

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-13

Title

Indian Child Welfare Act (ICWA):
Implementation of AB 3176 in Probate
Guardianships and Conservatorships

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 7.51,
7.1003, 7.1013, and 7.1015; revise forms
GC-210(CA) and ICWA-005-INFO

Proposed by

Probate and Mental Health Advisory
Committee
Hon. Jayne C. Lee, Chair

Tribal Court–State Court Forum

Hon. Abby Abinanti, Cochair

Hon. Suzanne N. Kingsbury, Cochair

Action Requested

Review and submit comments by May 27,
2021

Proposed Effective Date

January 1, 2022

Contact

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Executive Summary and Origin

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum (forum) recommend amending four rules of court and revising two forms to clarify the procedures required in probate guardianship and conservatorship proceedings involving an Indian child to which the Indian Child Welfare Act (ICWA) may or does apply. The proposed amendments and revisions would update the rules and forms to conform to the requirements of the 2016 federal ICWA regulations, California statutory changes, and recent amendments to the California Rules of Court governing ICWA proceedings generally.

Background

The federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901–1963) establishes minimum federal standards that apply to all state court proceedings in which an Indian child could be involuntarily placed in the custody of a nonparent or parental rights could be terminated. In 2006, Senate Bill 678 (Stats. 2006, ch. 838) incorporated many provisions of ICWA into

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It is circulated for comment purposes only.*

California law. Effective January 1, 2008, the Judicial Council adopted California Rules of Court and Judicial Council forms to implement ICWA and SB 678. Rule 7.1015 specified procedures for applying ICWA to probate proceedings and incorporated the applicable provisions of the general ICWA rules, now found in rules 5.480 through 5.488.

In 2016, the federal government adopted regulations implementing ICWA and updated its ICWA guidelines.¹ In some respects, California law and practice were inconsistent with the regulations and guidelines. Further, in 2017 the California ICWA Compliance Task Force delivered a report to the Attorney General which identified a number of issues with California's application of ICWA.²

Effective January 1, 2020, Assembly Bill 3176 addressed many of the issues discussed above.³ The bill directed the Judicial Council to adopt any rules or forms necessary to implement its provisions. Although AB 3176 did not amend the Probate Code provisions that incorporate ICWA's requirements, it did, nevertheless, amend several sections of the Welfare and Institutions Code that impose inquiry and notice requirements on probate guardianship and certain conservatorship proceedings.

In response to the enactment of AB 3176, the Judicial Council amended the generally applicable ICWA rules in title 5 and revised the ICWA forms.⁴ The amendments in this proposal would bring the probate rules into conformity with the 2016 federal regulations, AB 3176, and the ICWA rules in title 5. The proposal would also clarify an Indian child's tribe ability to have access to specific reports and documents filed in probate guardianship proceedings.

The Proposal

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2022:

1. Amend California Rules of Court, rules 7.51, 7.1003, and 7.1013 to clarify and confirm the rights of an Indian child's tribe to receive notices of hearings and other activity and obtain access to status reports in a covered proceeding;

¹ Indian Child Welfare Act, [25 C.F.R. §§ 23.1–23.144](#); U.S. Department of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), available at www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

² California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), available at <https://caltribalfamilies.org/wp-content/uploads/2020/12/ICWAComplianceTaskForceFinalReport2017.pdf>.

³ Assem. Bill 3176 (Stats. 2018, ch. 833), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176.

⁴ Judicial Council of Cal., Advisory Com. Rep., *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019) (adopted Sept. 24, 2019, effective Jan. 1, 2020), available at <https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000>.

