

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-31

Title

Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child’s Tribe in ICWA Proceedings

Action Requested

Review and submit comments by June 9, 2020

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.9, 5.482, and 5.531

Proposed Effective Date

January 1, 2021

Contact

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Proposed by

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

Executive Summary and Origin

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council amend rules 5.9, 5.482, and 5.531 of the California Rules of Court, effective January 1, 2021, to permit an Indian child’s tribe to participate by telephone or other computerized remote means in any hearing in a proceeding governed by the Indian Child Welfare Act, as required by section 224.2(k) of the Welfare and Institutions Code.

Background

On October 2, 2019, Governor Newsom signed Assembly Bill No. 686.¹ This bill amended section 224.2 of the Welfare and Institutions Code by adding subdivision (k), as follows:

(k) The Judicial Council, by July 1, 2021, shall adopt rules of court to allow for telephonic or other remote appearance options by an Indian child’s tribe in proceedings where the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec.

¹ Waldron; Stats. 2019, ch. 434 available at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB686

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 It is circulated for comment purposes only.

1901 et seq.) may apply. Telephonic or other computerized remote access for court appearances established under this subdivision shall not be subject to fees.

The Proposal

The proposal would implement the requirements of AB 686 by amending rules 5.9, 5.482, and 5.531 to require courts to permit an Indian child's tribe to appear at any hearing by telephone or other computerized remote means in any proceeding governed by ICWA and further stipulating that no fee could be charged to the tribe for this remote appearance.

Specifically, the proposal would adopt new subdivision (g) of rule 5.482 and amend rules 5.9(a) and 5.531(b) (governing appearances by telephone in juvenile cases) to cross-reference rule 5.482(g).

The proposed amendments would allow courts flexibility to implement the remote appearance requirements in the manner consistent with court capacity and contractual obligations (such as court call). It does not require courts to adopt any specific technology so long as some form of remote option for effective tribal participation is provided.

Alternatives Considered

The forum and committee considered whether the requirements of new Welfare and Institutions Code section 224.2(k) applied only in juvenile cases or more broadly to all case types governed by ICWA. They concluded that broad application to all ICWA case types was appropriate. The provisions in Welfare and Institutions Code sections 224.2 through 224.6 are of general application to all ICWA case types and are incorporated by reference in the Family and Probate Codes. The forum and committee also noted that the legislative counsel's digest for AB 686 states that the bill "...would require the Judicial Council to establish a rule of court that would authorize the use of telephonic or other remote access by an Indian child's tribe in proceedings where ICWA applies."

Fiscal and Operational Impacts

There may be fiscal and operational impacts. Nevertheless, the Legislature has mandated that tribes be permitted to appear remotely at no charge in ICWA cases. The proposed language of rule 5.531 allows courts flexibility in meeting the requirements. The method of appearance may be determined by the court consistent with court capacity and contractual obligation, as long as some method of effective remote appearance and participation is provided.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The forum and advisory committees 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, proposed rules 5.9, 5.482 and 5.531, at pages 4–5

Rules 5.9, 5.482, and 5.531 of the California Rules of Court would be revised, effective January 1, 2021, to read:

1 **Rule 5.9. Appearance by telephone**

2
3 **(a) Application**

4
5 This rule applies to all family law cases, except for actions for child support
6 involving a local child support agency and cases governed by the Indian Child
7 Welfare Act. Rule 5.324 governs telephone appearances in governmental child
8 support cases. Rule 5.482(g) governs telephone appearances in cases governed by
9 the Indian Child Welfare Act.

10
11 **(b)–(d) * * ***

12
13 **Rule 5.482. Proceedings after notice**

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15 **(a)–(f) * * ***

16
17 **(g) Tribal appearance by telephone or other remote means**

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19 In any proceeding governed by the Indian Child Welfare Act involving an Indian
20 child, the child’s tribe may, on request, appear at any hearing by telephone or other
21 computerized remote means. The method of appearance may be determined by the
22 court consistent with court capacity and contractual obligations, as long as some
23 method of effective remote appearance and participation is provided. No fee may
24 be charged to the tribe for such telephonic or other remote appearance.

25
26 **Rule 5.531. Appearance by telephone (§§ 224.2(k), 388; Pen. Code § 2625)**

27
28 **(a) Application**

29
30 The standards in (b) apply to any appearance or participation in court by telephone,
31 videoconference, or other digital or electronic means authorized by law.

32
33 **(b) Standards for local procedures or protocols**

34
35 Local procedures or protocols must be developed to ensure the fairness and
36 confidentiality of any proceeding in which a party is permitted by statute, rule of
37 court, or judicial discretion to appear by telephone. These procedures or protocols
38 must, at a minimum:

- 39
40 (1) Allow an Indian child’s tribe to appear by telephone or other computerized
41 remote means at no charge in accordance with rule 5.482(g). The method of

Rules 5.9, 5.482 and 5.531 are revised effective January 1, 2021 to read:

1 appearance may be determined by the court consistent with court capacity
2 and contractual obligations, as long as some method of effective remote
3 appearance and participation is provided;

4

5 (2) * * *

6

7 ~~(2) (9) (3) (10)~~ * * *

8

9 (c) * * *