



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

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Title	Agenda Item Type
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484, 5.485, and 5.486; renumber 5.487; adopt forms ICWA-070, ICWA-080, and ICWA-90; revise forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600	January 1, 2020
Recommended by	Date of Report
Tribal Court–State Court Forum Hon. Abby Abinanti, Cochair Hon. Suzanne N. Kingsbury, Cochair	September 5, 2019
Family and Juvenile Law Advisory Committee	Contact
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov

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## **Executive Summary**

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend adopting a new rule of court, amending 16 other rules, creating 3 new forms for Indian Child Welfare Act (ICWA) proceedings, and revising 27 forms for ICWA and juvenile court dependency proceedings to comply with statutory changes in Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), as well as changes to governing federal regulations and guidelines. The proposal also addresses technical amendments and corrections and responds to several appellate court decisions regarding ICWA rules and forms.

## **Recommendation**

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2020:

1. Adopt rule 5.484 to create a rule related specifically to emergency proceedings in ICWA cases consistent with federal regulations and revised state law;
2. Amend rule 5.480 to reflect the four distinct proceedings set out in the federal regulations and AB 3176;
3. Amend rule 5.481 to implement changed inquiry and notice requirements;
4. Amend rule 5.482 to reflect the changes in ICWA noticing requirements;
5. Amend rule 5.483 to conform the jurisdictional and transfer provisions to the new language of Welfare and Institutions Code section 305.5;
6. Amend rules 5.484 and 5.485 to revise the analysis of placement preferences and active efforts to reflect the language of the new federal regulations and renumber as rules 5.485 and 5.486, respectively;
7. Amend rules 5.485 and 5.486 to reflect requirements regarding active efforts and compelling reasons not to terminate parental rights and renumber as rules 5.486 and 5.487, as rules respectively;
8. Amend rule 5.550 to reflect the limitations on continuances and time requirements found in AB 3176;
9. Amend rule 5.570 to reflect the distinction between reasonable and active efforts;
10. Amend rule 5.668 to reflect the initial ICWA inquiry that must be made by the court;
11. Amend rule 5.674 to include the findings that revised Welfare and Institutions Code section 309(a)(3) requires the court make on the record at a detention hearing;
12. Amend rule 5.676 to reflect the detention requirements for an Indian child;

13. Amend rule 5.678 to reflect the specific requirements when the court knows or has reason to know the child is an Indian child, consistent with the requirements of AB 3176;
14. Amend rule 5.690 to reference the placement preference requirements and time requirements to get to disposition when the child is an Indian child;
15. Amend rule 5.725 to conform to the Court of Appeal decision in *In re J.Y.* (2018) 30 Cal.App.5th 712;
16. Renumber rule 5.487 as rule 5.488;
17. Revise form ICWA-005-INFO to reflect the revised requirements of AB 3176;
18. Revise form ICWA-020 to have the questions asked of parents more closely follow the inquiry required in the federal regulations and AB 3176;
19. Revise form ICWA-030 to add a section for information on direct lineal ancestors in response to the Court of Appeal decision in *In re E.H.* (2018) 26 Cal.App.5th 1058;
20. Revise form ICWA-040 to simplify the purpose of the form to designate a tribal representative;
21. Revise form ICWA-060 to conform the language to the requirements of AB 3176 concerning what is good cause not to transfer a case to tribal court;
22. Adopt forms ICWA-070, ICWA-080, and ICWA-090 to create a process to seek return of an Indian child removed on an emergency basis as mandated by AB 3176;
23. Revise forms JV-100, JV-110, and JV-600 to clarify the way ICWA inquiry is made and attested to;
24. Revise form JV-320 findings required by AB 3176 when a child is an Indian child;
25. Revise form JV-405 to include required inquiry and findings about Indian status;
26. Revise form JV-410 to include the required ICWA findings regarding inquiry, ICWA status, placement preferences, and active efforts;
27. Revise form JV-412 to reflect ICWA notice requirements;
28. Revise forms JV-415 and JV-418 to add findings related to active efforts;
29. Revise form JV-421 to reflect ICWA evidentiary requirements;
30. Revise forms JV-430 and JV-432 to add findings regarding active efforts;

31. Revise forms JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, and JV-457 to add required ICWA findings and orders.

The text of the rules is attached at pages 10–36; the proposed forms are attached at pages 37–140.

### **Relevant Previous Council Action**

The federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA) was enacted in 1978 and establishes minimum federal standards that apply in all state court proceedings involving an Indian child where the child could be involuntarily placed in the custody of a nonparent, or where the parental rights of a parent could be terminated. The Judicial Council has acted numerous times to implement and improve compliance with the Indian Child Welfare Act, including:

- 1995 amendments to former rules 1431, 1432, and 1463 to assure proper notice consistent with ICWA and adopted former rule 1439;
- 1998 amendments to former rule 1439 and forms JV-100 and JV-110 to better identify Indian children and comply with ICWA; and
- 2000 and 2005 amendments to former rule 1439 and revisions to various juvenile and family law forms to clarify when and how notice should be given under ICWA.

In 2006, California enacted SB 678 to substantially incorporate provisions of ICWA into the Family Code, Probate Code, and Welfare and Institutions Code. Following enactment of SB 678, the Judicial Council adopted implementing rules of court and forms.<sup>1</sup>

The rules and forms have not been comprehensively amended or revised since that time. Some of the rules and forms have been updated, but only when necessary to comply with legislative changes or appellate court decisions. Other nonurgent suggestions for corrections or improvements to the rules and forms have been noted, following the practice that these nonurgent issues can be addressed when the rules and forms are being amended or revised for other reasons.

### **Analysis/Rationale**

In 2016, the federal government for the first time since 1979 finalized comprehensive regulations and issued updated guidelines implementing ICWA.<sup>2</sup> In some areas, the regulations and guidelines were inconsistent with existing California law and practice. In addition, in 2017, the

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<sup>1</sup> That rules and forms proposal was adopted by the Judicial Council at a meeting on October 26, 2007 (agenda item A27) and is available at [www.courts.ca.gov/documents/102607ItemA27.pdf](http://www.courts.ca.gov/documents/102607ItemA27.pdf).

<sup>2</sup> See 25 C.F.R. § 23, [www.ecfr.gov/cgi-bin/retrieveECFR?gp=&r=PART&n=25y1.0.1.4.13](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&r=PART&n=25y1.0.1.4.13); *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), [www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf](http://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf).

California ICWA Compliance Task Force presented its report to Attorney General Xavier Becerra.<sup>3</sup> The task force report identified various concerns from tribes and tribal representatives about how ICWA was being interpreted and applied in California.

On September 27, 2018, Governor Brown signed AB 3176 to (1) address issues identified in the task force report and (2) conform California law to the requirements of the new federal ICWA regulations and guidelines. The bill makes important revisions to California law including clarifying “the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child’s possible status as an Indian child” and revising “the various notice requirements that are mandated during an Indian child custody proceeding, including a proceeding for an emergency removal of an Indian child from the custody of his or her parents or Indian custodian.”<sup>4</sup> The bill directs the Judicial Council to adopt any forms or rules of court necessary to implement these provisions.

While the new federal ICWA regulations and guidelines apply to all proceedings governed by ICWA, including those that may arise under the Family Code and Probate Code, AB 3176 only amends the Welfare and Institutions Code. In some instances, those provisions of the Welfare and Institutions Code are incorporated by reference in the Family Code and Probate Code. To avoid multiple rules amendments and forms revisions, this proposal includes changes to ICWA rules and forms that apply to all case types governed by ICWA required by the federal regulations and guidelines, as well as revisions to juvenile rules and forms that are specifically required by AB 3176. The proposal also encompasses amendments to rules and revisions to forms required by appellate decisions<sup>5</sup> and suggested by commenters since the rules and forms were last amended or revised.

Finally, while the identified rules and forms were being amended or revised, they were examined to determine whether amendments or revisions were appropriate in order to be more gender neutral consistent with the spirit of the Gender Recognition Act (Sen. Bill 179; Atkins, Stats. 2017, ch. 853). The questions about a child’s sex found at item 1e of *Juvenile Dependency Petition (Version One)* (form JV-100), item 1b of *Juvenile Dependency Petition (Version Two)* (form JV-110), and *Juvenile Wardship Petition* (form JV-600) were identified as being high priority to assess whether it would be possible to change the term to “gender.” The forum and committee concluded that these should be changed from sex to gender.

### **Policy implications**

The proposal will benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act and conforming California practice to the requirements of federal and state law, thus reducing confusion and appeals.

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<sup>3</sup> See [www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf](http://www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf).

<sup>4</sup> Assem. Bill 3176 (Waldron); Stats. 2018, ch. 833.

<sup>5</sup> *In re E.H.* (2018) 26 Cal.App.5th 1058; *In re J.Y.* (2018) 30 Cal.App.5th 712.

## **Comments**

The proposal circulated for public comment from April 11 through June 10, 2019, as part of the spring 2019 invitation-to-comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys and distributed through the California Department of Social Services Office of Tribal Affairs list serve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

Seventeen comments were received. None of the comments opposed the proposal. Six did not indicate whether they approved, four approved if amended, and seven approved of the proposal.

Among the commenters that approved the proposal without modification were the California Lawyers Association Executive Committee of the Family Law Section, the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the Marin County Counsel's Office, and the Superior Court of San Bernardino County.

