

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

---

## INVITATION TO COMMENT

### SPR20-30

---

<b>Title</b>	<b>Action Requested</b>
Indian Child Welfare Act (ICWA): Tribal Information Form	Review and submit comments by June 9, 2020
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 5.522; approve forms ICWA-100 and ICWA-100-Info	January 1, 2021
<b>Proposed by</b>	<b>Contact</b>
Tribal Court–State Court Forum Hon. Abby Abinanti, Cochair Hon. Suzanne N. Kingsbury, Cochair Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov

---

### Executive Summary and Origin

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend revising rule 5.522 of the California Rules of Court and approving a new optional form and instructions sheet for that form, effective January 1, 2021, to be used by an Indian child’s tribe to provide information to the court on issues where consultation with the child’s tribe is required by the Indian Child Welfare Act, and the tribe’s position on these issues in cases governed by the Indian Child Welfare Act. This proposal originated with comments from tribal advocates and attorneys.

### Background

#### Tribal Information Sheet

California is home to more people of Indian ancestry than any other state in the nation. Currently, 109 tribes are federally recognized in California, a number second only to the number of tribes in the state of Alaska. California’s Indian population includes a large number of people affiliated with out-of-state tribes or tribes whose territories and primary headquarters are based in neighboring states, such as the Washoe, Fort Mojave, Chemehuevi, Colorado River, and

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

Quechan tribes.<sup>1</sup> Tribes within California are often located in remote areas, often making travel to court locations burdensome. Tribal resources and staffing vary greatly, but many tribes have only one full-time staff person devoted to child welfare cases, and that individual may have active cases in multiple counties and states. Under the federal Indian Child Welfare Act and corresponding California statutes, an Indian child's tribe has a right to participate in cases governed by ICWA, and proper implementation of and compliance with ICWA involves tribal input on a number of key issues. However, as noted in *ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), many tribes find it difficult to exercise their right to fully participate in ICWA cases.<sup>2</sup> Of particular concern are the rights of "lower-income tribes, as they often do not have resources to retain legal counsel, travel and be present at all hearings or even pay fees associated with telephonic appearances." If a tribe intervenes in a case, the tribe becomes a full party. Rule 5.534(e) recognizes various rights of a tribal representative, including the right to submit written reports and recommendations to the court even if the tribe does not intervene in the case; however, tribes located out of state or unrepresented by counsel may be unfamiliar with California court procedures, and an optional form may encourage them to exercise their right to submit information more often.

If the tribe's position on key ICWA issues is unknown as a case progresses, this lack of clarity can have negative consequences on the case. For instance, if the court is unaware of the tribe's position on permanency planning until after reunification services have been terminated, unnecessary conflicts and disruptions may occur during placement.

California has a high number of appeals related to the Indian Child Welfare Act.<sup>3</sup> Some of these appeals might be avoided if tribal input could be consistently obtained throughout the life of a case.

## The Proposal

The proposal seeks to remedy the problem created by these barriers to tribal input on key ICWA issues by establishing the optional *Tribal Information Form* (form ICWA-100) and its corresponding instruction sheet for optional use by an Indian child's tribe to submit information to the court on key issues and amending rule 5.552 to authorize an Indian tribe to file this form and other documents by fax. The form is similar to the existing *Caregiver Information Form* (form JV-290).

---

<sup>1</sup> Judicial Council of Cal., Center for Families, Children & Cts., "Native American Statistical Abstract: Population Characteristics" *Research Update* (Mar. 2012), [www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf](http://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf); California Indian Tribal Homelands and Trust Land Map, [https://www3.epa.gov/region9/air/maps/ca\\_tribe.html](https://www3.epa.gov/region9/air/maps/ca_tribe.html).

<sup>2</sup> Cal. ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), p. 41, [www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf](http://www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf).

<sup>3</sup> In 2016, California had 114 appeals related to ICWA. (Prof. Kathryn E. Fort, "2016 ICWA Appellate Cases by the Numbers" *Turtle Talk* [Indigenous Law and Policy Center blog], Michigan State University College of Law, Jan. 4, 2017, <https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/>).

Tribes would not be required to use this form. However, by removing barriers to tribal participation in ICWA cases and facilitating tribal input on key issues, the proposal should reduce delays and appeals in ICWA cases and improve ICWA compliance.

### **Alternatives Considered**

The committees and forum considered taking no action but determined that the creation of the optional *Tribal Information Form* would be of significant benefit to the courts, tribes, and justice partners. Education, training, guidelines, or best practices are not viable alternatives to the creation of an optional form because ICWA not only applies in different case types, but it often involves out-of-state tribes that may have limited familiarity with California law and practice. Tribes may be involved in cases in different counties arising in probate, family, or juvenile court. A consistent, simple form for statewide use will facilitate tribal participation in all these cases.

### **Fiscal and Operational Impacts**

Incorporating a new form into court and justice partner systems may cause a fiscal impact. Any such impact will likely be outweighed by a reduction in delays, continuances, and appeals by improving tribal participation throughout the life of an ICWA case.

#### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committees and forum are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?

The advisory committees and form also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 5.552, at pages 5–6
2. Forms ICWA-100 and ICWA-100-INFO, at pages 7–9

Rule 5.522 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 5.522. Remote filing**

2  
3 **(a)–(b)** \* \* \*

4  
5 **(c) Fax filing**

6  
7 (1) *Juvenile court documents that may be filed by fax*

8  
9 The following documents may be filed in juvenile court by the use of a fax  
10 machine: petitions filed under sections 300, 342, 387, 388, 601, 602, 777, and  
11 778; Tribal Information Form (ICWA-100); and other documents, may be  
12 ~~filed by the use of a fax machine~~ if permitted by local rule as specified in (a).