2. Amend California Rules of Court, rule 7.1015 to conform to recent changes in the federal ICWA regulations, California statutory law, and California Rules of Court, rules 5.480–5.488 related to implementing ICWA;
3. Revise *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) to:
 - Conform to the amendments to rule 7.1015 by modifying item 1c and deleting item 8 to reflect that form ICWA-010(A) would be henceforth used to document the Indian child inquiry;
 - Combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3;
 - Add a new item 4 for the petitioner to explain why appointing a guardian would be in the child’s best interest; and
 - Add a new subitem a. to item 6 for the petitioner to inform the court whether the child’s parent or parents agree that the court needs to appoint a guardian for the child; and
4. Revise *Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) to reflect that form GC-210(CA) would no longer be used for the Indian child inquiry in probate guardianship proceedings.

The text of the rules and the forms, as proposed to be amended and revised, are attached at pages 6–21.

The proposed rule amendments are, for the most part, required by the passage of AB 3176 and the 2016 federal regulations and guidelines, and are urgently needed to conform to these recent changes in the law. Additional proposed changes would respond to specific issues and recommendations in the California ICWA Compliance Task Force Report and tribal advocates.

The federal regulations and guidelines and AB 3176 made significant changes to the law and practice under ICWA, especially regarding inquiry and notice. The proposal would benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act in probate guardianship and conservatorship proceedings and conforming practice to the requirements of federal and state law, thus protecting the legal rights of tribal children and families by reducing confusion and the need for appeals.

Amendment to rule 7.51

Rule 7.51 governs the manner of giving notices of hearings in probate proceedings. The amendment would add subdivision (f) to specify that notices of hearings in proceedings to which ICWA applies must be mailed to an Indian child’s tribe as provided in rule 7.1015(d).

Amendment to rule 7.1003

Rule 7.1003 addresses the confidential guardianship status report. Proposed subdivision (c) would require the court clerk to make the status report available to an Indian child's tribe that has intervened in the proceeding, and would clarify that the limits on access to the status report are not intended to preclude an interested person or a tribe that has not intervened from petitioning for a court order directing the clerk to make the status report available to that person or tribe.

Amendment to rule 7.1013

Probate Code section 2352 requires a guardian of the person to give notice to certain persons before and after changing the ward's residence. The proposed amendments to rule 7.1013 would add an Indian child's tribe to those persons entitled to receive notice of a change in residence.

Amendment to rule 7.1015

The proposed amendments would primarily address three substantive issues. First, the amendments would update the inquiry requirements to conform to the requirements in the federal regulations, AB 3176, and the recent amendments to rules 5.480–5.488, which apply to probate guardianship proceedings. Second, the amendments would update the notice requirements to conform to the same federal and state laws. In particular, these amendments would assist courts and parties in determining when there is reason to *believe* that an Indian child is the subject of a proceeding and when there is reason to *know* that an Indian child is involved. Third, the proposed amendments would add a new subdivision applying the emergency proceeding requirements in rule 5.484 to temporary guardianships and conservatorships involving an Indian child. This revision also changes the wording from “formerly married” child to “child whose marriage was dissolved” to clarify that if a marriage is annulled rather than being dissolved, the child is not emancipated and is subject to a guardianship rather than conservatorship proceeding. Finally, the amendments would also consolidate the Indian child inquiry onto a single form, *Indian Child Inquiry Attachment* (form ICWA-010(A)) for Indian child custody proceedings, consistent with rule 5.481(a)(1) of these rules.

Guardianship Petition—Child Information Attachment (form GC-210(CA))

The proposed revisions would modify item 1c and delete item 8 to reflect that the proposed amendments conform to rule 7.1015, and would require form ICWA-010(A) to be used to document the Indian child inquiry. Additional revisions would combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3 to promote efficiency; add a new item 4 for the petitioner to explain why appointing a guardian would be in the child's best interest, thereby providing information needed by the court to make the determination under Probate Code section 1514(a)–(b)(1) and Family Code section 3040; and add a new subitem a. to item 6 for the petitioner to tell the court whether the child's parent or parents agree that the court needs to appoint a guardian for the child so the court could, among other things, make a preliminary determination whether to apply the standard in Family Code section 3040 or 3041 to the appointment of a guardian of the person.

Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child (form ICWA-005-INFO)

The proposed revisions would remove references to form GC-210(CA) because that form would no longer be used to document the Indian child inquiry and would make technical changes to the title, content, and formatting.

Alternatives Considered

The committee and the forum considered proposing more extensive rule amendments, but decided to take an incremental approach and limit this proposal to the amendments necessary to conform to the law

Fiscal and Operational Impacts

Courts will face some fiscal and operational impacts as courts, justice partners, and litigants adjust to the new requirements and update their existing forms and practices. However, these impacts and burdens are required to comply with federal and state law and cannot be avoided. The benefits of complying with the law and avoiding appellate reversals will outweigh the potential costs. In addition, the burdens may be mitigated in courts that have implemented these requirements in their juvenile and family law divisions.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks 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 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015, at pages 6–15
2. Forms GC-210(CA) and ICWA-005-INFO, at pages 16–21

Rules 7.51, 7.1003, 7.1013, and 7.1015 of the California Rules of Court would be amended, effective January 1, 2022, to read:

1 **Rule 7.51. Service of notice of hearing**

2
3 (a)–(e) * * *

4
5 **(f) Notice when Indian Child Welfare Act may apply**

6
7 If the court or the petitioner knows or has reason to know, as described in section
8 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of
9 a guardianship or conservatorship proceeding, notice to the child’s tribe must be
10 given as prescribed in rule 7.1015(d).

11
12
13 **Rule 7.1003. Confidential guardianship status report form ~~form~~ (Prob. Code, § 1513.2)**

14
15 (a)–(b) * * *

16
17 **(c) Access to report**

- 18
19 (1) Except as provided in paragraph 2, the clerk must make a status report
20 submitted under Probate Code section 1513.2 available only to persons
21 served in the guardianship proceedings.
- 22
23 (2) If the ward is an Indian child and the child’s tribe has intervened in the
24 proceeding, the clerk must also make the status report available to the
25 representative designated by the child’s tribe.
- 26
27 (3) Paragraphs (1) and (2) are not intended to preclude an interested person or an
28 Indian child’s tribe that has not intervened from filing a petition for a court
29 order directing the clerk to make the status report available to that person or
30 tribe.

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32
33 **Rule 7.1013. Change of ward’s residence**

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35 **(a) Pre-move notice of change of personal residence required**

36
37 Unless an emergency requires a shorter period of notice, the guardian of the person
38 must mail copies of a notice of an intended change of the ward’s personal residence
39 to the persons listed below at least 15 days before the date of the proposed change;
40 and file the original notice with proof of mailing with the court. Copies of the
41 notice must be mailed to:

42
43 (1)–(4) * * *

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(5) A guardian of the ward’s estate;~~and~~

(6) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(7) If the ward is an Indian child and the child’s tribe has intervened, the child’s tribe.

(b) * * *

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward’s residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian’s attorney, or an employee of the guardian’s attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1)–(3) * * *

(4) A guardian of the ward’s estate;~~and~~

(5) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(6) If the ward is an Indian child and the child’s tribe has intervened, the child’s tribe.

(d)–(g) * * *

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1449, 1459, 1459.5, 1460.2, 1511(i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963)

(a) Definitions

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

(1) “Act” means the federal Indian Child Welfare Act (~~25 United States Code sections~~ U.S.C. §§ 1901–1963).

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(2) “Emergency proceeding” refers to:

(A) a temporary guardianship of the person of a minor; or

(B) a temporary conservatorship of the person of a minor whose marriage has been dissolved

when it is known or there is reason to know that the minor is or may be an Indian child.

(3) “Petitioner” means and refers to:

(A) A petitioner for the appointment of a guardian of the person of a minor child; or

(B) A petitioner for the appointment of a conservator of the person of a formerly married minor child whose marriage has been dissolved.