The invitation to comment sought specific input on several issues and revised the proposal based on comments in six broad categories:

- Inquiry and notice
- Proceedings after notice
- Jurisdiction and transfer
- Emergency removal and detention
- Active efforts
- Placement preferences

Many of the comments were technical corrections and grammatical suggestions. Many, but not all, were accepted. Many other suggestions that were not controversial and strengthened and clarified the proposal by better conforming it to the statutes were also accepted and incorporated into the proposal. The revisions made in response to the comments are consistent with rule 10.22(d)(2). Several of the comments were provided in red-line tracked changes to the original proposal and in other formats not easily copied verbatim into the comment chart. The full text of those comments is attached as Appendix A. The length of the comment chart makes it difficult to follow, so a summary of revisions in response to the comments, and the comments that were not followed, are arranged by topic and attached as Appendix B.

### ***Inquiry and notice***

The proposal was revised to clarify in rules 5.481 and 5.668 at which hearings, of whom, and what specific questions need to be asked as part of ICWA inquiry; when and how information on

a child's status would be shared with tribes outside of formal notice; language regarding tribal determinations of membership issues; exemptions to notice timing that had inadvertently been removed from the rules were reinstated; and the findings options related to Indian status.

An Advisory Committee comment was added to rule 5.481 to reference the provisions in the federal regulations and the Welfare and Institutions Code that provide detailed recommendations for contacting tribes and fulfilling the obligations of inquiry, due diligence, information sharing, and notice to tribes.

Consideration was given to a comment about whether notices for continued hearings needed to be sent by registered mail, return receipt requested, and the forum and committee concluded that consistent with existing case law, notice by registered mail, return receipt requested, was only required for an initial hearing date.

The forum and committee considered the suggestion of one commenter that all relatives present in court should be ordered by the court to complete form ICWA-020 as part of the court's ICWA inquiry, but it was ultimately concluded that this was inconsistent with the statutory inquiry scheme and impractical. Similarly, another commenter suggested that the rules should require that tribes be re-noticed using form ICWA-030 whenever new information relevant to a child's Indian ancestry was received. The forum and committee concluded that this was inconsistent with the statutory changes that limited when formal ICWA notice using form ICWA-030 was required.

Forms JV-405 (item 12) and JV-410 (item 10) were revised to incorporate the statutorily mandated findings and orders regarding further inquiry and due diligence for ICWA inquiry.

### ***Proceedings after notice***

The proposal was revised to add back in to rule 5.482 several exceptions to the general timing requirements that had been removed from the rule. Commenters noted that the exceptions were still relevant notwithstanding the revisions of AB 3176. The proposal was also required to add reference to the statutory requirements for proof of notice and to incorporate the findings and orders on issues of adequacy of inquiry and notice, and the child's Indian status, authorized by the statute.

### ***Jurisdiction and transfer***

The proposal was revised by incorporating into rule 5.483 the requirement to notify a tribal court when a transfer petition related to that court is filed and asking the tribal court for a timely response. The proposal also incorporated the statutory language on factors that cannot be considered as good cause not to transfer to tribal court. Rule references in the Advisory Committee comment were updated to reflect the pending rule changes.

*Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) was revised to reference the need for an evidentiary hearing on a contested transfer request.

### ***Emergency removal and detention***

The proposal was revised by incorporating into rules 5.483 and 5.678 the statutory language regarding findings required to support an emergency removal and detention of an Indian child.

Rule 5.484 was revised to refer to the relevant general civil rules that govern ex parte proceedings and apply in juvenile court to reduce confusion.

Revisions were made to rules 5.550 and 5.678 to incorporate the statutory time frames limiting emergency removals of an Indian child.

Rule 5.676 was revised to incorporate the statutory requirement that the court's findings to support detention of an Indian child must be made on the record.

Form JV-410 (item 15) was revised to incorporate the statutorily mandated court findings to support detention of an Indian child.

### ***Active efforts***

Revisions were made to rule 5.570 to incorporate the statutory requirement for active efforts findings instead of reasonable efforts findings to support termination of reunification services when the case involves an Indian child.

Revisions were made to rule 5.678 to reflect the statutory description of active efforts and to provide the court with the alternative to find that active efforts have been successful.

Forms JV-418 (item 3), JV-421 (item 5), JV-430 (item 11), JV-432 (item 7), JV-433 (item 7), JV-435 (item 11), JV-438 (item 3), JV-440 (item 12), JV-442 (item 3), JV-455 (item 12), and JV-457 (item 4) were revised to conform the description of active efforts to the language in the statute and to add an alternative finding that active efforts have been either successful or unsuccessful.

### ***Placement preferences***

Rules 5.484 and 5.678 were revised to incorporate statutory language regarding considerations and evidentiary standards governing the placement of an Indian child, and the ongoing nature of the placement preference considerations.

Forms JV-320 (item 17), JV-410 (item 16), JV-421 (item 12), JV-432 (item 5), JV-433 (item 5), JV-437 (item 5), JV-438 (item 8), JV-442 (item 8), JV-443 (item 5), and JV-457 (item 6) were revised to change the language regarding the extent of efforts that must be made to find a placement within the placement preferences for an Indian child from an "exhaustive" to a "diligent" search to conform to the statutory language and to incorporate language regarding the evidentiary standard required to find good cause to depart from the placement preferences.



### **Alternatives considered**

The forum and committee carefully considered whether all of the proposed revisions were necessary and determined that they were important to reducing confusion with respect to ICWA requirements. The forum and committee carefully considered each of the comments received, accepted many of them and determined that the current proposal is appropriate to implement the requirements of AB 3176.

### **Fiscal and Operational Impacts**

There will be fiscal and operational impacts as courts, justice partners, and litigants adjust to the new requirements and update their existing forms and practices. However, these changes 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.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.480–5.488, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725, at pages 10–36
2. Forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, ICWA-070, ICWA-080, ICWA-090, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600, at pages 37–140
3. Chart of comments, at pages 141–193
4. Appendix A: Full text of comments of Agua Caliente Band of Cahuilla Indians, Children’s Law Center of California, and Superior Court of San Diego County, at pages 194–269
5. Appendix B: Summary of comments and responses by topic, pages 270–281
6. Link A: Assembly Bill 3176 (Stats. 2018, ch. 833),  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB3176](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB3176)

Rule 5.484 of the California Rules of Court is adopted, rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, and 5.690 are amended, rules 5.484, 5.485, and 5.486 are amended and renumbered, and rule 5.487 is renumbered, effective January 1, 2020, to read:

1 **Rule 5.480. Application**

2  
3 This chapter addressing the Indian Child Welfare Act (~~25 United States Code section~~  
4 U.S.C. § 1901 et seq.) as codified in various sections of the ~~California~~ Family Code,  
5 Probate Code, and Welfare and Institutions Codes, applies to most proceedings involving  
6 Indian children that may result in an involuntary foster care placement; guardianship or  
7 conservatorship placement; custody placement under Family Code section 3041;  
8 declaration freeing a child from the custody and control of one or both parents;  
9 termination of parental rights; preadoptive placement; or adoptive placement. This  
10 chapter applies to:

11  
12 \* \* \*

13  
14 **Rule 5.481. Inquiry and notice**

15  
16 **(a) Inquiry**

17  
18 The court, court-connected investigator, and party seeking a foster-care placement,  
19 guardianship, conservatorship, custody placement under Family Code section 3041,  
20 declaration freeing a child from the custody or control of one or both parents,  
21 termination of parental rights, preadoptive placement, or adoption have an  
22 affirmative and continuing duty to inquire whether a child is or may be an Indian  
23 child in all proceedings identified in rule 5.480. The court, court-connected  
24 investigator, and party include the county welfare department, probation  
25 department, licensed adoption agency, adoption service provider, investigator,  
26 petitioner, appointed guardian or conservator of the person, and appointed  
27 fiduciary.

- 28  
29 (1) The party seeking a foster-care placement, guardianship, conservatorship,  
30 custody placement under Family Code section 3041, declaration freeing a  
31 child from the custody or control of one or both parents, termination of  
32 parental rights, preadoptive placement, or adoption must ask the child, if the  
33 child is old enough, and the parents, Indian custodian, or legal guardians,  
34 extended family members, others who have an interest in the child, and  
35 where applicable the party reporting child abuse or neglect, whether the child  
36 is or may be an Indian child and whether the residence or domicile of the  
37 child, the parents, or Indian custodian is on a reservation or in an Alaska  
38 Native village, and must complete the *Indian Child Inquiry Attachment* (form  
39 ICWA-010(A)) and attach it to the petition unless the party is filing a  
40 subsequent petition; and there is no new information.  
41

1 (2) At the first appearance by a parent, Indian custodian, or guardian, and all  
2 other participants in any dependency case; or in juvenile wardship  
3 proceedings in which the child is at risk of entering foster care or is in foster  
4 care; or at the initiation of any guardianship, conservatorship, proceeding for  
5 custody under Family Code section 3041, proceeding to terminate parental  
6 rights, proceeding to declare a child free of the custody and control of one or  
7 both parents, preadoptive placement, or adoption proceeding; and at each  
8 hearing that may culminate in an order for foster care placement, termination  
9 of parental rights, preadoptive placement or adoptive placement, as described  
10 in Welfare and Institutions Code section 224.1(d)(1), or that may result in an  
11 order for guardianship, conservatorship, or custody under Family Code  
12 section 3041; the court must:

13  
14 (A) Ask each participant present whether the participant knows or has  
15 reason to know the child is an Indian child;

16  
17 (B) Instruct the parties to inform the court if they subsequently receive  
18 information that provides reason to know the child is an Indian child;  
19 and

20  
21 (C) Order the parent, Indian custodian, or guardian, if available, to  
22 complete *Parental Notification of Indian Status* (form ICWA-020).

