of the rules rather than family or juvenile, and because the statutory scheme that is the underpinning for this rule proposal is most detailed in the Welfare and Institutions Code, which is then incorporated by reference</p>

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GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	that the provisions already contained in Rules 5.480-5.487 be deleted from Rule 7.1015.”	into the Family and Probate Codes, it made sense to provide more details from the statutes in the probate rules for ease of use and understanding. Rules 5.480-5.487 were incorporated by reference so that probate practitioners and other users would be alerted to the more detailed rules applicable to some probate proceedings.
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	In rule 5.480(1), delete any reference to having the rule apply to 602 proceedings involving Indian children where the criminal action, if committed by an adult, would be a crime (unless termination of parental rights is at issue in the 602 proceeding). Those types of 602 proceedings are not covered by the act. Although SB 678 includes those types of proceedings, <i>In re Enrique O.</i> (2006) 137 Cal.App.4 th 728 came out after the 2006 Cal. Rules of Court [rule 5.664] were adopted and after the first drafts of SB 678.	See committees’ response to Wesley M. Forman. <i>In re Enrique O.</i> predates SB 678. The committees believe any potential conflict between the state statutes and federal ICWA should be resolved by an appellate court. The committees’ position is that rules of court must implement the law, and SB 678 is the law interpreting ICWA’s application to child custody proceedings, including delinquency cases, in California.
Hon. Kenneth G. Peterson Juvenile Court Judge Superior Court of Sacramento County	a. ICWA provisions do not apply to 602 delinquency cases where the “placement is based upon an act which, if committed by an adult, would be deemed a crime.” The only exception would be “any juvenile delinquency proceeding that results in termination of a parental relationship.” Modify by limiting the various references to delinquency proceedings in the proposal.	a. See committees’ response to Wesley M. Forman above.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	b. The attempt to create rules for ICWA compliance in three different disciplines (juvenile, family, & probate) has resulted in confusing language. Recommend placing rules in separate locations for each discipline to use the language common to that judicial area.	b. After long thought and discussion, the committees structured the rules in the proposed form. They have used the language from three different disciplines because the statutory changes apply to all three. The committees provided a separate rule for probate practitioners because the application in practice of ICWA to probate cases is new, but rules 5.480-5.487 apply to all three disciplines, and the committees opted not to be repetitive by creating three separate sets of rules.
Mark Radoff Directing Attorney California Indian Legal Services	While we recognize that application of ICWA in delinquency cases is generally a dispositional issue, there are some circumstances where it would be advantageous for the tribe, the minor, and the court to have the tribe involved at an earlier stage. For example, even though “detention” is technically not a “placement,” it falls within the definition of a “foster care placement” in 25 USC §1903, which defines it as “any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution. . .where the parent or Indian custodian cannot have the child returned upon demand.” When an Indian child is involved and where Indian relative placements or tribal placements are available that would comply with the placement preferences, it is to everyone’s advantage to	See committees’ response to Robert E. Kalunian above.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	identify those options at the earliest possible stage. This is equally true of tribal resources, services or programs that could assist the court and the minor in returning home or being placed in the least restrictive setting pending the trial/adjudication. For these reasons, we believe that the rule of court should require notice to be sent in any delinquency proceeding where there is reason to know an Indian child is involved.	
Mike Roddy Executive Officer Superior Court of San Diego County	a. Throughout the proposed rules, there is inconsistency in the order of codes cited. b. Various grammatical, technical, and formatting errors noted throughout the proposal.	a. The committees modified the order of codes for consistency. b. The committees made grammatical, technical, and formatting corrections as appropriate.
Karen Roebuck Deputy County Counsel Office of County Counsel (for Humboldt County Probation Dept.)	The proposed rule change provides more clarity about when ICWA applies in delinquency proceedings.	No response required.
D. Sanz-David Legal Research Attorney Access Center Superior Court of San Francisco	“Yes! I can dispose of the makeshift notice that I created. We really needed clarity on this issue (and proper forms).”	No response required.

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GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
Hon. Robert W. Weir Judge of the Juvenile Court Superior Court of Del Norte	<p>a. With reference to delinquency cases in particular, application of the proposed rule to “all proceedings involving Indian children that may result in . . .involuntary foster care placement” is overbroad and will result in “cumbersome, costly and time-consuming notice procedures in cases where the ICWA does not apply.”</p> <p>b. The proposed rules do not conform with case law (in particular <i>In re Enrique O.</i> (2006) 137 Cal.App. 4th 728) because “the ICWA is not intended to apply to most delinquency proceedings,” specifically those where placement is based on an act that would be a crime if committed by an adult. Rules should make clear that ICWA only applies in Welf. & Inst. Code § 602 cases to foster placements that are not based on the commission of crimes.</p> <p>c. “The provisions for tribal intervention, and removal of delinquency cases to tribal courts would create serious practical problems” including questions of venue for trial (tribal court or state court), personnel for trial (tribal court or DA), and timing of any intervention.</p>	<p>a. See committees’ response to Wesley M. Forman above.</p> <p>b. <i>In re Enrique O.</i> predates SB 678. The committees believe any potential conflict between the state statutes and federal ICWA should be resolved by an appellate court. The committees’ position is that rules of court must implement the law, and SB 678 is the law interpreting ICWA’s application to child custody proceedings, including delinquency cases, in California.</p> <p>c. The committees declined to modify the proposal based on this comment. First, tribal intervention is an absolute right at any time in all involuntary child custody proceedings involving an Indian child, and does not rely on any special provisions by way of state statute or rule of court. The committees welcome the additional resources and support that are brought to bear in any case where a tribe intervenes.</p>

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GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	Comment Excerpt or Summary	Committees Response
	Further, it may interfere with the court taking a more lenient course of sending a minor to a group home (requiring ICWA findings), and instead encourage placement at CYA or juvenile hall (which do not require ICWA findings).	Second, transfer of a delinquency case to tribal jurisdiction does not occur until disposition, at which point in most cases, the state court will maintain concurrent jurisdiction, and again, will benefit from the additional resources and services that a tribe might provide. And finally, in delinquency cases, as in dependency cases, the court is required to order the least restrictive placement for a child, regardless of whether that child is an Indian child or not, and therefore, placement priority will be given to relatives first, foster care second, group home third, and only if secured confinement is warranted would the court look to a locked facility.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.480--Application		
Commentator	Comment Excerpt or Summary	Committees Response
Frank Mecca Executive Director County Welfare Directors Assn.	Recommend clarifying sentence in preamble to rule 5.480: "Foster care proceedings do not include voluntary foster care and guardianship placements where the child can be returned to the parent on demand."	The committees modified rule 5.480 with the following clarifying sentence following rule 5.480(4): "This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand."

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.480--Application		
Commentator	Comment Excerpt or Summary	Committees Response
Joanne Willis Newton Attorney at Law San Diego County	<p>a. In rule 5.480(1), remove the second comma to clarify that the rule applies to all 300 proceedings.</p> <p>b. Insert “, but not limited to,” after the word “including” to clarify that all hearings in those cases are subject to the rule (e.g. special hearings, ex parte hearings, etc.).</p>	<p>a. The committees modified the sentence in rule 5.480(1) as suggested.</p> <p>b. The phrase “but not limited to” creates a redundancy because the term “may include” is not limiting.</p>
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	<p>a. The preamble to rule 5.480 implies that proceedings covered by the proposed rule include those where the child can be returned upon demand—a situation excluded by both federal and state (WIC) law. Recommend adding sentence “Foster care proceedings do not include voluntary foster care and guardianship placements where the child can be returned to the parent on demand.”</p> <p>b. In rule 5.480(1), delete any reference to having the rule apply to 602 proceedings involving Indian children where the criminal action, if committed by an adult, would be a crime (unless termination of parental rights is at issue in the 602 proceeding).</p>	<p>a. The committees modified rule 5.480 with the following clarifying sentence following rule 5.480(4): “This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand.”</p> <p>b. See committees’ response to Wesley M. Forman above.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.480--Application		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. The language “or termination of parental rights” should be added to subsection (3) regarding family law proceedings covered by ICWA. That language would clarify that the provision would also apply where an abandonment petition was filed but did not result in a step-parent adoption.</p> <p>b. In 5.480(a) of this proposed rule (and anywhere else where it has been omitted), we recommend adding in the language “or nominated” after “appointed” so that the rule clarifies that a proposed guardian in a probate guardianship petition would also have a duty of inquiry before they are appointed.</p>	<p>a. The committees modified rule 5.480(3) to read: “Proceedings under the Family Code resulting in adoption or termination of parental rights;”</p> <p>b. Guardians are often nominated years before they are ever appointed. For example, it is common to nominate a guardian for one’s children in a will—someone who may never have to serve unless there is a need due to the incapacity of the parent. To expand the inquiry duty to anyone who has been nominated as a guardian would be much too onerous and also would be impossible to monitor.</p>
<p>Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento</p>	<p>Commentator thinks that proceedings that might result in an order declaring a child free from the custody and control of one or both parents in family law cases should be carefully excluded from the new rules to prevent inviting a tribe into, for example, a divorce between two biological parents.</p>	<p>Rule 5.480 is already sufficiently clear that it only applies to the following family law cases: adoptions, terminations of parental rights, and declarations freeing a child from the custody or control of one or both parents under Family Code section 3041.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
Jacqueline Carey-Wilson Deputy County Counsel San Bernardino County Counsel	Rule 5.481(a)(4)(A) goes beyond what is required by federal and state statute. Welf. & Inst. Code §224.3, subd. (c) requires the court, social worker, or probation officer to make further inquiry of extended family. But the state does not include the language “as defined by the law or custom of the Indian child’s tribe” and does not specifically list members of the extended family that have to be interviewed. In addition, to require the social worker or other official to interview all those listed in the rule would be burdensome and violate the confidentiality rules by disclosing information to outside parties not involved in the case.	The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);”
Dennis B. Jones Court Executive Officer Sacramento County Superior Court	a. Agree with clarification in rule 5.481(a)(2), (3) of the applicability and point of inquiry for delinquency cases to be at the initial hearing. b. Rule 5.481(b)(1) and (2) appear to conflict, because (b)(1) applies to “a proceeding listed in rule 5.480”, which includes 601 and 602 proceedings, while (b)(2) offers a different procedure in wardship cases under 601 and 602.	a. No response required. b. The committees modified rule 5.481(b)(1) in response to this comment as follows: “(1) If there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for wardship proceedings under Welfare and Institutions Code sections 601 and 602 et. seq., the social worker. . .” The committees also modified rule 5.481(b)(2) as follows: “(2) If there is reason to know