(b) Applicability of this rule and rules 5.480 through 5.4878

(1) This rule applies to the following proceedings under division 4 of the Probate Code ~~when the proposed ward or conservatee is an Indian child, within the meaning of the act:~~

(A) A guardianship ~~or temporary guardianship~~ of the person or ~~of~~ the person and estate in which the proposed guardian of the person is not the proposed ward’s ~~natural biological~~ parent or Indian custodian ~~within the meaning of the act;~~

(B) A conservatorship, ~~limited conservatorship,~~ or temporary ~~conservatorship~~ of the person or ~~of~~ the person and estate of a ~~formerly married~~ minor ~~whose marriage has been dissolved~~ in which the proposed conservator ~~of the person~~ is not a ~~natural~~ ~~the proposed~~ ~~conservatee’s biological~~ parent or Indian custodian ~~of the minor~~ and is seeking physical custody of the proposed conservatee.

(2) Unless the context ~~requires~~ otherwise, ~~requires,~~ rules 5.480 through 5.4878 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.4878 to social workers, probation officers, county probation departments, or county social welfare departments are references to the

1 petitioner or petitioners for the appointment of a guardian or conservator of
2 the person of ~~an Indian child~~ and to ~~an Indian child's~~ the appointed temporary
3 or general guardian or conservator of the person.
4

- 5 (4) If the court appoints a temporary or general guardian or conservator of the
6 person of the child involved in a proceeding listed in (1), the duties and
7 responsibilities of a petitioner under the Act and this rule ~~are transferred to~~
8 ~~and~~ become the duties and responsibilities of the appointed guardian or
9 conservator. The petitioner must cooperate with and provide any information
10 the petitioner ~~has~~ knows or possesses concerning the child to the appointed
11 guardian or conservator.
12

13 (c) **Inquiry**
14

- 15 (1) The court, a the court investigator or county officer appointed to conduct an
16 investigation under Probate Code section 1513 or 1826, and each petitioner,
17 have an affirmative and continuing duty to inquire whether ~~the~~ each child
18 involved in ~~the a~~ matters identified in (b)(1) is or may be an Indian child.
19
- 20 (2) Before filing ~~his or her~~ a petition for appointment of a guardian or
21 conservator of the person, the petitioner must ask the child involved in the
22 proceeding, if the child is old enough, ~~and~~ the parents, any ~~other legal~~
23 previously appointed guardian of the person, and any Indian custodian,
24 whether the child is or may be an Indian child, ~~and must complete items 4e~~
25 ~~and 8 of the Guardianship Petition - Child Information Attachment (form~~
26 ~~GC-210(CA))~~ Indian Child Inquiry Attachment (form ICWA-010(A)), and
27 attach it that form to ~~his or her~~ the petition.
28
- 29 (3) At the first personal appearance by a parent or previously appointed legal
30 guardian at a hearing in a guardianship or conservatorship, the court must if
31 requested by petitioner, or may on its own motion, order the parent or legal
32 guardian to complete a Parental Notification of Indian Status (form ICWA-
33 020) and deliver the completed form to the petitioner. At the initiation of any
34 proceeding identified in (b)(1) and at any hearing in such a proceeding that
35 may result in the appointment of a guardian or conservator, the court must:
36
- 37 (A) Ask each participant present whether the participant knows or has
38 reason to know that the child is an Indian child;
39
- 40 (B) Instruct the parties to inform the court if they subsequently receive
41 information that provides reason to know that the child is an Indian
42 child; and
43

1 (C) Order the parent, existing guardian, or Indian custodian, if available, to
2 complete *Parental Notification of Indian Status* (form ICWA-020).
3

4 (4) If the parent, Indian custodian, or guardian ~~does not personally appear at a~~
5 ~~hearing in~~ is not available at the initiation of a proceeding identified in (b)(1),
6 the court ~~may~~ must order the petitioner to use reasonable diligence to find
7 and ask inform the parent, Indian custodian, or ~~legal~~ guardian that the court
8 has ordered that person to complete and deliver to petitioner a *Parental*
9 *Notification of Indian Status* (form ICWA-020).