23  
24 (3) \* \* \*

25  
26 (4) If the social worker, probation officer, licensed adoption agency, adoption  
27 service provider, investigator, or petitioner knows or has reason to know or  
28 believe that an Indian child is or may be involved, that person or entity must  
29 make further inquiry as soon as practicable by:

30  
31 (A) Interviewing the parents, Indian custodian, and “extended family  
32 members” as defined in 25 United States Code sections ~~1901 and~~  
33 ~~1903(2)~~, to gather the information listed in Welfare and Institutions  
34 Code section ~~224.2(a)(5)~~ 224.3(a)(5), Family Code section 180(b)(5),  
35 or Probate Code section 1460.2(b)(5), ~~which is required to complete the~~  
36 ~~*Notice of Child Custody Proceeding for Indian Child* (form ICWA-~~  
37 ~~030);~~

38  
39 (B) \* \* \*

40  
41 (C) Contacting the tribes and any other person ~~that~~ who reasonably can be  
42 expected to have information regarding the child’s membership status  
43 or eligibility. These contacts must at a minimum include the contacts

1                    and sharing of information listed in Welfare and Institutions Code  
2                    section 224.2(e)(3).

3  
4            (5) The petitioner must on an ongoing basis include in its filings a detailed  
5            description of all inquiries, and further inquiries it has undertaken, and all  
6            information received pertaining to the child's Indian status, as well as  
7            evidence of how and when this information was provided to the relevant  
8            tribes. Whenever new information is received, that information must be  
9            expeditiously provided to the tribes.

10  
11           (5) ~~The circumstances that may provide reason to know the child is an Indian~~  
12           ~~child include the following:~~

13  
14           (A) ~~The child or a person having an interest in the child, including an~~  
15           ~~Indian tribe, an Indian organization, an officer of the court, a public or~~  
16           ~~private agency, or a member of the child's extended family, informs or~~  
17           ~~otherwise provides information suggesting that the child is an Indian~~  
18           ~~child to the court, the county welfare agency, the probation department,~~  
19           ~~the licensed adoption agency or adoption service provider, the~~  
20           ~~investigator, the petitioner, or any appointed guardian or conservator~~

21  
22           (B) ~~The residence or domicile of the child, the child's parents, or an Indian~~  
23           ~~eustodian is or was in a predominantly Indian community; or~~

24  
25           (C) ~~The child or the child's family has received services or benefits from a~~  
26           ~~tribe or services that are available to Indians from tribes or the federal~~  
27           ~~government, such as the U.S. Department of Health and Human~~  
28           ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~  
29           ~~Needy Families benefits.~~

30  
31           (b) **Reason to know the child is an Indian child**

32  
33           (1) There is reason to know a child involved in a proceeding is an Indian child if:

34  
35           (A) A person having an interest in the child, including the child, an officer  
36           of the court, a tribe, an Indian organization, a public or private agency,  
37           or a member of the child's extended family informs the court the child  
38           is an Indian child;

39  
40           (B) The residence or domicile of the child, the child's parents, or Indian  
41           custodian is on a reservation or in an Alaska Native village;  
42

- 1                   (C) Any participant in the proceeding, officer of the court, Indian tribe,  
2                   Indian organization, or agency informs the court that it has discovered  
3                   information indicating that the child is an Indian child;  
4
- 5                   (D) The child who is the subject of the proceeding gives the court reason to  
6                   know he or she is an Indian child;  
7
- 8                   (E) The court is informed that the child is or has been a ward of a tribal  
9                   court; or  
10
- 11                  (F) The court is informed that either parent or the child possesses an  
12                  identification card indicating membership or citizenship in an Indian  
13                  tribe.  
14
- 15                  (2) When there is reason to know the child is an Indian child, but the court does  
16                  not have sufficient evidence to determine that the child is or is not an Indian  
17                  child, the court must confirm, by way of a report, declaration, or testimony  
18                  included in the record that the agency or other party used due diligence to  
19                  identify and work with all of the tribes of which there is reason to know the  
20                  child may be a member, or eligible for membership, to verify whether the  
21                  child is in fact a member or whether a biological parent is a member and the  
22                  child is eligible for membership. Due diligence must include the further  
23                  inquiry and tribal contacts discussed in (a)(4) above.  
24
- 25                  (3) Upon review of the evidence of due diligence, further inquiry, and tribal  
26                  contacts, if the court concludes that the agency or other party has fulfilled its  
27                  duty of due diligence, further inquiry, and tribal contacts, the court may:  
28
- 29                  (A) Find there is no reason to know the child is an Indian child and the  
30                  Indian Child Welfare Act does not apply. Notwithstanding this  
31                  determination, if the court or a party subsequently receives information  
32                  that was not previously available relevant to the child's Indian status,  
33                  the court must reconsider this finding; or  
34
- 35                  (B) Find it is known the child is an Indian child, and that the Indian Child  
36                  Welfare Act applies, and order compliance with the requirements of the  
37                  act, including notice in accordance with (c) below; or  
38
- 39                  (C) Find there is reason to know the child is an Indian child, order notice in  
40                  accordance with (c) below, and treat the child as an Indian child unless  
41                  and until the court determines on the record that the child is not an  
42                  Indian child.  
43

1 (4) A determination by an Indian tribe that a child is or is not a member of, or  
2 eligible for membership in, that tribe, or testimony attesting to that status by a  
3 person authorized by the tribe to provide that determination, must be  
4 conclusive. Information that the child is not enrolled, or is not eligible for  
5 enrollment in, the tribe is not determinative of the child’s membership status  
6 unless the tribe also confirms in writing that enrollment is a prerequisite for  
7 membership under tribal law or custom.  
8

9 **(c) Notice**

10  
11 (1) If it is known or there is reason to know ~~that~~ an Indian child is involved in a  
12 proceeding listed in rule 5.480, except for a wardship proceeding under  
13 Welfare and Institutions Code sections 601 and 602 et seq., the social worker,  
14 petitioner, or in probate guardianship and conservatorship proceedings, if the  
15 petitioner is unrepresented, the court, must send *Notice of Child Custody*  
16 *Proceeding for Indian Child* (form ICWA-030) to the parent or legal  
17 guardian and Indian custodian of an Indian child, and the Indian child’s tribe,  
18 in the manner specified in Welfare and Institutions Code section ~~224.2~~ 224.3,  
19 Family ~~Law~~ Code section 180, and Probate Code section 1460.2 for all initial  
20 hearings that may result in the foster care placement, termination of parental  
21 rights, preadoptive placement, or adoptive placement, or an order of  
22 guardianship, conservatorship, or custody under Family Code section 3041.  
23 For all other hearings, and for continued hearings, notice must be provided to  
24 the child’s parents, legal guardian or Indian custodian, and tribe in  
25 accordance with Welfare and Institutions Code sections 292, 293, and 295.  
26

27 (2) \* \* \*

28  
29 (3) The circumstances that may provide reason to know the child is an Indian  
30 child include the circumstances specified in ~~(a)(5)(b)(1)~~.

31  
32 (4) \* \* \*

33  
34 **Advisory Committee Comment**

35  
36 Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain  
37 detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence,  
38 information sharing, and notice under the Indian Child Welfare Act and state law.  
39

1 **Rule 5.482. Proceedings after notice**

2  
3 **(a) Timing of proceedings**

- 4  
5 (1) If it is known or there is reason to know ~~that~~ a child is an Indian child, ~~the~~ a  
6 court hearing that may result in a foster care placement, termination of  
7 parental rights, preadoptive placement, or adoptive placement must not  
8 proceed until at least 10 days after the parent, Indian custodian, the tribe, or  
9 the Bureau of Indian Affairs ~~have~~ has received notice, except as stated in  
10 sections (a)(2) and (3).  
11
- 12 (2) The detention hearing in dependency cases and in delinquency cases in which  
13 the probation officer has assessed that the child is in foster care or it is  
14 probable the child will be entering foster care described by rule 5.480(2)(A)–  
15 (C) may proceed without delay, provided that:
- 16 (A) Notice of the detention hearing must be given as soon as possible after  
17 the filing of the petition initiating the proceeding; and  
18  
19 (B) Proof of notice must be filed with the court within 10 days after the  
20 filing of the petition.  
21
- 22 (3) The parent, Indian custodian, or tribe must be granted a continuance, if  
23 requested, of up to 20 days to prepare for the proceeding, except for specified  
24 hearings in the following circumstances:
- 25 (A) The detention hearing in dependency cases and in delinquency cases  
26 described by rule 5.480(2)(A)–(C);  
27  
28 (B) The jurisdiction hearing in a delinquency case described by rule  
29 5.480(2)(A)–(C) in which the court finds the continuance would not  
30 conform to speedy trial considerations under Welfare and Institutions  
31 Code section 657; and  
32  
33 (C) The disposition hearing in a delinquency case described by rule  
34 5.480(2)(A)–(C) in which the court finds good cause to deny the  
35 continuance under Welfare and Institutions Code section 682. A good  
36 cause reason includes when probation is recommending the release of a  
37 detained child to his or her parent or to a less restrictive placement. The  
38 court must follow the placement preferences under rule 5.484 when  
39 holding the disposition hearing.  
40  
41  
42