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
		that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code section 601 or 602, and the . . .”
Robert E. Kalunian Chief Deputy Public Defender Los Angeles Co. Public Defender Los Angeles County	A change of the notice standard in juvenile delinquency cases from when the youth is “at risk of” entering foster care to when it is “probable” that the child will be entering foster care (proposed rule 5.481(b)(2)) dilutes some of the ICWA protections for no justifiable reason.	This proposed rule should not result in a dilution of ICWA provisions because the rule's notice requirement in delinquency cases is consistent with statute and acknowledges that to cast a wider net of delinquency cases for notice would reach non-ICWA cases. The courts and probation departments have asked how do we know if the child is at risk of entering foster care, since the statutes do not contemplate that notice be sent in all delinquency cases. In fact, in most delinquency cases, children are either released home on probation or committed to locked facilities, and are never placed in foster care. The rule’s requirement that probation make an assessment and determine whether it was probable that a child would enter foster care would both provide the requested guidance and was a reasonable interpretation of the statutes to help courts and probation comply with the law.
Devon R. Lomayesva Tribal Attorney Santa Ysabel Band of Diegueno Indians	Rule 5.481(a)(5)(C) should include reference to Tribal Temporary Assistance to Needy Families. Many of our Indian children are served by this program that is now offered on and off-reservation in Southern California. Participation in this program is certainly reason to believe a child is an Indian child.	The committees modified the rule to incorporate this suggestion.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
Frank Mecca Executive Director County Welfare Directors Assn.	In rule 5.481(a)(4)(A), recommend adding “if the identity and locations of any of these individuals are known.”	The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);”
Joanne Willis Newton Attorney at Law San Diego County	<p>a. In rule 5.481(a)(4)(A), replace ““extended family members’ as defined . . .or stepparent” with simply “extended family members.” Otherwise the rule appears to impose a duty to interview each of the relatives listed and to know what the tribes’ legal or customary definition of family are. This would be more onerous than the statute.</p> <p>b. In rule 5.481(b)(2) replace “it is probable the child will be entering foster care” with “the child is at risk of entering foster care” to be consistent with the statute. As written, the rule seems to create a higher threshold for notice than the statute, which is a lesser standard.</p>	<p>a. The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);” The list of interviewees is required by statute. (See, e.g., Welf. & Inst. Code § 224.3(c).)</p> <p>b. The rule's notice requirement in delinquency cases is consistent with statute and acknowledges that to cast a wider net of delinquency cases for notice would reach non-ICWA cases and place an undue burden on probation and the court since only a small percentage of delinquency cases result in a foster care placement. Certainly when it is known at an early stage in the proceedings that the child will probably be going to foster care, notice will be required early.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego	<p>a. Modify the heading of rule 5.481(a) from “Inquiry” to “Duty of Inquiry.”</p> <p>b. Delete reference to Probate Code 1495.5(b) in rule 5.481(a) or delete this section from rule 7.1015.</p> <p>c. The tribe believes that the use of the term “Indian child” in rule 5.481(a)(5)(A) is too narrow. Recommends changing the words “suggesting that the child is an Indian child . . .” to the words “suggesting that the child is a member of a tribe or eligible for membership in a tribe or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe . . .”</p> <p>d. Modify the first sentence of rule 5.481(b)(1) to read “If it is known or there is reason to know . . .” instead of the proposed “If there is reason to know . . .”</p> <p>e. Add a new paragraph to rule 5.481(b) to</p>	<p>a. The heading gives enough information to identify the topic it covers.</p> <p>b. The underlying statute codifies federal ICWA into three separate state codes: family, probate, and juvenile. Where the provisions are similar or identical the committees have provided all three statutory references because rules 5.480 through 5.487 apply to proceedings under all three codes.</p> <p>c. “Indian child” is defined in the state statutes by reference to federal ICWA, 25 U.S.C. § 1903. (See, e.g., Welf. & Inst. Code §224.1(a).)</p> <p>d. The committees modified the rule to incorporate this comment.</p> <p>e. The committees modified the rule to incorporate this comment.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
	read: “Notice to an Indian child’s tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.”	Rule 5.481(b)(4) now reads: “Notice to an Indian child’s tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.”
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	<p>a. Recommend against using the phrase “juvenile wardship proceedings” in rule 5.481(a)(2) because it erroneously includes 602 proceedings involving Indian children where the criminal action, if committed by an adult, would be a crime (unless termination of parental rights is at issue in the 602 proceeding).</p> <p>b. Recommend modifying the first line of rule 5.481(a)(4)(A) to read “Interviewing the parents, Indian custodian, and [‘to the extent possible’ or ‘if available’] extended family members . . .” Otherwise judges could find notice not proper merely because the social service agency did not conduct a diligent search of relatives for the sole purpose of inquiring about Indian heritage.</p> <p>c. Recommend that in the second line of rule 5.481(a)(4)(B) the word “and” should be changed to “or” because it is too cumbersome</p>	<p>a. See committees’ response to Wesley M. Forman above.</p> <p>b. The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);” The list of interviewees is required by statute. (See, e.g., Welf. & Inst. Code § 224.3(c).)</p> <p>c. The committees clarified the rule by modifying it as follows: “Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance . . .” The “and” is dictated</p>

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	<p>for the social services agency to contact 3 sources—DOI, BIA & CDSS—to inquire about tribal contact information because DOI refers the caller to the BIA Area Director in Sacramento and CDSS has no additional pertinent information than the BIA—CDSS should be deleted.</p> <p>d. Combine rule 5.481(a)(4)(C) with rule 5.481(a)(4)(B) (with change of wording suggested for that rule) because it’s too cumbersome for the social services agency to call the tribes to check on the accuracy of all tribal contact information. The agency should have the option of being able to contact tribes that have not responded to notices and tribes for clarification where the contact information of the Federal Register differs from that on the state CDSS tribal list.</p> <p>e. In rule 5.481(a)(5)(B) insert “or was” after “is.”</p> <p>f. In rule 5.481(b)(2) delete any reference to having notices sent out on 602 proceedings.</p>	<p>by the statutory authority. (See, e.g., Welf. & Inst. Code § 224.3(c).)</p> <p>d. The language in the rule tracks the requirements imposed by the statutory changes made by passage of SB 678. (See, e.g., Welf. & Inst. Code § 224.3(c).)</p> <p>e. The committees modified the rule as suggested.</p> <p>f. See committees’ response to Wesley M. Forman above.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.481—Inquiry and Notice		
Commentator	Comment Excerpt or Summary	Committees Response
Hon. Kenneth G. Peterson Juvenile Court Judge Superior Court of Sacramento County	<p>a. In rule 5.481(a)(3), currently the court will order the appropriate person/agency to attempt to contact a missing parent to “ask” the parent to complete the ICWA-020 information form. Change the word “ask” to “inform the parent that the court has ordered the parent to complete” the form.</p> <p>b. Rule 5.481(a)(4)(A) requires “interviewing” the parents, Indian custodian and extended family members to gather Indian heritage information.</p> <p>(1) It includes among the interviewers “the court” and “the appointed guardian or conservator.” Strike the above references because a thorough and appropriate interview should not be the responsibility of either the court or the guardian/conservator. It should be the social worker or probation officer.</p> <p>(2) The list of family members to interview is lengthy and would be burdensome. Suggest deleting the list and replace it with “readily available family and extended</p>	<p>a. The committees modified the rule as follows: “(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this subdivision of the rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete <i>Parental Notification of Indian Status</i> (form ICWA-020).”</p> <p>b. The committees modified the rule to clarify that the inquiry interviewing responsibility lies with the social worker or the probation officer.</p> <p>(2) The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
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	<p>family members.”</p> <p>(3) There is no time limit set up for beginning or ending the “interview” process. Suggest that a “no later than” date after the initial hearing be established to begin the process, and another such date for completing it.</p> <p>c. Rule 5.481(a)(5) provides a list of persons having an interest in the child who may bring information to the court’s attention “suggesting” the child is an Indian. The phrase is too vague to provide sufficient guidance to the court as to when the “suggestion” is too weak or strong enough to trigger application of the ICWA. A more precise definition is needed.</p> <p>d. Rule 5.481(b)(1) refers to the “petitioner” having a duty to send the ICWA-030 notice to the parent and tribe. But in a delinquency case it is the DA, not the probation officer, who is the petitioner, and the DA should not have the</p>	<p>Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);” The list of interviewees is required by statute. (See, e.g., Welf. & Inst. Code § 224.3(c).)</p> <p>(3) Often the initial inquiry work is conducted while the petitioner prepares the petition. To allow inquiry to be officially postponed until after the initial hearing likely would lead to delays in the proceedings.</p> <p>c. The language in the rule tracks that in the statute. (See e.g. Welf. & Inst. Code § 224.3(b)(1).</p> <p>d. The committees modified the rule in response to this comment as follows: “(1) If there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, the social worker, probation officer, petitioner, or clerk . . .”</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
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	<p>notice duty.</p> <p>e. Rule 5.481(b)(1) includes the court clerk as a person who is required to give notice. Perhaps that is appropriate in family or probate (we take no position on that), but it is not appropriate in juvenile. That should be the job of the social worker or probation officer.</p>	<p>e. The rule makes it clear that the clerk is only responsible for giving notice in the case where the petitioner is unrepresented, which would not happen in a juvenile court proceeding.</p>
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. In rule 5.481(a)(5)(C), the words “or Tribal TANF (Temporary Assistance for Needy Families)” should be added. Tribal “TANF” programs are developing throughout California and a family receiving services or benefits from such a program would create a reason to know the child is an Indian child.</p> <p>b. We agree with the applicability of the ICWA in certain §600 cases and the corresponding obligation to give notice to a tribe where there is reason to know that an Indian child is involved and may be at risk of foster care placement.</p> <p>c. With respect to the rule’s delegation of assessing the probability that a child will enter foster care, we request that the court require the</p>	<p>a. The committees modified the rule to incorporate this suggestion.</p> <p>b. No response required.</p> <p>c. Notice is triggered in delinquency cases in which the probation officer assesses that it is probable that the child will be entering foster care or is in foster care (rule 5.481(b)(2)) AND the probation officer</p>