10
11 (5) If the court or county investigator, ~~the~~ petitioner, ~~appointed guardian or~~
12 ~~conservator,~~ or the attorney for a ~~the~~ petitioner ~~or appointed guardian or~~
13 ~~conservator,~~ knows or has reason to know or believe that an Indian child is
14 involved in the proceeding, ~~he or she~~ that person must make further inquiry
15 as soon as practicable by:

16
17 (A) Interviewing the parents, Indian custodian, and “extended family
18 members” as defined in 25 United States Code section 1903(2), to
19 gather the information listed in ~~Probate Code section 1460.2(b)(5) that~~
20 ~~is required to complete the *Notice of Child Custody Proceeding for*~~
21 ~~*Indian Child* (form ICWA-030)~~ Welfare and Institutions Code section
22 224.3(a)(5);
23

24 (B) ~~Contacting the U.S. Department of the Interior,~~ federal Bureau of
25 Indian Affairs and the California Department of Social Services for
26 assistance in identifying the names and contact information of the tribes
27 of which the child may be a member or eligible for membership; and
28

29 (C) Contacting the tribes and any other persons who reasonably can be
30 expected to have information regarding the child’s tribal membership
31 status or eligibility for membership. These contacts must at a minimum
32 use the methods and share the information listed in Welfare and
33 Institutions Code section 224.2(e)(2)(C).
34

35 (6) If the court knows or has reason to know or believe that an Indian child is
36 involved in the proceeding, the court ~~may direct any~~ must direct one or more
37 of the persons named in (5) to conduct the inquiry described in that
38 paragraph.
39

40 (7) The circumstances that may provide reason to believe the child may be an
41 Indian child are those set forth in Welfare and Institutions Code section
42 224.2(e)(1). The circumstances that may provide reason to know the child is

1 an Indian child ~~include the following:~~ are those set forth in Welfare and
2 Institutions Code section 224.2(d) and rule 5.481(b).

3
4 (A) ~~The child or person having an interest in the child, including an Indian~~
5 ~~tribe, an Indian organization, an officer of the court, a public or private~~
6 ~~agency, or a member of the child's extended family, informs or~~
7 ~~otherwise provides information suggesting that the child is an Indian~~
8 ~~child to the court or to any person listed in (5);~~

9
10 (B) ~~The residence or domicile of the child, the child's parents, or an Indian~~
11 ~~eustodian is in a predominantly Indian community; or~~

12
13 (C) ~~The child or the child's family has received services or benefits from a~~
14 ~~tribe or services that are available to Indians from tribes or the federal~~
15 ~~government, such as the U.S. Department of Health and Human~~
16 ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~
17 ~~Needy Families benefits.~~

18
19 **(d) Emergency proceedings**

20
21 In an emergency proceeding as defined in (a)(2), the following requirements apply
22 to the proceeding in addition to the applicable requirements of Probate Code
23 sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062.

24
25 (1) If a petition for appointment of a temporary guardian or conservator of the
26 person of the child is filed, the petition must meet the requirements in rule
27 5.484(a) of these rules for a petition requesting emergency placement.

28
29 (2) If a petition for termination of a temporary guardianship or conservatorship
30 of the person of the child is filed, the requirements of rule 5.484(b) apply.

31
32 (3) If the court considers extending the time for the termination of the powers of
33 a temporary guardian or conservator of the person of the child, it must first
34 make the determinations required by rule 5.484(c).