1 (b) **Proof of notice**

2  
3 Proof of notice in accordance with this rule must be filed with the court in advance  
4 of the hearing, except for those excluded by (a)(2) and (3), and must include *Notice*  
5 *of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts,  
6 and any responses received from the Bureau of Indian Affairs and tribes.  
7

8 (c) ~~When there is no information or response from a tribe~~ **Determination of**  
9 **applicability of the Indian Child Welfare Act**

10  
11 (1) ~~If after notice has been provided as required by federal and state law and~~  
12 ~~neither the tribe nor the Bureau of Indian Affairs has provided a~~  
13 ~~determinative response within 60 days after receiving that notice, then the~~  
14 ~~court may determine that the Indian Child Welfare Act does not apply to the~~  
15 ~~proceedings, provided that the court must reverse its determination of the~~  
16 ~~inapplicability of the act and must apply it prospectively if a tribe or the~~  
17 ~~Bureau of Indian Affairs subsequently confirms that the child is an Indian~~  
18 ~~child. If the court finds that proper and adequate inquiry, further inquiry, and~~  
19 ~~due diligence were conducted under Welfare and Institutions Code section~~  
20 ~~224.2 and, if applicable, notice provided under Welfare and Institutions Code~~  
21 ~~section 224.3, and the court determines there is no reason to know the child is~~  
22 ~~an Indian child, the court may make a finding that the Indian Child Welfare~~  
23 ~~Act does not apply to the proceedings.~~

24  
25 (2) ~~If at any time, based on the petition or other information, the court knows or~~  
26 ~~has reason to know the child is an Indian child, the court must proceed as if~~  
27 ~~the child were an Indian child. The determination of the court that the Indian~~  
28 ~~Child Welfare Act does not apply in (c)(1) is subject to reversal based on~~  
29 ~~sufficiency of the evidence. The court must reverse its determination if it~~  
30 ~~subsequently receives information providing reason to believe that the child~~  
31 ~~is an Indian child and order the social worker or probation officer to conduct~~  
32 ~~further inquiry under Welfare and Institutions Code section 224.3.~~

33  
34 (3) ~~The court is not required to delay proceedings until a response to notice is~~  
35 ~~received.~~

36  
37 (d) **Intervention**

38  
39 The Indian child's tribe and Indian custodian ~~may~~ are entitled to intervene, orally or  
40 in writing, at any point in the proceedings, ~~and~~ The tribe may, but ~~are~~ is not  
41 required to, file with the court the *Notice of Designation of Tribal Representative*  
42 *and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form  
43 ICWA-040) to give notice of ~~their~~ its intent to intervene.



1  
2 (e) \* \* \*

3  
4 (f) **Consultation with tribe**

5  
6 Any person or court involved in the placement of an Indian child in a proceeding  
7 described by rule 5.480 must use the services of the Indian child's tribe, whenever  
8 available through the tribe, in seeking to secure placement within the order of  
9 placement preference specified in rule ~~5.484~~ 5.485.

10  
11 **Rule 5.483. Dismissal and transfer of case**

12  
13 (a) ~~Mandatory transfer of case to tribal court with~~ **Dismissal when tribal court**  
14 **has exclusive jurisdiction**

15  
16 ~~The court must order transfer of a case to the tribal court of the child's tribe if:~~  
17 Subject to the terms of any agreement between the state and the tribe under 25  
18 United States Code section 1919:

19  
20 (1) ~~The Indian child is a ward of the tribal court;~~ If the court receives information  
21 at any stage of the proceeding suggesting that the Indian child is already the  
22 ward of the tribal court or ~~The Indian child~~ is domiciled or resides within a  
23 reservation of an Indian tribe that has exclusive jurisdiction over Indian child  
24 custody proceedings under 25 United States Code section 1911 or 1918 ~~of~~  
25 title 25 of the United States Code, the court must expeditiously notify the  
26 tribe and the tribal court that it intends to dismiss the case upon receiving  
27 confirmation from the tribe or tribal court that the child is a ward of the tribal  
28 court or subject to the tribe's exclusive jurisdiction.

29  
30 (2) When the court receives confirmation that the child is already a ward of a  
31 tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the  
32 state court must dismiss the proceeding and ensure that the tribal court is sent  
33 all information regarding the proceeding, including, but not limited to, the  
34 pleadings and any state court record. If the local agency has not already  
35 transferred physical custody of the Indian child to the child's tribe, the state  
36 court must order that the local agency do so forthwith and hold in abeyance  
37 any dismissal order pending confirmation that the Indian child is in the  
38 physical custody of the tribe.

39  
40 (3) This section does not preclude an emergency removal consistent with 25  
41 United States Code section 1922, 25 Code of Federal Regulations  
42 part 23.113, and Welfare and Institutions Code section 319 to protect the  
43 child from risk of imminent physical damage or harm and if more time is

1 needed to facilitate the transfer of custody of the Indian child from the county  
2 welfare department to the tribe.

3  
4 (b) \* \* \*

5  
6 (c) **Documentation of request to transfer a case to tribal court**

7  
8 (1) \* \* \*

9  
10 (2) Upon receipt of a transfer petition, the state court must ensure that the tribal  
11 court is promptly notified in writing of the transfer petition. This notification  
12 may request a timely response regarding whether the tribal court wishes to  
13 decline the transfer.

14  
15 (d) **Cause to deny a request to transfer to tribal court with concurrent state and**  
16 **tribal jurisdiction**

17  
18 (1) ~~One or more~~ Either of the following circumstances constitutes mandatory  
19 good cause to deny a request to transfer:

20  
21 (A) One or both of the child's parents objects to the transfer in open court  
22 or in an admissible writing for the record; or

23  
24 (B) ~~The child's tribe does not have a "tribal court" or any other~~  
25 ~~administrative body as defined in section 1903 of the Indian Child~~  
26 ~~Welfare Act: "a court with jurisdiction over child custody proceedings~~  
27 ~~and which is either a Court of Indian Offenses, a court established and~~  
28 ~~operated under the code or custom of an Indian tribe, or any other~~  
29 ~~administrative body of a tribe which is vested with authority over child~~  
30 ~~custody proceedings;"~~ or

31  
32 (C)(B) The tribal court of the child's tribe declines the transfer.

33  
34 (2) ~~One or more of the following circumstances may constitute discretionary~~  
35 ~~good cause to deny a request to transfer~~ In assessing whether good cause to  
36 deny the transfer exists, the court must not consider:

37  
38 (A) ~~The evidence necessary to decide the case cannot be presented in the~~  
39 ~~tribal court without undue hardship to the parties or the witnesses, and~~  
40 ~~the tribal court is unable to mitigate the hardship by making~~  
41 ~~arrangements to receive and consider the evidence or testimony by use~~  
42 ~~of remote communication, by hearing the evidence or testimony at a~~

1 location convenient to the parties or witnesses, or by use of other means  
2 permitted in the tribal court's rules of evidence or discovery;

3  
4 (B) ~~The proceeding was at an advanced stage when the request to transfer  
5 was received and the petitioner did not make the request within a  
6 reasonable time after receiving notice of the proceeding, provided the  
7 notice complied with statutory requirements. Waiting until  
8 reunification efforts have failed and reunification services have been  
9 terminated before filing a request to transfer may not, by itself, be  
10 considered an unreasonable delay;~~

11  
12 (C) ~~The Indian child is over 12 years of age and objects to the transfer; or~~

13  
14 (D) ~~The parents of a child over five years of age are not available and the  
15 child has had little or no contact with his or her tribe or members of the  
16 child's tribe.~~

17  
18 (A) Socioeconomic conditions and the perceived adequacy of tribal social  
19 services or judicial systems;

20  
21 (B) Whether the child custody proceeding is at an advanced stage if the  
22 Indian child's parent, Indian custodian, or tribe did not receive notice of  
23 the child custody proceeding until an advanced stage. It must not, in  
24 and of itself, be considered an unreasonable delay for a party to wait  
25 until reunification efforts have failed and reunification services have  
26 been terminated before filing a petition to transfer;

27  
28 (C) Whether there have been prior proceedings involving the child for  
29 which no transfer petition was filed;

30  
31 (D) Whether transfer could affect the placement of the child; or

32  
33 (E) Whether the Indian child has cultural connections with the tribe or its  
34 reservation.

35  
36 (3) \* \* \*

37  
38 (e) **Evidentiary considerations**

39  
40 ~~The court may not consider socioeconomic conditions and the perceived adequacy  
41 of tribal social services, tribal probation, or the tribal judicial systems in its  
42 determination that good cause exists to deny a request to transfer to tribal court  
43 with concurrent state and tribal jurisdiction.~~

1  
2 **~~(f)~~(e) Evidentiary burdens**

3  
4 (1) \* \* \*

5  
6 (2) If the court believes, or any party asserts, that good cause to deny the request  
7 exists, the reasons for that belief or assertion must be stated orally on the  
8 record or in writing, in advance of the hearing, and made available to all  
9 parties who are requesting the transfer, and the petitioner must have the  
10 opportunity to provide information or evidence in rebuttal of the belief or  
11 assertion.