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	<p>probation officer to specifically identify his or her reasons rather than allow an open-ended, potentially subjective assessment. We recommend that rule 5.481(b)(2) be modified to read: “If there is reason to know that an Indian child is involved in a wardship proceeding, and the probation officer has assessed that it is probable the child will be entering foster care and specified those reasons to the court in writing, or if the child is already in foster care, the probation officer must send <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child’s tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2). If the probation officer has assessed that it is not probable that the child will be entering foster care, then the officer must specify to the court in writing the reasons why the child is not at risk.”</p>	<p>has reason to know the child is or may be an Indian child. (See Welf. & Inst. Code § 727.4(a)(2).) The rule's notice requirement in delinquency cases is consistent with statute and acknowledges that to cast a wider net of delinquency cases for notice would place an undue burden on probation and the court since only a small percentage of delinquency cases result in a foster care placement. Rather than delegating the assessment, the rule acknowledges the two-part reality of complying with ICWA requirements, starting with the inquiry, which must happen immediately, and followed by notice, which in delinquency cases can wait until there is a probability that the child will be placed in foster care. Requiring a written assessment is likely to increase the burden on probation and the court, possibly compromising time that could be spent exploring the least restrictive placement with court oversight.</p>
<p>Mike Roddy Executive Officer Superior Court of San Diego County</p>	<p>Change rule 5.481(a)(1) by adding the words “is or” to read: “. . . whether the child [is or] may be an Indian child . . .”</p>	<p>The committees modified the rule to incorporate this comment.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
Jacqueline Carey-Wilson Deputy County Counsel San Bernardino County Counsel	Rule 5.482(c) (new rule number 5.482(d)(2)) goes beyond what is required by federal and state statutes, requiring the higher burden of proof required by ICWA to be applied to all children prior to a conclusive determination that they are in fact an Indian child. This places a high burden on the agency because many parents allege Indian heritage, but actually only a small percentage of children are found to be Indian children.	Rule 5.482(d)(2) only applies if the court “knows or has reason to know the child is an Indian child . . .” That is the standard required to trigger notice by both the federal and state statutes and is reached by conducting a thorough inquiry.
Robert E. Kalunian Chief Deputy Public Defender Los Angeles Co. Public Defender	Allowing a 20-day continuance, if requested by the parent, Indian custodian, or tribe (rule 5.482(a)(2)) (new rule number 5.482(a)(3)) unlawfully overrides statutorily imposed time lines, or speedy trial considerations, which are strictly construed in cases of juveniles who are detained. (<i>In re Tan T.</i> (1997) 55 Cal.App.4 th 1398). A continuance should not be available over defense objection unless there was a time waiver or the youth was released.	The committees modified the rule in response to this comment. The committee clarified the rule 5.482(a) as follows: “(3) With the exception of the detention hearing, the parent, Indian custodian, or tribe must be granted a continuance, if requested, of up to 20 days to prepare for the proceeding. (4) In a delinquency case, the court may deny a continuance or tailor a continuance of a jurisdiction or disposition hearing to conform to speedy trial considerations under Welfare and Institutions Code section 657 when there has not been a waiver of time. The court should not delay these hearings, and can order a detained child home on supervision or to a less restrictive placement following the placement preferences under rule 5.484 as long as the court gives the parent, Indian custodian, or Indian tribe an opportunity to be heard at a subsequent hearing.”

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Devon R. Lomayesva Tribal Attorney Santa Ysabel Band of Diegueno Indians</p>	<p>a. The language in rule 5.482(a), “a child is entitled to the protections and procedures” is not clear and conflicts with proposed rule 5.482(d)(2), which states that the court is supposed to proceed as though the child is an Indian child if the court knows or has reason to know. Replace “If the court determines that a child is entitled to the protections and procedures of. . .” with “If the court knows or has reason to know that the child is an Indian child . . .”</p> <p>b. Regarding rule 5.482(c) (new rule number 5.482(d)(2)), the tribe cannot always quickly respond to a request from a state court for a determination of a child’s tribal affiliation. However, active efforts must be made to prevent the breakup of the Indian family. Therefore, if there is reason to know, at any time in the proceeding, including before and after the initial removal, that the child may be of Indian ancestry, the Act should be applied, including the essential placement preferences.</p> <p>c. The rule should be clarified to reflect that intervention may be oral or written and that</p>	<p>a. The committees modified the rule in response to this comment as follows: “If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, and the tribe, or the Bureau of Indian Affairs have received notice of the hearing.”</p> <p>.</p> <p>b. The committees noted that once there is a proceeding and the court “knows or has reason to know” that the subject of the proceeding is an Indian child, the rule requires the court to follow placement preferences and follow other requirements of ICWA while awaiting a final determination of the issue.</p> <p>c. The committees modified rule 5.482(e) as follows: “The Indian child’s tribe and Indian custodian may intervene, orally or in writing,</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
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Commentator	Comment Excerpt or Summary	Committees Response
	there is no need to make a “motion”—the court has no discretion to rule on a notice of intervention.	at any point in the proceedings and may, but are not required to, file . . .”
Frank Mecca Executive Director County Welfare Directors Assn.	Questions the legal basis for the proposed phrase “in the supervision of the placement” in rule 5.482(g). Neither WIC 224.2(c) or (d) contain this requirement to coordinate with the tribes in the supervision of the placement. Once the tribe is consulted regarding placement preference, supervision responsibility rests with the appropriate supervising agency.	The committees modified the rule in response to the comment by removing the phrase “and in the supervision of the placement.”
Joanne Willis Newton Attorney at Law San Diego County	<p>a. In rule 5.482(a)(1) replace “it is probable the child will be entering foster care” with “the child is at risk of entering foster care” to be consistent with the statute. As written, the rule seems to create a higher threshold for notice than the statute, which is a lesser standard.</p> <p>b. In rule 5.482, add statute cites for each subdivision’s heading.</p> <p>c. In rule 5.482(a)(1) (new rule number 5.4821(b)), change “those entitled to notice under the act” to specify who is entitled to</p>	<p>a. See committees’ response to Mark Radoff.</p> <p>b. The committees modified the rule in response to this comment.</p> <p>c. The committees modified the rule in response to this comment by listing those to whom notice should be sent.</p>

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Commentator	Comment Excerpt or Summary	Committees Response
	<p>notice. The list is brief.</p> <p>d. In rule 5.482(b), replace “Indian Child Welfare Act notice” with new Judicial Council form cites. Delete the comma after “return receipts” to clarify that the return receipts received in response to the mailing must be filed (not just the form they took from the post office).</p> <p>e. In rule 5.482(d)(2) (new rule number 5.482(d)(3), delete “that determines the issue of Indian ancestry” or replace it with “that determines whether the child is an Indian child.”</p> <p>f. In rule 5.482(e), insert, but is not required to,” after “may”.</p> <p>g. In rule 5.482(f), replace “all state ICWA statutory requirements and all relevant sections of this chapter” with “the placement preferences and standards specified in Welf. & Inst. Code 361.31.”</p>	<p>d. The committees modified the rule in response to this comment as follows: “Proof of notice filed with the court must include Notice of Child Custody Proceeding for Indian Child (form ICWA-030), return receipts and any responses received from the Bureau of Indian Affairs and tribes.”</p> <p>e. The committees modified the rule in response to this comment as follows: “The court is not required to delay proceedings until a response to the notice is received.”</p> <p>f. The committees modified rule 5.482(e) as follows: “The Indian child’s tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings and may, but are not required to, file....”</p> <p>g. The committees modified rule 5.482(f) as requested in response to the comment.</p>

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Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego	<p>a. Add to the end of the sentence in rule 5.482(d)(2): “. . . provided, however, that no proceeding other than a detention proceeding may be held until 10 days after receipt of notice by the parent, Indian custodian, tribe, or the Bureau of Indian Affairs.”</p> <p>b. Add to rule 5.482(f) the words “federal and” before the words “state ICWA statutory requirements” in the 4th line.</p>	<p>a. Rule 5.482(a)(1) already contains that limitation.</p> <p>b. The language of that section of the rule has changed.</p>
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	Recommend that rule 5.482(c) (new rule number 5.482(d)(2)) be deleted or amended to state: “If, based [upon information provided pursuant to 5.481(a)(5)(B) or (C)] the court knows or has reason to know the child is an Indian child, the court [may] proceed as if the child were an Indian child.” Changing the word “must” to “may” gives the court the ability to exercise its discretion as to how it should proceed.	The rule encourages the court to apply ICWA when it knows or has reason to know the child is an Indian child and gives the court discretion to make this determination depending on the information it has. The court may decide after hearing statements that it is not likely or credible that the child is an Indian child, and choose not to apply ICWA.
Hon. Kenneth G. Peterson Juvenile Court Judge Superior Court of Sacramento County	a. Rule 5.482(a) (new rule number 5.482(a)(1)) includes a phrase in the intro about the determination that a child is “entitled to the protections and procedures” of the ICWA. We	a. The committees modified the rule in response to this comment as follows: “If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian

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	<p>cannot figure what that vague phrase means.</p> <p>b. Rule 5.482(a)(1) (new rule number 5.482(a)(2) uses the phrase “detention hearing” for juvenile matters. In most, if not all other rules, the phrase “initial hearing” is used. For consistency, that change should be made here.</p> <p>c. Rule 5.482(f) requires compliance with ICWA whenever an Indian child is removed from one residential placement and placed in a different home. That is not always possible or desirable (e.g. and adoptive home is identified and the prospective parents are not Indian). A phrase should be added to this section: “unless the placing agency is unable with reasonable diligence to identify a family meeting the criteria of rule 5.664(k)(4).</p>	<p>Affairs have received notice.”</p> <p>b. The statute specifies the “detention” hearing, not the initial hearing. (See, e.g., Welf. & Inst. Code § 224.2(d).) Other rules referring to the initial hearing track statutes that refer to the initial hearing.</p> <p>c. The language of the rule tracks that in 25 U.S.C. 1916(b), which requires application of the ICWA placement preferences and adherence to ICWA requirements whenever there is a change of placement, including preadoptive and adoptive placements. ICWA provides good cause reasons not to follow placement preferences.</p>
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. Proposed rule 5.482(a) (new rule number 5.482(a)(1)) precludes the court from proceeding until 10 days after receipt of notice applies if “a child is entitled to the protections and procedures of the Indian Child Welfare Act.” This standard of being “entitled” is not mentioned in state or federal law and is</p>	<p>a. The committees modified the rule in response to this comment as follows: “If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice.”</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>potentially confusing. Such language may lead a court to believe that the 10 day requirement would only apply if the court has proof that an Indian child is involved. We suggest the following language: “if there is reason to know the child is an Indian child, the court hearing must not proceed. . .” The requirement that the court wait 10 days to proceed should apply under the same “reason to know” standard used for requiring notice.</p> <p>b. Recommend adding an additional subsection (a)(1)(C) that would state: “If the minor is detained, the court still must comply with the placement preferences contained in the Indian Child Welfare Act for any temporary placement or detention.”</p> <p>c. In rule 5.482(a)(2), where there is a conflict between a speedy adjudication and a tribe’s right to request a continuance, we suggest adding the following language to subsection (a)92): “. . . so long as the minor has not invoked his or her right to a speedy trial under Welfare and Institutions Code section 657 and California Rules of Court, rule 5.774(a) and (b),</p>	<p>b. Rule 5.482(d)(2) already addresses this issue.</p> <p>c. The committees modified the rule in response to this comment. A second sentence will be added to rule 5.482(a)(2) as follows: “The court has discretion in a delinquency case to deny a continuance or to tailor a continuance to conform to speedy trial considerations under Welf. & Inst. Code § 657 when there has not been a waiver of time.”</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>and has waived time.” If a tribe’s right to continue the hearing for 20 days conflicts with the minor’s statutory and constitutional right to a hearing in 15 days, the shorter setting should prevail. Where the minor has waived time, there is no conflict.</p> <p>d. During the period when the court is still waiting for a tribal response, but knows or has reason to know that the child is an Indian child, it must proceed as if the child were an Indian child, including placement preferences. We recommend adding to the end of rule 5.482(d)(2): “. . . including applying the ICWA placement preferences and any other requirements of the Act.”</p> <p>e. Rule 5.482(c) (new rule number 5.482(d)) should reflect that intervention can be oral or written, and should indicate that it is not necessary to bring a “motion” to intervene. Revise rule as follows: “The Indian child’s tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding orally or in writing. If in writing, the tribe or Indian custodian may use the optional</p>	<p>d. It would be misleading to give only one of the ICWA protections in the rule.</p> <p>e. The committees modified rule 5.482(e) as follows: “The Indian child’s tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings and may, but are not required to, file . . .”</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.482— Proceedings after notice		
Commentator	Comment Excerpt or Summary	Committees Response
	<i>Notice of Designated Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child (for ICWA-040) in court to give notice of its intent to intervene, or other written notice, which may be done without a motion.”</i>	
Mike Roddy Executive Officer Superior Court of San Diego County	<p>a. In the first sentence of rule 5.482(a) change the word “must” to “may” so that it reads: “. . .the court hearing may not proceed until at least 10 days . . .”</p> <p>b. In rule 5.482(a)(1) (new rule number 5.482(a)(2)) add the words “or is in foster care” so that it reads: “The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that it is probable the child will be entering foster care or is in foster care may proceed without delay, provided that:” While it is unlikely at detention that the child would be in foster care, it is possible in dual jurisdiction cases.</p>	<p>a. There is no discretion for the court to waive the 10 days.</p> <p>b. The committees modified the rule as suggested in response to this comment.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
Devon R. Lomayesva Tribal Attorney Santa Ysabel Band of Diegueno Indians	A parent’s objection should be made in court or in writing. Counsel for the parent should not be able to infer or speculate that a parent might want to object. Modify rule 5.483(b)(1)(A) to read: “One or both of the child’s parents objects to the transfer <u>in open court or in an admissible writing for the record.</u> ”	The courts have discretion to determine the efficacy of an objection.
Joanne Willis Newton Attorney at Law San Diego County	a. In rule 5.483, move statutory cites at subdivision (a) heading to main rule heading or repeat them for each subdivision. b. In rule 5.483(a)(3) (new rule number 5.483(d)), insert “pursuant to Welf. & Inst. Code 305.5(c)” at end of sentence.	a. The committees modified the rule in response to this comment. b. The citation is in the rule heading.
Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	Believe that the juvenile court should always be able to retain the discretion to deny a transfer of a juvenile case to a tribal court if it believes that good cause exists and that there would be a detriment to the child. Tribes and interested parties should be allowed to comment in the event of a denial, but the discretion of a state court should never be automatically eliminated.	The court has ample discretion to deny a transfer for good cause under this rule.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. Change rule 5.483 heading to read: “Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.”</p> <p>b. In rule 5.483(b)(1)(A) (new rule number 5.483(d)(1)(A)), the parent’s objection should be made in court or in writing and not in the form of a continuing objection. Counsel for the parent should not be able to infer that a parent might want to object. Rather, the parent must do so for the record. Revise rule as follows: “One or both of the child’s parents objects to the transfer in open court or in an admissible writing for the record.”</p> <p>c. Rule 5.483(b)(1)(B) (new rule number 5.483(d)(1)(B)) should include other administrative bodies of the tribe vested with authority over child custody proceedings as defined in 25 USC §1903. Revise rule to read: “The child’s tribe does not have a “tribal court” or any other administrative body as defined in section 1903 . . .”</p> <p>d. Modify rule 5.483(b)(2) (new rule number 5.483(d)(2)) to read: “One or more of the</p>	<p>a. The committees modified the rule in response to this comment as requested.</p> <p>b. The committees modified the rule in response to this comment as requested.</p> <p>c. The committees modified the rule in response to this comment as requested.</p> <p>d. The committees modified the rule in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>following circumstances may constitute discretionary good cause to deny a request to transfer:”</p> <p>e. Rule 5.483(c) (new rule number 5.843f) should require an evidentiary hearing. The burden is supposed to be on the party opposing the transfer under the federal ICWA. However, both WIC 305.5(c)(4) and rule 5.483(c) (new rule number 5.483(e) and (f)) impermissibly shift the burden to the party petitioning for transfer. As proposed, only the party requesting the transfer has to provide evidence; the opposing party merely has to assert that good cause exists and state the reasons for that assertion.</p> <p>f. Modify rule 5.483(c) (new rule number 5.483(e)) to read: “The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.”</p>	<p>e. The committees, having reviewed the federal and state statutes find that both place the burden on the party opposing the transfer, and therefore modified the rule in response to this comment. Rule 5.483(f) describes the evidentiary burden and places that burden on the party opposing transfer.</p> <p>f. The committees modified the rule in response to this comment as requested.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>g. Modify rule 5.483(c)(3) (new rule 5.483(f)(2)) to read: “If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated in writing, in advance of the hearing, and made available . . .”</p> <p>h. In rule 5.483(e)(2) (new rule number 5.483(h)) it should be made clear that an order transferring custody of the child to a “designated representative of the tribal court” is not necessarily the same “designated representative” identified in the Notice of Intervention form (ICWA-040). That tribal representative designation is an alternative to proceeding with an attorney in dependency court, and since the titles are so close, it could be misunderstood that the person who was designated at the beginning of the case is the only one who can take custody of the Indian child. Please clarify in rule.</p> <p>i. Overall, rule 5.483 does not address all possible case transfers. It only addresses referral cases under 25 USC 1911(b) and WIC 305(b). It should also address exclusive jurisdiction cases</p>	<p>g. The committees modified the rule in response to this comment as requested.</p> <p>h. The committees modified the rule in response to this comment as requested.</p> <p>i. The committees modified the rule in response to this comment as requested adding a section for mandatory transfer of a case to the tribal court of the child’s tribe (rule 5.483(a)) and a section on presumptive transfer of a case to tribal court with concurrent state and tribal</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>under 25 USC 1911(a) and WIC 305.5(a). Revise as follows: Add a new subsection (a) that provides: “(a) Mandatory transfer of case to tribal court with exclusive jurisdiction. (1) Upon written petition by a tribe providing that: (A) The Indian child is a ward of the tribal court; or (B) The Indian child is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings pursuant to section 1911 or 1918 of Title 25 of the United States Code.” Subsection (a) becomes subsection (b). Rename: “Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction.” Subsection (b) becomes subsection (c). Rename: “Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.” Make subsection (c)(1) become subsection (d), to read: “The court may not consider socioeconomic conditions and the</p>	<p>jurisdiction (rule 5.483(b)).</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.483—Transfer of case		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>perceived adequacy of tribal social services or judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.”</p> <p>Subsection (c)(2) and (3) becomes subsection (e)(1) and (2)</p> <p>Subsection (d) becomes subsection (f).</p> <p>Subsection (e) becomes subsection (g).</p>	