35
36 **(ee) Notice**

37
38 If, at any time after the filing of a petition for appointment of a guardian or
39 conservator for a minor child, the court or petitioner knows or has reason to know,
40 within the meaning of ~~Probate Code sections 1449 and 1459.5 and Welfare and~~
41 ~~Institutions Code section 224.3(b), 224.2(d) and rule 5.481(b) of these rules,~~ that an
42 Indian child is involved, the petitioner and the court must notify the child's parents
43 or ~~legal~~ previously appointed guardian of the person, and Indian custodian, if any,

1 and the Indian child's tribe, of the pending proceeding and the right of the tribe to
2 intervene, as provided in rule 5.481(c), follows:

3
4 (1) — ~~Notice to the Indian child's parents, Indian custodian, and Indian tribe of the~~
5 ~~commencement of a guardianship or conservatorship must be given by~~
6 ~~serving copies of the completed *Notice of Child Custody Proceeding for*~~
7 ~~*Indian Child* (form ICWA-030), the petition for appointment of a guardian or~~
8 ~~conservator, and all attachments, by certified or registered mail, fully prepaid~~
9 ~~with return receipt requested.~~

10
11 (2) — ~~The petitioner and his or her attorney, if any, must complete the *Notice* and~~
12 ~~the petitioner must date and sign the declaration. If there is more than one~~
13 ~~petitioner, the statements about the child's ancestors and background~~
14 ~~provided in the *Notice of Child Custody Proceeding for Indian Child* (form~~
15 ~~ICWA-030) must be based on all information known to each petitioner, and~~
16 ~~all petitioners must sign the declaration.~~

17
18 (3) — ~~When the petitioner is represented by an attorney in the proceeding, the~~
19 ~~attorney must serve copies of the *Notice of Child Custody Proceeding for*~~
20 ~~*Indian Child* (form ICWA-030) in the manner described in (1) and sign the~~
21 ~~declaration of mailing on the *Notice*.~~

22
23 (4) — ~~When the guardianship or conservatorship petitioner or petitioners are not~~
24 ~~represented by an attorney in the proceeding, the clerk of the court must serve~~
25 ~~the *Notice* in the manner described in (1) and sign the certificate of mailing~~
26 ~~on the *Notice*.~~

27
28 (5) — ~~The original of all *Notices of Child Custody Proceeding for Indian Child*~~
29 ~~(form ICWA-030) served under the act, and all return receipts and responses~~
30 ~~received, must be filed with the court before the hearing.~~

31
32 (6) — ~~Notice to an Indian child's tribe must be sent to the tribal chairperson unless~~
33 ~~the tribe has designated another agent for service.~~

34
35 (7) — ~~Notice must be served on all tribes of which the child may be a member or~~
36 ~~eligible for membership. If there are more tribes or bands to be served than~~
37 ~~can be listed on the last page of the *Notice*, the additional tribes or bands may~~
38 ~~be listed on an *Attachment to Notice of Child Custody Proceeding for Indian*~~
39 ~~*Child* (form ICWA-030(A)).~~

40
41 (8) — ~~Notice under the act must be served whenever there is any reason to know~~
42 ~~that the child is or may be an Indian child and for every hearing after the first~~

1 hearing unless and until it is determined that the act does not apply to the
2 proceeding.

3
4 (9) — If, after a reasonable time following the service of notice under the act — but
5 in no event less than 60 days — no determinative response to the *Notice of*
6 *Child Custody Proceeding for Indian Child* (form ICWA-030) is received,
7 the court may determine that the act does not apply to the proceeding unless
8 further evidence of its applicability is later received.

9
10 (10) — If an Indian child’s tribe intervenes in the proceeding, service of the *Notice of*
11 *Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer
12 required, and subsequent notices to the tribe may be sent to all parties in the
13 form and in the manner required under the Probate Code and these rules. All
14 other provisions of the act, this rule, and rules 5.480 through 5.487 continue
15 to apply.

16
17 (11) — Notice under the act must be served in addition to all notices otherwise
18 required for the particular proceeding under the provisions of the Probate
19 Code.

20
21 **(d) — Duty of inquiry**

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23 (1) — The court, a court investigator or county officer appointed to conduct an
24 investigation under Probate Code section 1513 or 1826, a petitioner, and any
25 appointed temporary or general guardian or conservator of the person of a
26 minor child each have an affirmative and continuing duty to inquire whether
27 the child involved in the matters identified in (b)(1) is or may be an Indian
28 child.