12  
13 **~~(g)~~(f) Order on request to transfer \* \* \***

14  
15 **~~(h)~~(g) Advisement when transfer order granted \* \* \***

16  
17 **~~(i)~~(h) Proceeding after transfer \* \* \***

18  
19 **Advisory Committee Comment**

20  
21 Once a transfer to tribal court is finalized as provided in rule 5.483~~(i)~~(h), the appellate court lacks  
22 jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

23  
24 As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the  
25 provisions of a judgment or order awarding, changing, or affecting custody of a minor child  
26 “pending review on appeal or for any other period or periods that it may deem appropriate” (Code  
27 Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay  
28 in the lower court. (See *Nuckolls v. Bank of California, Nat. Assn.* (1936) 7 Cal.2d 574, 577 [61  
29 P.2d 927] [“Inasmuch as the [L]egislature has provided a method by which the trial court, in a  
30 proper case, may grant the stay, the appellate courts, assuming that they have the power, should  
31 not, except in some unusual emergency, exercise their power until the petitioner has first  
32 presented the matter to the trial court.”].) If the juvenile court should deny the stay request, the  
33 aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules  
34 of Court, rule 8.112).

35  
36 ~~Subsection (h)~~ Subdivision (g) and this advisory committee comment are added to help ensure  
37 that an objecting party does not inadvertently lose the right to appeal a transfer order.  
38

1 **Rule 5.484. Emergency proceedings involving an Indian child**

2  
3 **(a) Standards for removal**

4  
5 Whenever it is known or there is reason to know the case involves an Indian child,  
6 the court may not order an emergency removal or placement of the child without a  
7 finding that the removal or placement is necessary to prevent imminent physical  
8 damage or harm to the child. The petition requesting emergency removal or  
9 continued emergency placement of the child or its accompanying documents must  
10 contain the following:

- 11
- 12 (1) A statement of the risk of imminent physical damage or harm to the child and  
13 any evidence that the emergency removal or placement continues to be  
14 necessary to prevent such imminent physical damage or harm to the child;
- 15
- 16 (2) The name, age, and last known address of the Indian child;
- 17
- 18 (3) The name and address of the child’s parents and Indian custodian, if any;
- 19
- 20 (4) The steps taken to provide notice to the child’s parents, Indian custodian, and  
21 tribe about the emergency proceeding;
- 22
- 23 (5) If the child’s parents and Indian custodian are unknown, a detailed  
24 explanation of what efforts have been made to locate and contact them;
- 25
- 26 (6) The residence and the domicile of the Indian child;
- 27
- 28 (7) If either the residence or the domicile of the Indian child is believed to be on  
29 a reservation or in an Alaska Native village, the name of the tribe affiliated  
30 with that reservation or village;
- 31
- 32 (8) The tribal affiliation of the child and of the parents or Indian custodian;
- 33
- 34 (9) A specific and detailed account of the circumstances that led to the  
35 emergency removal of the child;
- 36
- 37 (10) If the child is believed to reside or be domiciled on a reservation where the  
38 tribe exercises exclusive jurisdiction over child custody matters, a statement  
39 of efforts that have been made and are being made to contact the tribe and  
40 transfer the child to the tribe’s jurisdiction; and
- 41
- 42 (11) A statement of the efforts that have been taken to assist the parents or Indian  
43 custodian so the Indian child may safely be returned to their custody.

1  
2 **(b) Return of Indian child when emergency situation has ended**

3  
4 (1) Whenever it is known or there is reason to know the child is an Indian child  
5 and there has been an emergency removal of the child from parental custody,  
6 any party who asserts that there is new information indicating that the  
7 emergency situation has ended may request an ex parte hearing by filing a  
8 request on *Request for Ex Parte Hearing to Return Physical Custody of an*  
9 *Indian Child* (form ICWA-070) to determine whether the emergency  
10 situation has ended.

11  
12 (2) If the request provides evidence of new information establishing that the  
13 emergency placement is no longer necessary, the court must promptly  
14 schedule a hearing. At the hearing the court must consider whether the child's  
15 removal and placement is still necessary to prevent imminent physical  
16 damage or harm to the child. If the court determines that the child's  
17 emergency removal or placement is no longer necessary to prevent imminent  
18 physical damage or harm to the child, the court must order the child returned  
19 to the physical custody of the parents or Indian custodian.

20  
21 (3) In accordance with rules 3.10 and 3.20, this procedure is governed by the  
22 provisions of division 6, chapter 3 and division 11, chapter 4 of title 3 of the  
23 California Rules of Court.

24  
25 **(c) Time limitation on emergency proceedings**

26  
27 An emergency removal must not continue for more than 30 days unless the court  
28 makes the following determinations:

29  
30 (1) Restoring the child to the parent or Indian custodian would subject the child  
31 to imminent physical damage or harm;

32  
33 (2) The court has been unable to transfer the proceeding to the jurisdiction of the  
34 appropriate Indian tribe; and

35  
36 (3) It has not been possible to have a hearing that complies with the substantive  
37 requirements of the Indian Child Welfare Act for a foster care placement  
38 proceeding.

1 **Rule ~~5.485~~5.484. Placement of an Indian child**

2  
3 (a) \* \* \*

4  
5 (b) **Standards and preferences in placement of an Indian child**

6  
7 (1) All placements of an Indian child must be in the least restrictive setting that  
8 most approximates a family situation and in which the child's special needs,  
9 if any, may be met.

10  
11 ~~(1)(2)~~(2) Unless the court finds by clear and convincing evidence that there is good  
12 cause to deviate from them the contrary, whenever it is known or there is  
13 reason to know the child is an Indian child, all placements of Indian children  
14 in any proceeding listed in rules 5.480 and 5.484 must follow the specified  
15 placement preferences in Family Code section 177(a), Probate Code section  
16 1459(b), and Welfare and Institutions Code section 361.31.

17  
18 ~~(2)(3)~~(3) The court must analyze the availability of placements within the placement  
19 preferences in descending order without skipping. The court may deviate  
20 from the preference order only for good cause, which may include the  
21 following considerations:

22  
23 (A) The requests of the parent or Indian custodian if they attest that they  
24 have reviewed the placement options, if any, that comply with the order  
25 of preference;

26  
27 (B) The requests of the Indian child, when of sufficient age and capacity to  
28 understand the decision being made;

29  
30 (C) The presence of a sibling attachment that can be maintained only  
31 through a particular placement;

32  
33 ~~(C)(D)~~(D) The extraordinary physical, mental, or emotional needs of the Indian  
34 child, including specialized treatment services that may be unavailable  
35 in the community where families who meet the placement preferences  
36 live as established by a qualified expert witness; or

37  
38 ~~(D)(E)~~(E) The unavailability of a suitable families placement within the  
39 placement preferences based on a documented diligent effort to identify  
40 families-placements meeting the preference criteria. The standard for  
41 determining whether a placement is unavailable must conform to the  
42 prevailing social and cultural standards of the Indian community in  
43 which the Indian child's parent or extended family resides or with

1                   which the Indian child’s parent or extended family members maintain  
2                   social and cultural ties.

3  
4   ~~(3)~~(4) The placement preferences must be analyzed and considered each time there  
5                   is a change in the child’s placement. A finding that there is good cause to  
6                   deviate from the placement preferences does not affect the requirement that a  
7                   diligent search be made for a subsequent placement within the placement  
8                   preferences.

9  
10   (5)   The burden of establishing good cause for the court to deviate from the  
11           preference order is on the party requesting that the preference order not be  
12           followed. A placement may not depart from the preferences based on the  
13           socioeconomic status of any placement relative to another or solely on the  
14           basis of ordinary bonding or attachment that flowed from time spent in a  
15           nonpreferred placement that was made in violation of the Indian Child  
16           Welfare Act.

17  
18   ~~(4)~~(6) \* \* \*

19  
20   ~~(5)~~(7) \* \* \*

21  
22   ~~(6)~~(8) When no preferred placement is available, active efforts must be made and  
23           documented to place the child with a family committed to enabling the child  
24           to have visitation with “extended family members,” as defined in rule  
25           5.481(a)(4)(A) 25 United States Code section 1903(2), and participation in  
26           the cultural and ceremonial events of the child’s tribe.

27  
28   (c)   **Active efforts**

29  
30           In addition to any other required findings to place an Indian child with someone  
31           other than a parent or Indian custodian, or to terminate parental rights, the court  
32           must find that active efforts have been made, in any proceeding listed in rule 5.480,  
33           to provide remedial services and rehabilitative programs designed to prevent the  
34           breakup of the Indian family, and must find that these efforts were unsuccessful.  
35           These active efforts must include affirmative, active, thorough, and timely efforts  
36           intended primarily to maintain or reunite the child with his or her family, must be  
37           tailored to the facts and circumstances of the case, and must be consistent with the  
38           requirements of Welfare and Institutions Code section 224.1(f).