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.484—Placement of an Indian child		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Joanne Willis Newton Attorney at Law San Diego County</p>	<p>a. In rule 5.484(a), replace “If the court determines that a child is entitled to the protection and procedures of the Indian Child Welfare Act in any proceeding listed in rule 5.480” with “In an Indian child custody proceeding listed in rule 5.480.”</p>	<p>a. The committees modified the rule in response to this comment as follows: “In an Indian child custody proceeding listed in rule 5.480, the court may not order placement of the child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.”</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.484—Placement of an Indian child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>b. In rule 5.484(a)(3), delete “If a child is entitled to the protection and procedures of the Indian Child Welfare Act.”</p> <p>c. In rule 5.484(b)(1), replace “there is” with “the court finds.”</p> <p>d. In rule 5.484(b)(2), replace “The court may . . .the following considerations” with “The court may deviate from the preference order only for good cause. The court may consider the following:”. Insert “, when of sufficient age” after “Indian child.”</p> <p>e. In rule 5.484(b)(3), replace “to alter” with “to deviate from” and replace “a different order be considered” with “the preference order not be followed.”</p> <p>f. In rule 5.484(b)(5), insert “, when of sufficient age,” after “Indian child.”</p> <p>g. In rule 5.484(c), replace “at every stage of any proceeding” with “in any proceeding.” The phrase “at every stage” seems to require that the finding be made at every single hearing (incl.</p>	<p>b. The committees modified the rule in response to this comment as requested.</p> <p>c. The committees modified the rule in response to this comment as requested.</p> <p>d. The committees modified the rule in response to this comment as follows: “The court may deviate from the preference order only for good cause, which may include:” And 5.484(b)(2)(B) is modified to read: “(B) The requests of the Indian child, when of sufficient age.”</p> <p>e. The committees modified the rule in response to this comment as requested.</p> <p>f. The committees modified the rule in response to this comment as requested.</p> <p>g. The committees modified the rule in response to this comment as requested.</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.484—Placement of an Indian child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>special hearings, etc.).</p> <p>h. In rule 5.484(c)(1), insert “whether active efforts were made in a manner consistent with” after “must consider.”</p>	<p>h. The committees modified the rule in response to this comment as follows: “(1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe.”</p>
<p>Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego</p>	<p>a. The tribe requests that rule 5.484(b)(4) be changed to read as follows: “The tribe, by resolution, may establish a different preference order, which must be followed if it provides the least restrictive setting appropriate to the particular needs of the child.” The standard regarding tribally-established placement preferences should track the requirements of federal and state law. Neither federal nor state law allows for a “good cause” exception to the requirement that a tribe’s placement preference order be followed.</p> <p>b. The tribe requests that rule 5.484(c)(1) be changed to read as follows: “The court must consider the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe.” Both federal and state law require the court to consider not only the</p>	<p>a. The committees modified the rule in response to this comment.</p> <p>b. The committees modified the rule in response to this comment as follows: “(1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe.”</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.484—Placement of an Indian child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>cultural conditions of the Indian child’s tribe, but also the cultural values and way of life of the Indian child’s tribe.</p> <p>c. The tribe requests that in rule 5.484(c)(2) the words “tribal and other” be added before the words “Indian social services agencies” for clarification purposes.</p>	<p>c. The committees modified the rule in response to this comment as requested.</p>
<p>James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park</p>	<p>Regarding a finding of good cause to deviate from the ICWA placement preferences, add the following bracketed words to the last sentence of rule 5.484(b)(2): “. . . may include [but are not limited to] the following considerations:”</p>	<p>The phrase “but are not limited to” creates a redundancy because use of the term “may include” is not limiting.</p>
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. As in proposed rule 5.482(a), the language “a child entitled to the protections and procedures” is confusing. Under proposed rule 5.482(c) the court is supposed to proceed as though the child is an Indian child if the court knows or has reason to know. It should be clear that this is the standard applied at the placement preference stage as well. Rule 5.484(a) should begin “If the court knows of has reason to know that the child is an Indian child . . .”</p>	<p>a. The committees modified the rule in response to this comment as follows: “In an Indian child custody proceeding listed in rule 5.480, the court may not order placement of the child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.”</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.484—Placement of an Indian child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>b. Same as above for rule 5.484(a)(3).</p> <p>c. Add another sentence to rule 5.484(a)(2): “Any such stipulation must be agreed to in writing.” This is required by WIC 224.6(e).</p>	<p>b. The committees modified the rule in response to this comment by deleting “If a child is entitled to the protection and procedures of the Indian Child Welfare Act.”</p> <p>c. The committees modified the rule in response to this comment as requested.</p>
<p>Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento</p>	<p>This rule should be retained as a means of continuing to strengthen and clarify placement procedures for Indian children. Although the requirements to become an “expert witness” in an ICWA proceeding are not stringent, there were no guidelines in the past. This is an improvement to ICWA and we support it.</p>	<p>No response required.</p>

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.485—Termination of parental rights		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Joanne Willis Newton</p>	<p>In rule 5.485(1), insert standard of proof, which</p>	<p>The committees modified the rule in response to this comment as</p>

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.485—Termination of parental rights		
Commentator	Comment Excerpt or Summary	Committees Response
Attorney at Law San Diego County	is clear and convincing evidence. See, e.g., <i>In re Michael G.</i> (4 th Dist. 1998) 63 Cal.App.4 th 700, 712; <i>Adoption of Hannah S.</i> (3 rd Dist. 2006) 142 Cal.App.4 th 988.	requested.
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	Regarding active efforts, amend rule 5.485(1) to read: “Finds that active efforts were made [as required in Welfare and Institutions Code section 361.7]; and”	The committees modified the rule in response to this comment as follows: “Finds by clear and convincing evidence that active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family were made; and” The committees has also added Welf. & Inst. Code § 361.7 to the heading.
Mark Radoff Directing Attorney California Indian Legal Services	The proposed rule 5.485 neglects to mention the new exceptions to termination of parental rights under WIC 366.26 if an Indian child is involved. We recommend designating the current proposed rule as subsection (a) and adding the following as subsection (b): “(b) The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason that termination of parental rights would not be in the child’s best interest. Such a reason may include, but is not limited to: (1) Termination of parental rights would	The committees modified the rule in response to this comment as requested by adding 5.485(b) covering when parental rights may not be terminated.