29
30 (2) — Before filing his or her petition, the petitioner must ask the child involved in
31 the proceeding, if the child is old enough, and the parents, any other legal
32 guardian, and any Indian custodian, whether the child is or may be an Indian
33 child, and must complete items 1c and 8 of the *Guardianship Petition — Child*
34 *Information Attachment* (form GC-210(CA)) and attach it to his or her
35 petition.

36
37 (3) — At the first personal appearance by a parent or previously appointed legal
38 guardian at a hearing in a guardianship or conservatorship, the court must if
39 requested by petitioner, or may on its own motion, order the parent or legal
40 guardian to complete a *Parental Notification of Indian Status* (form ICWA-
41 020) and deliver the completed form to the petitioner.
42

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

6
7 ~~(5) If the court or county investigator, petitioner, appointed guardian or~~
8 ~~conservator, or the attorney for a petitioner or appointed guardian or~~
9 ~~conservator, knows or has reason to know that an Indian child is involved in~~
10 ~~the proceeding, he or she must make further inquiry as soon as practicable~~
11 ~~by:~~

12
13 ~~(A) Interviewing the parents, Indian custodian, and “extended family~~
14 ~~members” as defined in 25 United States Code section 1903(2), to~~
15 ~~gather the information listed in Probate Code section 1460.2(b)(5) that~~
16 ~~is required to complete the *Notice of Child Custody Proceeding for*~~
17 ~~*Indian Child* (form ICWA-030);~~

18
19 ~~(B) Contacting the U.S. Department of the Interior, Bureau of Indian~~
20 ~~Affairs and the California Department of Social Services for assistance~~
21 ~~in identifying the names and contact information of the tribes of which~~
22 ~~the child may be a member or eligible for membership; and~~

23
24 ~~(C) Contacting the tribes and any other person who reasonably can be~~
25 ~~expected to have information regarding the child’s tribal membership~~
26 ~~status or eligibility for membership.~~

27
28 ~~(6) If the court knows or has reason to know that an Indian child is involved in~~
29 ~~the proceeding, the court may direct any of the persons named in (5) to~~
30 ~~conduct the inquiry described in that paragraph.~~

31
32 ~~(7) The circumstances that may provide reason to know the child is an Indian~~
33 ~~child include the following:~~

34
35 ~~(A) The child or person having an interest in the child, including an Indian~~
36 ~~tribe, an Indian organization, an officer of the court, a public or private~~
37 ~~agency, or a member of the child’s extended family, informs or~~
38 ~~otherwise provides information suggesting that the child is an Indian~~
39 ~~child to the court or to any person listed in (5);~~

40
41 ~~(B) The residence or domicile of the child, the child’s parents, or an Indian~~
42 ~~custodian is in a predominantly Indian community; or~~

1
2
3
4
5

~~(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.~~

Guardianship of (all children's names): _____

This child's name: _____

Fill out a separate copy of this form for **each child** for whom your petition asks the court to appoint a guardian.

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

The petition asks the court to appoint 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 mm/dd/yyyy

b. Child's current address: _____

c. **Indian child inquiry (Complete only if your petition asks the court to appoint a guardian of this child's person or person and estate. If your petition asks the court to appoint a guardian of this child's estate only, skip this item and go to item 1d.)**

I have asked whether the child is or may be a member of one or more Indian tribes recognized by the federal government, or eligible for membership in such a tribe and the biological child of a tribal member. Form ICWA-010(A), *Indian Child Inquiry Attachment*, is attached to this form.

(For more information about your duties under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) and California law, including making the inquiry and completing form ICWA-010(A), if the child is or may be an Indian child, see Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child (form ICWA-005-INFO).)

d. Is this child married? Yes No Never married If you checked "No," was this child **married in the past** 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 benefits? Yes No I don't know (If you checked "Yes," fill in below.)