39  
40   (1)   The active efforts must be documented in detail in the record.  
41



1           ~~(1)~~(2) The court must consider whether active efforts were made in a manner  
2           consistent with the prevailing social and cultural conditions and way of life of  
3           the Indian child’s tribe.  
4

5           ~~(2)~~(3) Active efforts to provide services must include pursuit of any steps necessary  
6           to secure tribal membership for a child if the child is eligible for membership  
7           in a given tribe, as well as attempts to use the available resources of extended  
8           family members, the tribe, tribal and other Indian social service agencies, and  
9           individual Indian caregivers.  
10

11   **Rule ~~5.486~~5.485. Termination of parental rights**  
12

13   **(a)   \* \* \***  
14

15   **(b)   When parental rights may not be terminated**  
16

17           The court may not terminate parental rights to an Indian child or declare a child  
18           free from the custody and control of one or both parents if the court finds a  
19           compelling reason for determining that termination of parental rights would not be  
20           in the child’s best interest. Such a reason may include:  
21

22           (1)   The child is living with a relative who is unable or unwilling to adopt the  
23           child because of circumstances that do not include an unwillingness to accept  
24           legal or financial responsibility for the child, but who is willing and capable  
25           of providing the child with a stable and permanent environment through legal  
26           guardianship, and the removal of the child from the custody of his or her  
27           relative would be detrimental to the emotional well-being of the child. For  
28           purposes of an Indian child, “relative” must include an “extended family  
29           member,” as defined in the Indian Child Welfare Act (25 U.S.C. § 1903(2));  
30

31           ~~(1)~~(2) Termination of parental rights would substantially interfere with the child’s  
32           connection to his or her tribal community or the child’s tribal membership  
33           rights; or  
34

35           ~~(2)~~(3) The child’s tribe has identified tribal customary adoption, guardianship, long-  
36           term foster care with a fit and willing relative, or another planned permanent  
37           living arrangement for the child.  
38

1 **Rule ~~5.487,5.486~~. Petition to invalidate orders**

2  
3 **(a) Who may petition**

4  
5 Any Indian child who is the subject of any action for foster-care placement,  
6 guardianship or conservatorship placement, custody placement under Family Code  
7 section 3041, declaration freeing a child from the custody and control of one or  
8 both parents, preadoptive placement, adoptive placement, or termination of parental  
9 rights; any parent or Indian custodian from whose custody such child was removed;  
10 and the Indian child's tribe may petition the court to invalidate the action on a  
11 showing that the action violated the Indian Child Welfare Act.

12  
13 **(b)-(c) \* \* \***

14  
15 **Rule ~~5.488,5.487~~. Adoption record keeping \* \* \***

16  
17 **Rule 5.550. Continuances**

18  
19 **(a)-(b) \* \* \***

20  
21 **(c) Continuances of detention hearings (§§ 319, 322, 635, 636, 638)**

22  
23 **(1)-(2) \* \* \***

24  
25 **(3)** When the court knows or has reason to know the child is an Indian child, the  
26 detention hearing may not be continued beyond 30 days unless the court  
27 makes the findings required by section 319(e)(2).

28  
29 **(d) Continuances of a dispositional hearing when the court knows or has reason to**  
30 **know the child is an Indian child (§ 352(b))**

31  
32 **(1)** When the court knows or has reason to know that the case involves an Indian  
33 child, no continuance of a dispositional may be granted that would result in  
34 the hearing being held longer than 30 days after the hearing at which the  
35 minor was ordered removed or detained unless the court finds that there are  
36 exceptional circumstances requiring a continuance.

37  
38 **(2)** The absence of an opinion from a qualified expert witness must not, in and of  
39 itself, support a finding that exceptional circumstances exist.

1  
2 **Rule 5.570. Request to change court order (petition for modification)**

3  
4 **(a)–(d) \* \* \***

5  
6 **(e) Grounds for grant of petition (§§ 388, 778)**

7  
8 (1)–(4) \* \* \*

9  
10 (5) For a petition filed under section 388(c)(1)(A), the court may terminate  
11 reunification services during the time periods described in section 388(c)(1)  
12 only if the court finds by a preponderance of evidence that reasonable  
13 services have been offered or provided, and, by clear and convincing  
14 evidence, that the change of circumstance or new evidence described in the  
15 petition satisfies a condition in section 361.5(b) or (e). In the case of an  
16 Indian child, the court may terminate reunification services only if the court  
17 finds by clear and convincing evidence that active efforts have been made to  
18 provide remedial services and rehabilitative programs designed to prevent the  
19 breakup of the Indian family within the meaning of sections 224.1(f) and  
20 361.7 and that these efforts have proved unsuccessful. The court may grant  
21 the petition after following the procedures in (f), (g), and (h).  
22

23 (6) For a petition filed under section 388(c)(1)(B), the court may terminate  
24 reunification services during the time periods described in section 388(c)(1)  
25 only if the court finds by a preponderance of evidence that reasonable  
26 services have been offered or provided, and, by clear and convincing  
27 evidence, that action or inaction by the parent or guardian creates a  
28 substantial likelihood that reunification will not occur. Such action or  
29 inaction includes, but is not limited to, failure to visit the child or failure to  
30 participate regularly and make substantive progress in a court-ordered  
31 treatment program. In determining whether the parent or guardian has failed  
32 to visit the child or to participate regularly or make progress in a court-  
33 ordered treatment plan, the court must consider factors including, but not  
34 limited to, the parent or guardian’s incarceration, institutionalization, or  
35 participation in a residential substance abuse treatment program. In the case  
36 of an Indian child, the court may terminate reunification services only if the  
37 court finds by clear and convincing evidence that active efforts have been  
38 made to provide remedial services and rehabilitative programs designed to  
39 prevent the breakup of the Indian family within the meaning of sections  
40 224.1(f) and 361.7 and that these efforts have proved unsuccessful. The court  
41 may grant the petition after following the procedures in (f), (g), and (h).  
42

43 (7) \* \* \*

1  
2 (f)–(g) \* \* \*

3  
4 (h) **Conduct of hearing (§ 388)**

5  
6 (1) \* \* \*

7  
8 (A) \* \* \*

9  
10 (B) If the request is for termination of court-ordered reunification services,  
11 the petitioner must show by clear and convincing evidence that one of  
12 the conditions in section 388(c)(1)(A) or (B) exists and must show by a  
13 preponderance of the evidence that reasonable services have been  
14 offered or provided. In the case of an Indian child, the court may  
15 terminate reunification services only if the court finds by clear and  
16 convincing evidence that active efforts have been made to provide  
17 remedial services and rehabilitative programs designed to prevent the  
18 breakup of the Indian family within the meaning of sections 224.1(f)  
19 and 361.7 and that these efforts have proved unsuccessful.

20  
21 (C)–(E) \* \* \*

22  
23 (2) \* \* \*

24  
25 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**

26  
27 (a)–(b) \* \* \*

28  
29 (c) **Indian Child Welfare Act inquiry (§ 224.2(c) & (g))**

30  
31 (1) At the first appearance in court of each party, the court must ask each  
32 participant present at the hearing whether:

33  
34 (A) The participant knows or has reason to know the child is an Indian  
35 child;

36  
37 (B) The residence or domicile of the child, the child’s parents, or Indian  
38 custodian is on a reservation or in an Alaska Native village;

39  
40 (C) The child is or has ever been a ward of a tribal court; and

41  
42 (D) Either parent or the child possess an identification card indicating  
43 membership or citizenship in an Indian tribe.

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(2) The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) If there is reason to believe that the case involves an Indian child, the court must require the agency to proceed in accordance with section 224.2(e).

(4) If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in section 224.2(g) that the child does not meet the definition of an Indian child.

~~(e)~~(d) \* \* \*

**Rule 5.674. Conduct of hearing; admission, no contest, submission**

(a) \* \* \*

**(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)**

(1) \* \* \*

(2) The findings and orders that must be made on the record are:

(A)–(B) \* \* \*

(C) Reasonable efforts, or when it is known or there is reason to know the child is an Indian child, active efforts, have been made to prevent removal; and

(D) The findings and orders required to be made on the record under section 319; and

(E) When it is known or there is reason to know the case involves an Indian child, that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected if maintained in the physical custody of his or her parent or parents or Indian custodian.

1 (c) **Detention hearing; rights of child, parent, Indian custodian, or guardian (§§**  
2 **311, 319)**

3  
4 At the detention hearing, the child, the parent, Indian custodian, and the guardian  
5 have the right to assert the privilege against self-incrimination and the right to  
6 confront and cross-examine:

7  
8 (1) \* \* \*

9  
10 (2) Any person examined by the court under section 319. If the child, parent,  
11 Indian custodian, Indian child's tribe, or guardian asserts the right to cross-  
12 examine preparers of documents submitted for court consideration, the court  
13 may not consider any such report or document unless the preparer is made  
14 available for cross-examination.

15  
16 (d) **No parent, Indian custodian, or Indian child's tribe or guardian present and**  
17 **not noticed (§ 321)**

18  
19 If the court orders the child detained at the detention hearing and no parent, Indian  
20 custodian, or Indian child's tribe or guardian is present and no parent, Indian  
21 custodian, or Indian child's tribe or guardian has received actual notice of the  
22 detention hearing, a parent, Indian custodian, or Indian child's tribe or guardian  
23 may file an affidavit alleging the failure of notice and requesting a detention  
24 rehearing. The clerk must set the rehearing for a time within 24 hours of the filing  
25 of the affidavit, excluding noncourt days. At the rehearing the court must proceed  
26 under rules 5.670–5.678.