13  
14 (2) *Persons and agencies that may file by fax*

15  
16 Only the following persons and agencies may file documents by the use of a  
17 fax machine, as stated in (c)(1):

18  
19 (A) Any named party to the proceeding;

20  
21 (B) Any attorney of record in the proceeding;

22  
23 (C) The county child welfare department;

24  
25 (D) The probation department;

26  
27 (E) The office of the district attorney;

28  
29 (F) The office of the county counsel; ~~and~~

30  
31 (G) A Court Appointed Special Advocate (CASA) volunteer appointed in  
32 the case; and

33  
34 (H) An Indian tribe.

35  
36 (3)–(6) \* \* \*

**INSTRUCTION SHEET FOR TRIBAL INFORMATION FORM**  
**Background**

1. **What is the Tribal Information Form?** The *Tribal Information Form*, (form ICWA-100), is intended to provide an easily accessible way for an Indian child's tribe to provide information to the court about the case and the tribe's views on the case.
2. **When does it need to be filled out and filed?** The *Tribal Information Form* is an optional form. If you choose to use it, fill it out and file it with the court, along with eight copies, at least five calendar days before the hearing, or mail it and eight copies to the court for filing at least seven calendar days before the hearing. Follow the instructions below. Do not wait until the day of the court hearing to file the form.

**How to Fill Out Form ICWA-100**

1. **Complete the caption.** These are the boxes at the top of the page.
  - *Court name, street address, and mailing address.* Write the name of the county where the court is located and the street and mailing address of the court. If you do not know the name and address of the court, look on the notice of the court hearing you received in the mail or go to [www.courts.ca.gov/find-my-court.htm](http://www.courts.ca.gov/find-my-court.htm) to find the local court in your county. For branch name, write "Juvenile".
  - *Child's Name.* Write the child's first and last names.
  - *Hearing Date and Time.* Write the hearing date and time. Ask the social worker, if you do not have this information.
  - *Case Number.* This number is on the notice of the court hearing you received in the mail. If you do not have the number, ask the child's social worker or attorney for the number. If the case involves brothers and sisters (siblings), there may be more than one case number. Be sure to use a separate form and the correct number for each child.
2. **Complete the information about the child and about the tribe and tribal representative.**
  - *Item 1.* Fill in the child's first and last names, date of birth, and age.
  - *Item 2.* Complete the information about the tribe.
3. **Complete items 4–9 about the case.** For each question, check the box to indicate whether there is new information since the last hearing. Briefly write new information in the appropriate section of the form.
  - *Item 4.* Provide information on the communication between the agency/petitioner and the tribe since the last hearing.
  - *Item 5.* Provide information about case planning, services and active efforts.
  - *Item 6.* Provide information about the child's placement.
  - *Item 7.* Provide information about the appropriate concurrent and permanent plan for the child.
  - *Item 8.* Provide other information the tribe wants to convey to the court.
4. **Add any attachments.** Check the box in item 9 to add additional pages.
5. **Sign and date the form.** On the bottom of page 2, write the date, type or print your name, and sign your name.

**What to Do With the Form After You Have Filled It Out**

1. **Make copies.** Tribal representatives should make eight or more copies of completed form ICWA-100 and any attachments.
2. **If you choose to file the form in person.** At least **five** calendar days before the hearing date, bring the original form and the recommended eight copies to the court clerk's office at the courthouse where the hearing will be held. Ask the clerk to file the form for you. Keep one copy of the date-stamped form for yourself. The clerk is responsible for providing the form to all parties and completing and filing the proof of service form.
3. **If you choose to file the form by mail.** At least **seven** calendar days before the hearing date, mail the original form and all but one of the copies to the court clerk's office at the courthouse where the hearing will be held. Put two stamps on the envelope. Include a note indicating "For filing and service" and including the case number. The clerk is responsible for providing the form to all parties and completing and filing the proof of service form.
4. **Confirm the hearing date, time, and place.** If you plan to attend the hearing, call the social worker to confirm the hearing date, time, and courtroom.

**What to Do on the Hearing Day**

1. **Bring extra copies of the form.** If you decide to attend the hearing, it is suggested that you make additional copies of the form and any attachments to provide to anyone at the hearing who did not receive them.
2. **Comments in court.** If you choose to attend the hearing, any comments you make should be short, factual, and based on your own observations. You may raise your hand to let the judge know you would like to speak, or let the courtroom clerk, deputy or bailiff know before the hearing.



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

5. c.  The tribe recommends that the following programs and services be integrated into the parents and child's case plan:

d.  Further comments:

6.  **Placement (where the child is in out-of-home placement)**

a.  The tribe  has  has not been consulted on the child's placement.

b.  The tribe  is  is not aware of where the child is currently placed.

c.  The tribe  is  is not in agreement with the child's current placement.

d.  The tribe requests that the child be placed with (*insert name*): \_\_\_\_\_ . This placement is preferable because:

e.  Further comments:

7.  **Permanency Planning (where the child is in out-of-home placement)**

a. The tribe  has  has not been consulted regarding the appropriate permanent plan for the child should reunification with the parents, or Indian custodian fail.

b. The agency  has  has not discussed with the tribe tribal customary adoption as a permanency option should reunification with the parents, or Indian custodian fail.

c.  Further comments:

8. Other information:

9.  If you need more space to respond to any section on this form or have other information that you wish to share with the court, please check this box and attach additional pages.

Number of pages attached: \_\_\_\_\_

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 OF TRIBAL REPRESENTATIVE WHO HAS COMPLETED THIS FORM)