



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 29, 2016

Title	Agenda Item Type
Indian Child Welfare Act: Technical Amendment to Rule 5.482	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.482	August 15, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 21, 2016
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A Juhas, Cochair	Ann Gilmour, 415-865-4207
Probate and Mental Health Advisory Committee	ann.gilmour@jud.ca.gov
Hon. John H. Sugiyama, Chair	
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair	
Hon. Dennis M. Perluss, Cochair	

Executive Summary

In response to the California Supreme Court decision in *In re Abigail A. et al.* (July 14, 2016, S220187) – Cal. 4th – [2016 WL 3755924], the Tribal Court–State Court Forum (forum) and the Family and Juvenile Law Advisory Committee and Probate and Mental Health Advisory Committee (committees) recommend amending California Rules of Court, rule 5.482, by deleting subdivision (c) of that rule, which the Supreme Court held is invalid.

Recommendation

The forum and committees recommend that, effective August 15, 2016 unless the finality of the *In re Abbigail A. et al.* is extended, the Judicial Council amend rule 5.482, by deleting subdivision (c) of the rule and re-designating the remaining subdivisions. The August 15, 2016 effective date was chosen because it is the date upon which the *In re Abbigail A. et al.* decision will become final, unless the finality of the decision is extended by the court.

The text of the amended rule is attached at page 4.

Previous Council Action

In 2006, the Legislature enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which incorporated various provisions of the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) into the California Family Code, Probate Code, and Welfare and Institutions Code. To implement SB 678, the Judicial Council adopted comprehensive ICWA rules and forms, including rule 5.482 effective January 1, 2008.¹ Rule 5.482 has had no substantive amendments, since it was adopted.

Rationale for Recommendation

Rule 5.482(c) currently states that, if a tribe responds to a notice sent in accordance with the Indian Child Welfare Act that the child is eligible for membership in the tribe if certain steps are followed, the court is required to treat the child as an Indian child and direct the individual or agency to undertake active efforts to secure tribal membership for the child. The rule, as currently drafted, applies even if the child did not meet the statutory definition of “Indian child,” which is limited to a child who is “(a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. §1903(4)).

On July 14, 2016, the California Supreme Court issued its decision in *In re Abbigail A. et al.*² That decision will become final on August 15, 2016 unless the finality of the decision is extended by the court. The court held that Cal. Rules of Court, rule 5.482(c), is inconsistent with federal and state law and the legislature’s intent, and thus invalid:

...As we have explained, “[t]he primary objective of Senate Bill No. 678,” which incorporated ICWA’s requirements and definitional provisions into California statutory law, “was to *increase compliance* with ICWA.” [cite omitted]... Nothing in the bill’s language or history demonstrates the Legislature intended to apply ICWA’s requirements to, or require membership applications be made on behalf of, children who are not Indian children as defined in ICWA. Instead, the Legislature left cases not involving Indian children subject to

¹ The rules and forms were adopted at the October 26, 2007, Judicial Council meeting as item A27 on that agenda available at www.courts.ca.gov/documents/102607ItemA27.pdf

² The decision can be found at www.courts.ca.gov/opinions/documents/S220187.PDF

the statutes generally applicable in dependency proceedings. Rule 5.482(c) is inconsistent with those statutes, and with the Legislature’s intent, and thus invalid. (Page 8) (*In re Abbigail A. et al.* (July 14, 2016, S220187) – Cal.4th – [2016 WL 3755924].)

Comments, Alternatives Considered, and Policy Implications

This proposal has not been circulated for public comment. The forum and committee cochairs have concluded that, in light of the Supreme Court’s decision, there is no alternative but to delete subdivision (c) of rule 5.482. Although the Supreme Court’s decision articulated substantive law, the deletion of subdivision (c) to conform the rule to the law is technical in nature. It is therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2)). The forum and committees have further concluded that urgent action is needed to avoid any confusion caused by having a rule of court that is inconsistent with the law as determined by the Supreme Court.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs or operational impacts are expected as a result of this recommendation. In fact, costs will likely decrease by removing the confusion inherent in having a rule of court that has been determined to be invalid.

Attachments and Links

1. Cal. Rules of Court, rule 5.482, at page 4.
2. *In re Abbigail A et al.*, www.courts.ca.gov/opinions/documents/S220187.PDF

Rules 5.482 of the California Rules of Court is amended, effective August 15, 2016, to read:

1 **Rule 5.482. Proceedings after notice**

2
3 **(a)–(b) * * ***

4
5 **~~(e) — When there is information or response from a tribe that requires additional~~**
6 **~~steps~~**

7
8 ~~If after notice has been provided as required by federal and state law a tribe~~
9 ~~responds indicating that the child is eligible for membership if certain steps are~~
10 ~~followed, the court must proceed as if the child is an Indian child and direct the~~
11 ~~appropriate individual or agency to provide active efforts under rule 5.484(c) to~~
12 ~~secure tribal membership for the child.~~

13
14
15 **~~(d)~~(c) When there is no information or response from a tribe**

16
17 * * *

18 **~~(e)~~(d) Intervention**

19
20 * * *

21 **~~(f)~~(e) Posthearing actions**

22
23 * * *

24 **~~(g)~~(f) Consultation with tribe**

25
26 * * *

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