27  
28 (e) **Hearing for further evidence; prima facie case (§ 321)**

29  
30 If the court orders the child detained, and the child, a parent, an Indian custodian,  
31 an Indian child's tribe, a guardian, or counsel requests that evidence of the prima  
32 facie case be presented, the court must set a prima facie hearing for a time within 3  
33 court days to consider evidence of the prima facie case or set the matter for  
34 jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to  
35 establish the prima facie case, the child must be released from custody.

36  
37 **Rule 5.676. Requirements for detention**

38  
39 (a) **Requirements for detention (§ 319)**

40  
41 No child may be ordered detained by the court unless the court finds that:

42  
43 (1) \* \* \*

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(2) Continuance in the home of the parent, Indian custodian, or guardian is contrary to the child’s welfare; and

(3) \* \* \*

**(b) Additional requirements for detention of Indian child**

If it is known, or there is reason to know the child is an Indian child, the child may not be ordered detained unless the court also finds that detention is necessary to prevent imminent physical damage or harm to the child. The court must state the facts supporting this finding on the record.

~~(b)~~(c) \* \* \*

**(d) Additional evidence required at detention hearing for Indian child**

If it is known, or there is reason to know the child is an Indian child, the reports relied on must also include:

- (1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child;
- (2) The steps taken to provide notice to the child’s parents, Indian custodian, and tribe about the hearing under section 224.3;
- (3) If the child’s parents and Indian custodian are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director;
- (4) The residence and the domicile of the Indian child;
- (5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;
- (6) The tribal affiliation of the child and of the parents or Indian custodian;
- (7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody;

1           (8) If the child is believed to reside or be domiciled on a reservation in which the  
2           tribe exercises exclusive jurisdiction over child custody matters, a statement  
3           of efforts that have been made and that are being made to contact the tribe  
4           and transfer the child to the tribe's jurisdiction; and

5  
6           (9) A statement of the efforts that have been taken to assist the parents or Indian  
7           custodian so the Indian child may safely be returned to their custody.

8  
9       **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**  
10       **active efforts; detention alternatives**

11  
12       **(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)**

13  
14       The court must order the child released from custody unless the court makes the  
15       findings specified in section 319~~(b)~~(c), and where it is known, or there is reason to  
16       know the child is an Indian child, the additional finding specified in section 319(d).

17  
18       **(b)** In determining whether to release or detain the child under (a), the court must  
19       consider the factors in section 319~~(d)~~(f).

20  
21       **(c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)**

22  
23       (1) \* \* \*

24  
25       (2) Where it is known or there is reason to know the child is an Indian child,  
26       whether the child is released or detained at the hearing, the court must  
27       determine whether active efforts have been made to provide remedial  
28       services and rehabilitative programs designed to prevent the breakup of the  
29       Indian family and whether those efforts have been successful. Those active  
30       efforts must be documented in detail in the record, and the court must make  
31       one of the following findings:

32  
33           (A) Active efforts have been made and were successful; or

34  
35           (B) Active efforts have been made and were not successful; or

36  
37           (C) Active efforts have not been made; and

38  
39           (D) The court orders the department to initiate or continue services in  
40           accordance with section 358.

41  
42       ~~(2)~~(3) The court must also determine whether services are available that would  
43       prevent the need for further detention.



1  
2 ~~(3)~~(4) The court must not order the child detained unless the court, after inquiry  
3 regarding available services, finds that there are no reasonable services, or  
4 where it is known or there is reason to know the child is an Indian child,  
5 active efforts to provide remedial services and rehabilitative programs  
6 designed to prevent the breakup of the Indian family that would prevent or  
7 eliminate the need to detain the child or that would permit the child to return  
8 home.

9  
10 ~~(4)~~(5) If the court orders the child detained, the court must proceed under section  
11 319~~(d)~~(g)–~~(e)~~(h) and where it is known, or there is reason to know the child is  
12 an Indian child, subdivision (f) of this rule.

13  
14 **(d) Orders of the court (§ 319; 42 U.S.C. § 672)**

15  
16 If the court orders the child detained, the court must order that temporary care and  
17 custody of the child be vested with the county welfare department pending  
18 disposition or further order of the court and must make the other findings and  
19 orders specified in section 319~~(e)~~(g) and ~~(f)~~(3)(h)(3).

20  
21 **(e) Detention alternatives (§ 319)**

22  
23 The court may order the child detained as specified in section 319~~(f)~~(h).

24  
25 **(f) Additional requirements regarding detention of Indian child (§ 319)**

26  
27 (1) If it is known, or there is reason to know the child is an Indian child, the child  
28 must be detained in a home that complies with the placement preferences in  
29 section 361.31 unless the court finds by clear and convincing evidence good  
30 cause exists not to follow the placement preferences in accordance with rule  
31 5.485.

32  
33 (2) If it is known, or there is reason to know the child is an Indian child, the  
34 detention hearing may not be continued beyond 30 days unless the court finds  
35 all of the following:

36  
37 (A) Restoring the child to the parent, parents, or Indian custodian would  
38 subject the child to imminent physical damage or harm;

39  
40 (B) The court is unable to transfer the proceeding to the jurisdiction of the  
41 appropriate Indian tribe; and

1 (C) It is not possible to initiate an Indian child custody proceeding as  
2 defined in section 224.1.

3  
4 **(g) Hearing for return of custody of Indian child after emergency removal when**  
5 **emergency has ended (§ 319.4)**

6  
7 If it is known or there is reason to know the child is an Indian child, a party may  
8 request a hearing under rule 5.484(b) for return of the child before disposition if the  
9 party asserts that there is new evidence that the emergency removal or placement is  
10 no longer necessary to prevent imminent physical damage or harm to the child.

11  
12 **Rule 5.690. General conduct of disposition hearing**

13  
14 **(a) Social study (§§ 280, 309, 358, 358.1, 360, 361.5, 16002(b))**

15  
16 The petitioner must prepare a social study of the child. The social study must  
17 include a discussion of all matters relevant to disposition and a recommendation for  
18 disposition.

19  
20 (1) The petitioner must comply with the following when preparing the social  
21 study:

22  
23 (A) \* \* \*

24  
25 (B) If petitioner recommends removal of the child from the home, the  
26 social study must include:

27  
28 (i) A discussion of the reasonable efforts made to prevent or  
29 eliminate removal, or if it is known or there is reason to know the  
30 child is an Indian child, the active efforts to provide remedial  
31 services and rehabilitative programs designed to prevent the  
32 breakup of the Indian family, and a recommended plan for  
33 reuniting the child with the family, including a plan for visitation;

34  
35 (ii)–(iii) \* \* \*

36  
37 (C) The social study must include a discussion of the social worker’s  
38 efforts to comply with section 309(e) and rule 5.637, including but not  
39 limited to:

40  
41 (i)–(ii) \* \* \*

- 1 (iii) The number and relationship of those relatives described by item  
2 (ii) who are interested in ongoing contact with the child; ~~and~~  
3  
4 (iv) The number and relationship of those relatives described by item  
5 (ii) who are interested in providing placement for the child; and  
6  
7 (v) If it is known or there is reason to know the child is an Indian  
8 child, efforts to locate extended family members as defined in  
9 section 224.1, and evidence that all individuals contacted have  
10 been provided with information about the option of obtaining  
11 approval for placement through the tribe’s license or approval  
12 procedure.

13  
14 (D)–(F) \* \* \*

15  
16 (2) \* \* \*

17  
18 **(b)–(c) \* \* \***

19  
20 **(d) Timing**

21  
22 Notwithstanding any other law, if a minor has been removed from the custody of  
23 the parents or Indian custodians or guardians, a continuance may not be granted  
24 that would result in the dispositional hearing, held under section 361, being  
25 completed more than 60 days, or 30 days in the case of an Indian child, after the  
26 hearing at which the minor was ordered removed or detained, unless the court finds  
27 that there are exceptional circumstances requiring a continuance. If the court knows  
28 or has reason to know that the child is an Indian child, the absence of the opinion of  
29 a qualified expert witness must not, in and of itself, support a finding that  
30 exceptional circumstances exist.

31  
32 **Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)**

33  
34 **(a)–(d) \* \* \***

35  
36 **(e) Procedures—adoption**

37  
38 (1) \* \* \*

39  
40 (2) An order of the court terminating parental rights, ordering adoption under  
41 section 366.26 or, in the case of an Indian child, ordering tribal customary  
42 adoption under section 366.24, is conclusive and binding on the child, the  
43 parent, and all other persons who have been served under the provisions of

1 section 294. Once a final order of adoption has issued, the order may not be  
2 set aside or modified by the court, except as provided in section 366.26(e)(3)  
3 and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a  
4 referee.

5

6 **(f)-(h) \* \* \***

7

## INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENTS 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* or in a probate guardianship, page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

### **Form ICWA-010(A), *Indian Child Inquiry Attachment*, or page 5 of form GC-210(CA), *Guardianship Petition—Child Information 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*, or on page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment* form. 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*, or  
page 5 of form GC-210(CA), *Guardianship Petition—Child Information 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 or 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 tribes?
  - c. Does the child or 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 and attached to the petition form ICWA-010(A), *Indian Child Inquiry Attachment*. This does not apply to a petition for appointment of a guardian in a probate guardianship 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.

Contacts with the tribe or tribes should include contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act published in the Federal Register by telephone, facsimile, or email and sharing with the tribe or tribes information identified by the tribe as necessary 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.