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COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.485—Termination of parental rights		
Commentator	Comment Excerpt or Summary	Committees Response
	substantially interfere with the child’s connection to his or her tribal community or the child’s tribal membership rights. (2) The child’s tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.”	
Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	Similar to rule 5.484, this provision strengthens the original spirit and intent of ICWA, and we support it. It helps stop Indian children from being arbitrarily taken away from Indian families to be placed with non-Indian custodians.	No response required.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.486—Petition to Invalidate Orders		
Commentator	Comment Excerpt or Summary	Committees Response
Frank Mecca Executive Director	As written, rule 5.486(3)(A) (new rule number 5.486(c)(A)) is silent about the legal and	The committees modified the rule in response to this comment.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.486—Petition to Invalidate Orders		
Commentator	Comment Excerpt or Summary	Committees Response
County Welfare Directors Assn.	procedural standards that must be followed if an adoption decree is set aside, etc. Recommend additional language to clarify the expected steps that must be followed, consistent with existing law, in these situations (e.g. hold a new dispositional hearing, placement considerations, etc.).	
Joanne Willis Newton Attorney at Law San Diego County	a. In rule 5.486(1) (new rule number 5.486(c)), insert comma after “parent.” Even noncustodial parent has right to petition to invalidate. b. In rule 5.486(3) (new rule number 5.486(c)), insert “vacated or” before “set aside.”	a. The committees modified the rule in response to this comment as requested. b. The committees modified the rule in response to this comment as requested.
James M. Owens Assistant County Counsel Office of the County Counsel – Dependency Division Monterey Park	a. Regarding petitions to invalidate orders, the bracketed words must be added to the end of the sentence in rule 5.486(1) (new rule number 5.486(a)): “. . . that the action violated the Indian Child Welfare Act [25 USC 1901 et seq.]” b. Rule 5.486(3)(A) (new rule number 5.486(c)(1)) is too general, does not take into consideration standards a parent must show for return, and does not give legal/procedural	a. The rule is already clear without the recommended language. b. The committees modified the rule in response to this comment.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.486—Petition to Invalidate Orders		
Commentator	Comment Excerpt or Summary	Committees Response
	standards to follow. Amend the rule to state: “The court must reinstate dependency court jurisdiction and hold a new disposition hearing in accordance with 25 USC 1901 et seq. where the court may consider all placement options as stated in Welfare and Institutions Code section 361.31 (b), (c), (d), and (h). The court may also consider placement with the biological parent or prior Indian custodian if the biological parent or prior Indian custodian can show that placement with him or her is not detrimental to the child and that the placement is in the best interests of the child.”	
Mark Radoff Directing Attorney California Indian Legal Services	a. The proposed rule omits that a petition to invalidate may also be filed in a probate proceeding covered the Act, as noted in Probate Code §1459(e). Modify rule 5.486(1) (new rule number 5.486(a)) to read: “Any Indian child who is the subject of any action for foster care placements, guardianship placement, termination of parental rights . . .” Also, add relevant section of the Probate Code to title. b. Under rule 5.486(2) (new rule number 5.486(b)) only the state juvenile court is deemed	a. The committees modified the rule in response to this comment as requested. b. The committees modified the rule in response to this comment as requested.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.486—Petition to Invalidate Orders		
Commentator	Comment Excerpt or Summary	Committees Response
	competent to invalidate a foster care placement or termination of parental rights. However, in <i>Doe v. Mann</i> (9th Cir. 2005) 415 F.3d 1038, 1045, the federal court was held to be a competent court. Modify rule to read: “. . . the juvenile court is a court of competent jurisdiction.”	
Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	We support this provision.	No response required.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.487—Adoption record keeping		
Commentator	Comment Excerpt or Summary	Committees Response
Joanne Willis Newton Attorney at Law	In rule 5.487, insert Fam. Code 9208 cite after heading. Replace “Department of the Interior,	The committees modified the rule in response to this comment as requested.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 5.487—Adoption record keeping		
Commentator	Comment Excerpt or Summary	Committees Response
San Diego County	Bureau of Indian Affairs” with “Secretary of the Interior” throughout unless Judicial Council has affirmed that Secretary of Interior has officially designated BIA to receive these records. ICWA specifies the Secretary.	
Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	We support this provision.	No response required.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 7.1015—Indian Child Welfare Act in Guardianship and Certain Conservatorship Proceedings		
Commentator	Comment Excerpt or Summary	Committees Response
Jacqueline Carey-Wilson Deputy County Counsel San Bernardino County Counsel	Rule 7.1015(d)(5)(A) goes beyond what is required by federal and state statute. While the Probate Code requires the court to conduct an inquiry into possible Indian ancestry, but does not include the language “as defined by the law	The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 7.1015—Indian Child Welfare Act in Guardianship and Certain Conservatorship Proceedings		
Commentator	Comment Excerpt or Summary	Committees Response
	or custom of the Indian child’s tribe” and does not specifically list members of the extended family that have to be interviewed. To require the county investigator or other official to interview all those listed in the rule would be burdensome and violate the confidentiality rules by disclosing information to outside parties not involved in the case.	(form ICWA-030).” The list of interviewees is required by statute. (See, e.g., Welf. & Inst. Code § 224.3(c), made applicable to proceedings under the Probate Code by Probate Code section 1459.5(b).)
Joanne Willis Newton Attorney at Law San Diego County	a. In rule 7.1015(d)(5)(A), replace “‘extended family members’ as defined. . .or stepparent” with simply “‘extended family members.’” Otherwise the rule appears to impose a duty to interview each of the relatives listed and to know what the tribes’ legal or customary definition of family are. This would be more onerous than the statute. b. In rule 7.1015(b)(1), include proceeding listed at Prob. Code 1459.5(a)(2).	a. The committees modified the rule for clarification as follows: “(A) Interviewing the parents, Indian custodian, and “‘extended family members” as defined in 25 U.S.C. § 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030).” The list of interviewees is required by statute. (See, e.g., Welf. & Inst. Code § 224.3(c), made applicable to proceedings under the Probate Code by Probate Code section 1459.5(b).) b. The proceeding to declare a child free from the custody and control of one or both parents is not a proceeding under the Probate Code. Such a proceeding may be heard in an open guardianship matter under limited circumstances, including a two-year period of physical custody by an appointed guardian (see Probate Code section 1516.5), but the proceeding itself is a regular Family Code proceeding, provided for in the proposed rules governing those proceedings.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 7.1015—Indian Child Welfare Act in Guardianship and Certain Conservatorship Proceedings		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>c. In rule 7.1015(c), the notice sections are lacking much of the detail that the probate rule has here. It makes more sense to have the more detailed provision in the family and juvenile rules and limit the probate rule to describing what might be different in probate proceedings.</p>	<p>c. The advisory committees desire to specify in detail in the probate rule the unique service-of-notice requirements in guardianship proceedings. Also, many of the statutory changes were made in great detail in the Welfare and Institutions Code, but just incorporated by reference into the Family and Probate Codes. Rather than have practitioners or other users have to go back to two or three codes, the committees have, where they felt it was appropriate, provided detailed guidance in the rules, even if it sometimes tracks the language of the statutes.</p>
<p>Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego</p>	<p>a. The title heading referring to Chapter 22 of Title 7 only references Conservatorships. These rules also apply to probate guardianships. Thus, the heading should read “Guardianships and Conservatorships.”</p> <p>b. The tribe requests that in rule 7.1015(b)(1) the following paragraph be added: “A guardianship proceeding to have an Indian child declared free from the custody and control of one or both parents.” This is one of the enumerated probate proceedings covered by federal and state law and should be reflected in the proposed rules.</p>	<p>a. Agree. Chapter 21 is referenced, not Chapter 22. Chapter 21 is Guardianships, not Conservatorships. The appropriate correction (changing the title to “Guardianships”) was made. Rule 7.1015 is in the Guardianships chapter.</p> <p>b. The proceeding to declare a child free from the custody and control of one or both parents is not a proceeding under the Probate Code. Such a proceeding may be heard in an open guardianship matter under limited circumstances, including a two-year period of physical custody by an appointed guardian (see Probate Code section 1516.5), but the proceeding itself is a regular Family Code proceeding, provided for in the proposed rules governing those proceedings.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 7.1015—Indian Child Welfare Act in Guardianship and Certain Conservatorship Proceedings		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>c. The tribe notes that the notice requirements for probate proceedings are identical to those for juvenile and family law proceedings, and since the beginning of this proposed rule explicitly states that probate proceedings are governed by proposed rules 5.480 through 5.487, unless otherwise stated, the inclusion of the notice requirements again in proposed rule 7.1015(c) seems redundant and confusing.</p> <p>d. In the first paragraph of rule 7.1015(c), the words “court knows” should be changed to read the “court or petitioner knows.” Under federal and state law, the individual petitioning for guardianship/conservatorship also has a duty to provide notice.</p> <p>e. In proposed rule 7.1015(c)(5), the words “in advance of the hearing” should be added to the end of the paragraph. Federal and state laws require that return receipts, etc. be filed prior to the hearing.</p> <p>f. The procedure for a determination by the court that ICWA does not apply to a proceeding</p>	<p>c. There may be some duplication, but the probate bar, bench, and court staff need to access the ICWA requirements tailored to guardianships in a place with which they are familiar. Also, many of the statutory changes were made in great detail in the Welfare and Institutions Code, but just incorporated by reference into the Family and Probate Codes. Rather than have practitioners or other users have to go back to two or three codes, the committees have, where they felt it was appropriate, provided detailed guidance in the rules, even if it sometimes tracks the language of the statutes.</p> <p>d. The committees modified the rule in response to this comment per Probate Code section 1460.2.</p> <p>e. The committees modified the rule in response to this comment and will add the words “before the hearing.”</p> <p>f. There may be some duplication, but the probate bar, bench, and court staff need to access the ICWA requirements tailored to</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated rule 7.1015—Indian Child Welfare Act in Guardianship and Certain Conservatorship Proceedings		
Commentator	Comment Excerpt or Summary	Committees Response
	in rule 7.1015(c)(9) is identical to that in rule 5.482(d)(1), therefore is redundant. It should either be removed or if kept, should be moved into a separate section because it does not address notice. Most of the provisions in rule 7.1015(d) are identical to those addressed in rules 5.480 through 5.487, and for that reason the tribe suggests deleting that section of the proposed rule.	guardianships in a place with which they are familiar. Also, many of the statutory changes were made in great detail in the Welfare and Institutions Code, but just incorporated by reference into the Family and Probate Codes. Rather than have practitioners or other users have to go back to two or three codes, the committees have, where they felt it was appropriate, provided detailed guidance in the rules, even if it sometimes tracks the language of the statutes.
Mike Roddy Executive Officer Superior Court of San Diego County	a. In rule 7.1015(c)(10), add the words “to the tribe” so that it reads: “. . .subsequent notices to the tribe may be sent . . .” b. In rule 7.1015(d)(2), add the words “is or” so that it reads: “. . . whether the child is or may be and Indian child . . .”	a. The committees modified the rule in response to this comment as requested. b. The committees modified the rule in response to this comment as requested.
Arnold Samuel General Counsel Buena Vista Rancheria (Me-Wuk Indians) Sacramento	We support this provision.	No response required.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-005-INFO—Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
Grace Andres Court Services Program Manager Superior Court of Solano County	<p>a. Under ICWA-010, Indian Child Inquiry Attachment, last sentence, change to read: “The court clerk cannot file your petition unless this form is filled out and attached.” Also, this sentence should be moved to the top and/or emphasized by underlining or putting in bold font.</p> <p>b. Question: Will funding and resources be provided for the courts to complete service for self-represented litigants as noted under the ICWA-030 section of the ICWA-005 INFO sheet?</p>	<p>a. The committees modified this form to read as follows: “The court clerk’s office cannot file your petition unless you have filled out and attached to the petition form ICWA-010, <i>Indian Child Inquiry Attachment</i>.”</p> <p>b. The committees are charged with drafting rules to implement the statutory changes. Budgetary considerations rest with the Legislature. The committees do not know if there will be additional funding in response to the statutory changes. SB 678 did not provide for funding to complete service.</p>
L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel	<p>a. Disagree with statement “You are responsible for finding out if the child is or may be an Indian child . . .” Based on WIC 224.3, the social worker is only responsible for inquiring whether the child is an Indian child. The tribe (or the BIA when no tribe is identified) is responsible for determining whether the child is Indian.</p> <p>b. Best practice is for parent or person alleging Indian ancestry to fill out the requisite form.</p>	<p>a. The committees modified the form in response to this comment as follows: “You are responsible for helping to find out if the child is or may be an Indian child . . .” But, the form is designed to instruct a variety of people how to fill out the form, not just social workers—it may be used by a parent, a potential guardian, a probation officer, an Indian custodian, etc.</p> <p>b. See comment above. Instruction sheet is intended for use by parents, persons alleging Indian ancestry, etc.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-005-INFO—Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>Absent that, a similar instruction should be issued to the parents claiming Indian heritage that they must cooperate with the social worker/petitioner filling out the form and must review it for omissions, errors and corrections at the earliest possible time after they’ve alleged ancestry and prior to the notice being sent out.</p> <p>c. Additional reasons to know a child is Indian may include the child, parent or relatives speak the language of the tribe, practice the culture of the tribe, participate in voting in tribal elections or attend tribal meetings or gatherings.</p> <p>d. Disagree with paragraph 4 on page 2 of ICWA-005-INFO regarding the best source being the list maintained by the state Department of Child Services. While the www.childsworld list is user friendly and identifies tribes by cultural groups, the state’s list is not official nor is there any authority to use the addresses in the state list over different</p>	<p>c. The committees modified the form as follows: Heading to the “tips” will be changed to “Some tips to help you figure out if there is reason to know the child is an Indian child” After the three tips the committees will add the following sentence: “These are just a few of the reasons to know or give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.”</p> <p>d. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-005-INFO—Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>agents for services listed in the Federal Register. Courts of Appeal recognize the Federal Register list, not the state’s list. SB 678’s amendment to the Welfare & Institutions Code does not support using the state’s list over the Federal Register.</p> <p>e. Disagree with statement on p. 2 under “Copy the Secretary of the Interior” in Washington D.C. This is in direct contradiction to the Code of Federal Regulations at 25 CFR 23.11, subd. (c)(12), which state, “(12) For proceedings in California or Hawaii, notices shall be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.”</p>	<p>e. The committees modified the form in response to this comment to clarify when a copy should go to the Secretary of the Interior and when copies should go to the Sacramento Area Director of the Bureau of Indian Affairs.</p>
<p>Joanne Willis Newton Attorney at Law San Diego County</p>	<p>a. Include in tips on how to fill out ICWA-010(A), under item 2, “Does the child or any of his or her relatives receive services or benefits available to Indians from the federal government?”</p> <p>b. Under “Who do you need to notify?” it is</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-005-INFO—Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>misleading to state that adoptive parents need not be notified unless they're Indian. As a matter of due process, all adoptive parents should be notified.</p> <p>c. Under "How do you notify everyone . . .?", under item 3(b), clarify that the return receipts returned from mailing (not just those handed over by the post office) should be filed.</p> <p>d. Somewhere on form, in bold letters, include new sanction provided for in WIC 224.2(e), FC 180(f), and PC 1460.2, which applies when a party knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child.</p> <p>e. Include tips on how to obtain contact information for tribes for noticing purpose. Include reference to Federal Register list of tribally designated agents for service of ICWA notices, how to access, and caution that it is periodically updated and they will need to check for this. Also, include BIA and DSS contact information for assistance?</p>	<p>requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p> <p>d. The committees modified the form in response to this comment as requested.</p> <p>e. The committees modified the form in response to this comment as appropriate.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-005-INFO—Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
Hon. Kenneth G. Peterson Juvenile Court Judge Superior Court of Sacramento County	The ICWA-005-INFO sheet instructions causes confusion. It states that the ICWA-010 form is to be attached to the petition, including a JV-600 in delinquency court, or the petition can't be filed. That should not apply to the DA filing a delinquency petition. The inquiry is being made by the probation department, not the DA petitioner.	The committees modified the form in response to this comment as requested.
Jacqueline Y. Woode Deputy County Counsel Office of County Counsel Contra Costa County	<p>a. On p. 2 of form ICWA-005-INFO, the best source for addresses for the tribes is the Federal Register maintained by the Secretary of Interior (21 CFR 23.12). The state's website may be consulted to send a second notice to tribe where there is a discrepancy in the address.</p> <p>b. A copy of the notice to the Secretary of the Interior should be sent if the identity or one location of the parent and the tribe cannot be determined (25 USC 1913). The proposed statement on p. 2 of the form under "Copy to the Secretary of the Interior" is erroneous.</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-010(A)—Indian Child Inquiry Attachment		
Commentator	Comment Excerpt or Summary	Committees Response
<p>Joanne Willis Newton Attorney at Law San Diego County</p>	<p>a. Insert section that specifies name and contact information for person(s) questioned and their relationship to the child, as well as date and means of communication. Also include space to summarize the information that was received from that person concerning Indian status. At least include fields for indicating that parents and available grandparents were questioned or attempts were made to contact them.</p> <p>b. For subparagraphs “a” under each child, insert “or may be” after “The child is.”</p> <p>c. Include additional subparagraph “e” under each child with box and “Other reason to know child is or may be an Indian child (specify): _____”. The examples of reason to know in the statute are not exhaustive, contrary to the implication of the form as drafted.</p> <p>d. Include a declaration line, place for writing in name, date, and signature.</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p> <p>d. The committees modified the form in response to this comment as requested.</p>
<p>Mike Roddy Executive Officer Superior Court of San Diego County</p>	<p>The proposed amendment to the delinquency petition makes it seem like the attachment (ICWA-010(A)) is to be used in every case. The</p>	<p>The committees modified the form in response to this comment as appropriate.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-010(A)—Indian Child Inquiry Attachment		
Commentator	Comment Excerpt or Summary	Committees Response
	attachment does not have a place or way to indicate whether the child is in foster care or is likely to enter foster care. It also does not have a place or way to indicate that there is no evidence that the child is an Indian child.	