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

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

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



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

Case Number: _____

This child's name: _____

1 Tell the court about this child (continued)

h. (Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child 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 State Hospitals.) Write the name of the institution here:

2 List the names and addresses of this child's relatives and all 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	_____	_____

(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.)



This child's name: _____

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

Relationship	Name	Home Address (Street, City, State, Zip)
Spouse <i>(Guardianship of the estate only)</i>	_____	_____
Person nominated as guardian of this child <i>(if someone other than a proposed guardian named in 3)</i>	_____	_____
Indian custodian <i>(if any)</i>	_____	_____
Child's tribe <i>(if any and if known)</i>	_____	_____

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 relationship(s) to the child of each proposed relative guardian): _____

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

c. Did the child's parent(s) nominate the proposed guardian(s)? Yes No I don't know
(If you checked "Yes," attach the written nomination as Attachment 3c.)

d. Does this child currently live with the proposed guardian(s)? Yes No I don't know
If "Yes," how long has the child lived with the proposed guardian(s)? (years, months): _____

e. If the court approves the guardianship, will this child live with the proposed guardian(s)? Yes No

f. Does/do the proposed guardian(s) currently plan to adopt this child? Yes No I don't know

4 Explain why appointing a guardian for the child named in 1 would be in the child's best interest:

(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: Guardianship—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 Explain why appointing the person named in 3 to be this child's guardian would be in the child's best interest:

(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 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)

- 6 a. Does one or do both of this child's parents agree that the court needs to appoint a guardian for the child?
- (1) Father: Yes No I don't know
- (2) Mother: Yes No I don't know
- b. Does one or do both of this child's parents agree that the person named in 3 should be the child's guardian?
- (1) Father: Yes No I don't know
- (2) Mother: Yes No I don't know

7 Check this box if you (the petitioner) are not the person named in 3, and fill in below.

Your relationship to this child:

Relative (specify relationship): _____

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.



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 form ICWA-010(A), *Indian Child Inquiry Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

Form 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*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

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

1. Try to find contact information for the child's parents or other legal guardian, the child's Indian custodian (if the child is living with an Indian person other than a parent), the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents, any other legal guardian, and the child's Indian custodian and other available family members and ask them (and the child, if he or she is old enough) 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 tribe or tribes?
 - c. Does the child, or do the child's parents, live in Indian country, including a reservation, rancheria, Alaska Native village, or other tribal trust land?
 - d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
 - e. Does the child or any of the child's 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 form ICWA-010(A), *Indian Child Inquiry Attachment*, and attached it to the petition. This requirement does not apply to a petition for appointment of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602.

After taking the steps listed above to find out whether the child is an Indian child, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case. You have reason to believe the child is an Indian child if any of the people you question answers yes to any of your questions. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction.

Your contacts with the tribe or tribes should include:

- (1) Contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act, which is published in the Federal Register, by telephone, facsimile, or email; and
- (2) Sharing with the tribe or tribes any information identified by the tribe as necessary for the tribe to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

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

Following your inquiry about the child's Indian status and contacts with the child's tribe or tribes, if necessary, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, if you know or have reason to know the child is an Indian child.

(continued on next page)

Page 1 of 2

Some tips to help you figure out if you have a reason to know the child is an Indian child.

You have reason to know:

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 facts that would 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 know or have reason to know that the child is an Indian child, you must send the Notice to the following:

1. Child's parents or other legal guardian, 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, under state law, or if the parent asked that person 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).

Tips 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 (see 25 C.F.R. § 23.12) a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can access the Federal Register list and other resources related to ICWA on the Bureau of Indian Affairs website at www.bia.gov/bia/ois/dhs/.

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 or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 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 child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birth date, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

How do you send the Notice and prove to the court that you have done so?

If you have an attorney, the attorney will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the Notice, but you must deliver copies of the Notice and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then do step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
 - a. Your petition;
 - b. Form ICWA-010(A), *Indian Child Inquiry Attachment*; and
 - c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
 - a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A);
 - b. All return receipts 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 if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)