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-020—Parental Notification of Indian Status		
Commentator	Comment Excerpt or Summary	Committees Response
Grace Andres Court Services Program Manager Superior Court of Solano County	Expand language of notice box to encompass family law, probate, and adoption cases, as well as juvenile cases, by including additional parties who need to be updated with new information, such as court investigators, minor’s counsel, all attorneys, the respondent, etc.	The committees modified the form in response to this comment as requested.
Joanne Willis Newton Attorney at Law San Diego County	Insert new subparagraph under item 3 with box to check indicating “One or more of my parents, grandparents or other lineal ancestors is or was a member of a federally recognized tribe.”	The committees modified the form in response to this comment as requested.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-020—Parental Notification of Indian Status		
Commentator	Comment Excerpt or Summary	Committees Response
	Include line for writing in name of tribe(s) and name and relationship of ancestors(s).	
Mike Roddy Executive Officer Superior Court of San Diego County	Change notice box to read: “To the parent or guardian of the above named child: You are required to give the information requested below regarding the child’s Indian status. If you get new information that would change any of your answers, you must let your attorney and the social worker or probation officer know immediately and an updated form must be filed with the court.”	The committees modified the form in response to this comment as requested.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
Grace Andres Court Services Program Manager Superior Court of Solano County	a. Many tribes provide a registration card. If the child or parents have a registration card, shouldn’t a copy be provided to the court? Would a registration card reduce the requirement to provide all the ancestry	a. The committees modified the form in response to this comment.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>information?</p> <p>b. Item 4d of ICWA-030 states that the court may allow an additional 20 days from the date of receipt of the notice for the hearing date. What is the procedure to request a continuance? Should that be explained in this section. For example, “Contact the court to request a continuance of the hearing.”</p> <p>c. Item 4g of ICWA-030 specifies that the document is confidential. Consider assign “Confidential” to the document title, or provide a “Confidential” notification earlier in the form.</p>	<p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p>
<p>L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel</p>	<p>a. Form is easier to read, more spacing, better labeling, but with the additional length, it still lacks sufficient space to add all of a child’s great grandparents. Needs space for all eight of the great-grandparents.</p> <p>b. The notice page (9) seems like it would lead to improved compliance, but not complete compliance due to lack of sufficient space to list all of the great-grandparents.</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
Hon. Tari L. Cody Juvenile Dependency Judge Superior Court of Ventura County	Why does the declaration on pages 7 and 9 refer to the “attached petition” when this is a stand-alone form to which no petition is normally attached?	The committees modified the form in response to this comment as requested.
Dennis B. Jones Court Executive Officer Sacramento County Superior Court	It is helpful to have the address of the BIA and the US Department of the Interior imprinted on page 9 of form ICWA-030.	No response required.
Joanne Willis Newton Attorney at Law San Diego County	<p>a. Make clear on front of form that separate form is required for each child or, to reduce paperwork and administrative burden, modify form to allow for children who share both same biological parents to be combined on one form, but make it clear that if children do not share both same biological parents separate forms must be completed because family history will differ.</p> <p>b. Under item 2, add field for listing court’s phone number (required by statute).</p> <p>c. Item 4.b.—Parents don’t have a right to intervene. They are automatically a party and need not intervene.</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>d. Item 4.c.—Include notice that tribe has right to decline transfer.</p> <p>e. Item 4.d.—This is worded incorrectly. The continuance is up to 20 days from the time of the scheduled hearing or the time the request is made and granted, not from the time notice is received.</p> <p>f. Item 4.g.—Replace “person or entity” with tribal representative or agent”.</p> <p>g. In all family history information areas: Include separate fields for current and former addresses. Include separate fields for name of tribe or band and location of tribe or band. Change “Enrollment number or BIA/tribal agency, if known:” to “Tribal membership or enrollment number:”</p> <p>h. Item 5.b.—Insert “Biological” before “Mother” and “Father” in each heading. That is, each box should read: “Mother’s Biological Mother”, etc.</p> <p>i. Item 5.c.—Same comment about inserting</p>	<p>d. The form already includes the tribe’s right to refuse the transfer.</p> <p>e. The committees modified the form in response to this comment as requested.</p> <p>f. The committees modified the form in response to this comment.</p> <p>g. The committees modified the form in response to this comment as appropriate.</p> <p>h. The committees modified the form in response to this comment as requested.</p> <p>i. The committees modified the form in response to this comment as</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>“Biological”. Also, there is only space to list one grandmother and one grandfather for each parent. A parent has two sets of biological grandparents, and in some cases there will be Indian heritage through both sets. The form should be expanded to include space for all four grandparents.</p> <p>j. Item 8—There is only space here for one child. If form will be modified to allow for use with more than one child, this will need to be changed.</p> <p>k. Item 9—Change both references to “location” to “mailing address.”</p>	<p>requested.</p> <p>j. The notice is for one child only.</p> <p>k. The committees modified the form in response to this comment as requested.</p>
<p>Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego</p>	<p>a. In the Relative Information section the form should include sections for date and place of death because that is required by state law.</p> <p>b. In the Court Information section there should be a space for the telephone number of the court as required by state law.</p> <p>c. Both the form and the instructions for completing the form (ICWA-005-INFO) should</p>	<p>a. The form already contains sections for date and place of death.</p> <p>b. The form already includes a place for the telephone number of the court.</p> <p>c. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-030—Notice of Child Custody Proceeding for Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	include a statement indicating that notice to the tribe must be send to the tribal chairman or designated authorized agent for service.	

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-040—Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
Joanne Willis Newton Attorney at Law San Diego County	<p>a. Make clear on face of form that this is optional only, not mandatory.</p> <p>b. Item 3—Add boxes to check for each subparagraph. Tribe may not always want representative to have each of those powers.</p> <p>c. Item 3.f.—Delete “foster care.”</p> <p>d. Include after or under item 5 a box to check and description that would permit tribe to</p>	<p>a. The form is already marked for Optional Use in the lower left corner.</p> <p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p> <p>d. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-040—Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>indicate that although it is not formally intervening at this time it is asking that representative be permitted to exercise the powers listed under rule 5.534(i)(2). Include boxes to check beside each power so tribe can limit them if it wishes.</p> <p>e. Since participation under rule 5.534(i)(2) is permissive, that is, the court may or may not grant it, include on form a section for court order granting the tribe’s request for participation under rule 5.534(i)(2).</p>	<p>e. The committees modified the form in response to this comment as requested.</p>
<p>Kathryn A. Ogas Attorney for Lytton Rancheria (Tribe) San Diego</p>	<p>This form currently requires a tribal resolution or other official tribal document appointing the tribal representative. This is not a requirement of federal or state law. It is often very difficult, given the complexity of tribal governments, to obtain a tribal resolution or “official” tribal document, particularly given the time constraints often present in child custody proceedings.</p>	<p>The state court needs some form of documentation indicating the individual is acting on behalf of the tribe.</p>
<p>Mark Radoff Directing Attorney</p>	<p>a. Modify p. 1, item 2: “The above named children are. . Eligible <u>or may be eligible</u> for</p>	<p>a. The ICWA requires tribal membership or eligibility for membership AND that a biological parent is a tribal member.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-040—Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
California Indian Legal Services	<p>membership in this tribe.”</p> <p>b. p.1, item 3: Some tribes only meet monthly and may not be able to supply a formal resolution within 20 days time. The form should recognize some other letter, declaration, or confirmation from the Indian Child Welfare office of the tribe or the Chairperson or President’s office designating a representative where an “official” tribal document cannot be obtained in time to participate in quickly set hearings.</p> <p>c. Modify p. 1, item 3d: “. . . to examine <u>and receive copies of</u> all court documents relating to the case.</p>	<p>b. The commentators examples would all fit the intended definition of an “official” tribal document.</p> <p>c. Tribes are not entitled to copies of all court documents related to the case unless they intervene.</p>
Mike Roddy Executive Officer Superior Court of San Diego County	<p>a. Add appropriate citations to lower right corner of this form.</p> <p>b. On p. 2—Proof of Service, at 2.a. Personal service, change all of the words “deposit” to the word “delivery.”</p> <p>c. In Proof of Service notice box, change last</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-040—Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child		
Commentator	Comment Excerpt or Summary	Committees Response
	sentence to read: “ICWA-040, the <i>Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child</i> may not be filed with the court until all the parties or attorneys are served.” This replaces the word “cannot” with the words “may not”.	requested.

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-050—Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
Joanne Willis Newton Attorney at Law San Diego County	Make it clear on the face of the form that it is optional only, not mandatory.	The form is already marked for Optional Use in the lower left corner.
Mark Radoff Directing Attorney California Indian Legal Services	Modify p. 1, item 3: “Name of tribal court <u>or tribal administrative body:</u> ”	The committees modified the form in response to this comment as requested.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-050—Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
Mike Roddy Executive Officer Superior Court of San Diego County	<p>a. Add appropriate citations to lower right corner of this form.</p> <p>b. On p. 2—Proof of Service, at 2.a. Personal service, change all of the words “deposit” to the word “delivery”.</p> <p>c. In Proof of Service notice box, change word “cannot” in last sentence to the words “may not” so that it reads: “This form may not be filed . . .”</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p>

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-060—Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
Dennis B. Jones Court Executive Officer	Form ICWA-060 requires the child’s name to be written twice, once in the caption and then	The council form captions require the child’s name.

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-060—Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
Superior Court of Sacramento County	repeated as item 1.	
Joanne Willis Newton Attorney at Law San Diego County	<p>a. Disagrees with having a fill-in-the-blank form for ordering or denying petitions to transfer. Believes that it will make it too easy for the courts to deny transfers, which are mandatory unless good cause is found.</p> <p>b. Item 3—Make it clear that ICWA-060 is not required. Request could have been made verbally.</p> <p>c. Item 4—Include boxes to check which statute the order is being made under, either here or under name of form at upper area of form.</p> <p>d. Item 4.a.(1)—Delete this field or make it clear that proof is not required at the time the transfer is ordered. The court may properly receive proof of transfer after the order. It is only required to confirm transfer accepted at the time it dismisses the proceeding and terminates jurisdiction. This is a critical comment—without this change, the Judicial Council will undermine the transfer process by unnecessarily</p>	<p>a. The boxes make it just as easy for the court to grant as to deny a transfer.</p> <p>b. The committees modified the form as optional in response to this comment as requested.</p> <p>c. The committees modified the form in response to this comment as requested.</p> <p>d. The committees modified the form in response to this comment as requested.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-060—Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>delaying transfers.</p> <p>e. Item 4.b.(2)—This must be changed or the power to deny transfer is likely to be abused. Although this is good cause not to transfer under WIC 305.5(c)(1)(B), the form needs to emphasize that it is not for the state court to decide whether the tribal court meets the definition in ICWA. If the tribe represents that it has a tribal court, that’s the end of it. Under WIC 305.5(c)(3), the perceived adequacy of tribal judicial systems may not be considered in a determination that good cause exists. Suggest changing to read: “The child’s tribe has informed this court that it does not have a tribal court as defined in 25 USC 1903.”</p> <p>f. Item 4.c.(1)—Clarify what opposing party has submitted in writing.</p> <p>g. Item 4.c.(3)(b)—Need to include express finding that notices throughout the case were in compliance with WIC 224.2. Also need to include FC and PC notice provision cites and check boxes to indicate which applies.</p>	<p>e. The committees modified the form in response to this comment as requested.</p> <p>f. The committees modified the form in response to this comment as requested.</p> <p>g. The committees modified the form in response to this comment as appropriate.</p>

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Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-060—Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
	<p>h. Item 4.c.(3)(b)—Need to remind court that fact that party waited until after reunification efforts failed and reunification services were terminated is not good cause to deny transfer.</p> <p>i. Item 4.c.—Need to include sections indicating that the court provided tentative decision to deny transfer in writing with reasons in advance of the hearing at which order to deny was made.</p>	<p>h. The committees modified the form in response to this comment as requested.</p> <p>i. The committees modified the form in response to this comment as requested.</p>
<p>Mark Radoff Directing Attorney California Indian Legal Services</p>	<p>a. Modify p. 1, item 4b2: “”The child’s tribe does not have a tribal court <u>or other administrative body</u> as defined in 25 USC §1903.”</p> <p>b. Modify p.1, item 4b3: “The tribal court <u>or other administrative body of the child’s tribe . . .</u>”</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p>
<p>Mike Roddy Executive Officer Superior Court of San Diego County</p>	<p>a. Add appropriate citations to lower right corner of this form.</p> <p>b. Add “City, state, zip code” in 4.a.(2) between Address and Telephone number.</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p>

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form ICWA-060—Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction		
Commentator	Comment Excerpt or Summary	Committees Response
	c. At 4.c.(1), complete the sentence so that it makes sense and add closing punctuation.	c. The Committees modified the sentence so that it reads: “Name of opposing party:_____ has submitted information or evidence in writing to the court and all parties.”

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form JV-100—Juvenile Dependency Petition (Version One)		
Commentator	Comment Excerpt or Summary	Committees Response
L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel	a. Item 1.j.—Should add “Indian Custodian” to list of where child resided before intervention. b. Version One is more applicable to our jurisdiction than Version Two, because each child has a separate file in juvenile court. Version One is also easier to read.	a. The committees modified the form in response to this comment as requested. b. Some jurisdictions use Version One, while others use Version Two.
Dennis B. Jones Court Executive Officer Superior Court of Sacramento County	Both forms JV-100 and JV-600 now include the statement “I have asked about Indian ancestry for this child and have completed and attached the required Indian Child Inquiry attachment, form ICWA-010(A).” Form ICWA-005-INFO	The committees modified the form in response to this comment as requested.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form JV-100—Juvenile Dependency Petition (Version One)		
Commentator	Comment Excerpt or Summary	Committees Response
	informs the user that the clerk will not file the petition without the ICWA-010(A) form attached. The required form will become repetitive and time consuming if it is required to be filed every time along with the JV-100 and JV-600 forms, which are required to be filed as the cover page to the initiating petition, every subsequent, and VOP (in delinquency cases). A use note may be appropriate that if the filing is a subsequent filing and there is no new information, the ICWA-010(A) is not required.	

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form JV-101A—Additional Children Attachment		
Commentator	Comment Excerpt or Summary	Committees Response
L. David Casey Senior Deputy Juvenile Dependency Division San Diego County Counsel	Agree with form, but items 4.j. and 5.j. should include “Indian Custodian” as an option to check for where the child resided before intervention.	The committees modified the form in response to this comment as requested.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form JV-600—Juvenile Wardship Petition		
Commentator	Comment Excerpt or Summary	Committees Response
Dennis B. Jones Court Executive Officer Superior Court of Sacramento County	<p>a. Rule 5.481(a) imposes a continuing duty to inquire about a child’s possible Indian ancestry. Form JV-600 includes the statement “I have asked about Indian ancestry for this child and have completed and attached the required Indian Child Inquiry attachment, form ICWA-010(A).” This requirement places an unrealistic burden on the DA to inquire about Indian ancestry when the DA does not have contact with the family at the time of filing of the delinquency petition.</p> <p>b. Both forms JV-100 and JV-600 now include the statement “I have asked about Indian ancestry for this child and have completed and attached the required Indian Child Inquiry attachment, form ICWA-010(A).” Form ICWA-005-INFO informs the user that the clerk will not file the petition without the ICWA-010(A) form attached. The required form will become repetitive and time consuming if it is required to be filed every time along with the JV-100 and JV-600 forms, which are required to be filed as the cover page to the initiating petition, every</p>	<p>a. The committees modified the form in response to this comment as requested.</p> <p>b. The committees modified the form in response to this comment as requested.</p>

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form JV-600—Juvenile Wardship Petition		
Commentator	Comment Excerpt or Summary	Committees Response
	subsequent, and VOP (in delinquency cases). A use note may be appropriate that if the filing is a subsequent filing and there is no new information, the ICWA-010(A) is not required.	

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form GC-210(CA)—Guardianship Petition—Child Information Attachment		
Commentator	Comment Excerpt or Summary	Committees Response
Adrienne McMillan Staff Attorney, Access Center Superior Court of San Francisco	Regarding the Guardianship Petition—Child Information Attachment (form GC-210(CA): a. Definition of “Indian Child” should be included or attached for assistance in completing attachment; b. Under §1(c)(1), “Your attorney must serve . . .” should be changed to “The petition . . . must be served”, for self-represented parties;	a. The definition of an Indian child is too long for inclusion in this general-purpose guardianship form. Proposed form ICWA-005-INFO provides information about who is an Indian child under the law. Also, the statutes give the definition of an Indian child by reference to 25 U.S.C. § 1903. b. The form advises that the court will serve the notice form if the petitioner is unrepresented. That should be sufficient.

SPRING 07-33

Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480-5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135).

COMMENTS ABOUT SPECIFIC RULES AND FORMS		
Circulated form GC-210(CA)—Guardianship Petition—Child Information Attachment		
Commentator	Comment Excerpt or Summary	Committees Response
	c. Completion of §1(c)(1) requires knowledge of which tribes are recognized by the federal gov't. That information or a means to access that information should be included.	c. That information or even description of a means to access it is too voluminous for this general-purpose guardianship form.
Joanne Willis Newton Attorney at Law San Diego County	a. In form GC-210(CA), item 1(c), include a note that if petition is solely for guardianship of estate this section need not be completed. b. In form GC-210(CA), item 1(c)(2), delete “(within the meaning of Prob. . . . rule 7.1015)”. There is no exhaustive definition of what “reason to know a child is an Indian child.” The examples in the statutes are guidelines only. To leave this language in here misleadingly suggests otherwise and may also lead pro per petitioners to leave the box unchecked because they don't know what the statutes state.	a. The committees modified the form in response to this comment as requested. b. The cited statutes and rule are the only concise statements we have concerning what “reason to know” means that could be cited in the form.