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/](http://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, 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 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. In order to help establish the child's tribal identity, provide as much information as possible, including the child's name, birthdate, 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, he or she 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* or, in a probate guardianship case, form GC-210(CA), *Guardianship Petition—Child Information 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) or form GC-210(CA));
  - 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 counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)**

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

1. Name of child:

2. (Check one)

I have not yet been able to complete the inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry. I will do it as soon as possible and advise the court of my efforts.

I have asked or  I am advised by \_\_\_\_\_ and on information and belief confirm that this person has completed inquiry by asking the child, the child's parents, and other required and available persons about the child's Indian status. The person(s) questioned are:

Name: _____	Name: _____
Address: _____	Address: _____
City, state, zip: _____	City, state, zip: _____
Telephone: _____	Telephone: _____
Date questioned: _____	Date questioned: _____
Relationship to child: _____	Relationship to child: _____

Additional persons questioned and their information is attached.

3. This inquiry (check one):

gave me reason to believe the child is or may be an Indian child. (If yes, continue to 4.)

gave me no reason to believe the child is or may be an Indian child.

4.  I contacted the tribe(s) that the child may be affiliated with and worked with them to establish whether the child is a member or eligible for membership in the tribe(s). Information detailing the tribes contacted, the names of the individuals contacted, and the manner of the contacts is attached.

5. Based on inquiry and tribal contacts (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): \_\_\_\_\_  
Location of tribe(s): \_\_\_\_\_

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

Name of tribe(s): \_\_\_\_\_  
Location of tribe(s): \_\_\_\_\_

c.  The residence or domicile of the child, child's parents, or Indian custodian is on a reservation, rancheria, Alaska Native village or other tribal trust land.

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 is or has been a ward of a tribal court.

Name of tribe(s): \_\_\_\_\_  
Location of tribe(s): \_\_\_\_\_

f.  Either parent or the child possesses an Indian Identification card indicating membership or citizenship in an Indian tribe.

Name of tribe(s): \_\_\_\_\_  
Location of tribe(s): \_\_\_\_\_

6. If this is a delinquency proceeding under Welfare and Institutions Code section 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: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE:                ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>PARENTAL NOTIFICATION OF INDIAN STATUS</b>		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): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_
- b.  The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_
- c.  One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Location of tribe(s): \_\_\_\_\_  
 Name and relationship of ancestor(s): \_\_\_\_\_
- d.  I am a resident of or am domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- e.  The child is a resident of or is domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- f.  The child is or has been a ward of a tribal court.
- g.  Either parent or the child possesses an Indian identification card indicating membership or citizenship in an Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Membership or citizenship number (if any): \_\_\_\_\_

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 STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY    <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:					
CASE NAME:					
<b>NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD</b> <i>(check all that apply):</i> <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%;">HEARING DATE:</td> <td style="width:30%;">DEPT.:</td> </tr> <tr> <td> </td> <td> </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:	Dept.:	Room
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 additional 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 termination of parental rights and 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 Indian 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. A copy of the petition initiating this case is attached.
- b. The child's birth certificate is  attached  unavailable.
- c. A copy of the tribal registration card of  the child  the parent is attached.
- d. 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, § 224.3.)
- e.  If the chart does not represent the gender identities of the individuals in the child's family tree, please attach an appropriate equivalent.

Biological Mother	Biological Father
Name (include maiden, married, and former names or aliases):	Name (include former names or aliases):
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. 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".)*

<b>Mother's Biological Mother (Child's Maternal Grandmother)</b>	<b>Father's Biological Mother (Child's Paternal Grandmother)</b>
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:

<b>Mother's Biological Father (Child's Maternal Grandfather)</b>	<b>Father's Biological Father (Child's Paternal Grandfather)</b>
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. g. 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".)*

<b>Mother's Biological Grandmother (Child's Maternal Great-grandmother)</b>	<b>Mother's Biological Grandmother (Child's Maternal Great-grandmother)</b>
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:

<b>Mother's Biological Grandfather (Child's Maternal Great-grandfather)</b>	<b>Mother's Biological Grandfather (Child's Maternal Great-grandfather)</b>
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. h. 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".)*

<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>	<b>Father's Biological Grandmother (Child's Paternal Great-grandmother)</b>
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:

<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>	<b>Father's Biological Grandfather (Child's Paternal Great-grandfather)</b>
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. i. 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")*

<b>Information on Indian Ancestry of Other Lineal Biological Ancestors</b>	<b>Information on Indian Ancestry of Other Lineal Biological Ancestors</b>
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:

More information on lineal biological ancestors is attached on a separate sheet.

**5. j. 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".)*

<b>Indian Custodian Information</b>	<b>Indian Custodian Information</b>
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:

CASE NAME:	CASE NUMBER:
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**6. ADDITIONAL INFORMATION ON THE CHILD NAMED IN 1**

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

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

Unknown

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

**7. Has the child named in 1 or any members of the child's 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

- 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, rancheria, an allotment or in an Alaska Native village or other tribal trust land?

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 named in 1 (check all that apply):**

- a.  1906 Final Roll      Name of relative listed on roll:  
Relationship to child named in 1:
- b.  Roll of 1924      Name of relative listed on roll:  
Relationship to child named in 1:
- c.  California Judgment Roll. Name of relative listed on roll:  
Relationship to child named in 1:

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 224.3.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:

on *(date)*:

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

(TYPE OR PRINT NAME)	(SIGNATURE)
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**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 224.3.) 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)
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**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 224.3.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:  
on *(date)*:

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

(TYPE OR PRINT NAME)	(SIGNATURE)
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**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>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>	<p>2. <input type="checkbox"/> Parent (<i>Name</i>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>
<p>3. <input type="checkbox"/> Guardian (<i>Name</i>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>	<p>4. <input type="checkbox"/> Guardian (<i>Name</i>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>
<p>5. <input type="checkbox"/> Indian Custodian (<i>Name</i>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>	<p>6. <input type="checkbox"/> Indian Custodian (<i>Name</i>):          Street address:          Mailing address:          City, state and zip code:          Telephone number:</p>
<p>7. <input type="checkbox"/> <i>Sacramento Area Director</i>  <i>Bureau of Indian Affairs</i>          Street address: 2800 Cottage Way          City, state and zip code: Sacramento, CA 95825          Telephone number:</p>	<p>8. <input type="checkbox"/> <i>Sacramento Area Director</i>  <i>Bureau of Indian Affairs</i>          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>):          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>):          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>):          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>):          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 tribal chairperson or designated authorized agent for service.**

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

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>NOTICE OF DESIGNATION OF TRIBAL REPRESENTATIVE                  IN A COURT PROCEEDING INVOLVING AN INDIAN CHILD</b>	CASE NUMBER:  RELATED CASES ( <i>if any</i> ):

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 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: \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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5. 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 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 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:
 

<ol style="list-style-type: none"> <li>(1) <input type="checkbox"/> Name of child's attorney (<i>if applicable</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(3) Name of Court Appointed Special Advocate (<i>if applicable</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(5) Name of <input type="checkbox"/> child's caregiver or <input type="checkbox"/> Indian custodian served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(7) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>(2) Name of <input type="checkbox"/> parent (<i>if self-represented</i>) or <input type="checkbox"/> parent's attorney (<i>if applicable</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(4) Name of <input type="checkbox"/> social worker (<i>dependency only</i>) or <input type="checkbox"/> probation officer (<i>delinquency only</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(6) Attorney for child welfare services agency (<i>dependency only</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> <li>(8) District attorney (<i>delinquency only</i>) served:                             <ol style="list-style-type: none"> <li>(a) Address:</li> <li>(b) Date of delivery:</li> <li>(c) Time of delivery:</li> </ol> </li> </ol>
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CHILD'S NAME:	CASE NUMBER:
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2. 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:
- |  |   |
|--|---|
| <p>(1) <input type="checkbox"/> Name of child's attorney (if applicable) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(3) Name of Court Appointed Special Advocate (if applicable) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(5) Name of <input type="checkbox"/> child's caregiver or <input type="checkbox"/> Indian custodian served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(7) Name of <input type="checkbox"/> parent (if self-represented) or <input type="checkbox"/> parent's attorney (if applicable) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> | <p>(2) Name of <input type="checkbox"/> parent (if self-represented) or <input type="checkbox"/> parent's attorney (if applicable) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(4) Name of <input type="checkbox"/> social worker (dependency only) or <input type="checkbox"/> probation officer (delinquency only) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(6) Attorney for child welfare services agency (dependency only) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> <p>(8) District Attorney (delinquency only) served:</p> <p>(a) Address:</p> <p>(b) Date of deposit:</p> <p>(c) Place of deposit:</p> |
|--|---|
- 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 STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
<b>ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION</b>	RELATED CASES (if any):

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 (name): _____	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Child's attorney	<input type="checkbox"/> Parent (name): _____	<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-50, *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 request for transfer is granted and the following ordered:
    - (1) The child's case is ordered transferred to the jurisdiction of the tribe listed below:  
 Name of tribe: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, state, zip code: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_
    - (2) 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: \_\_\_\_\_
  - b. 
    - (1) The case is being transferred from a juvenile court, and all of the findings and orders or modifications of orders that have been made in the case are attached.
    - (2) The case is being transferred from a juvenile court, and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.
    - (3) The case is being transferred from a juvenile court, and all originals contained in the court file must be transferred to the tribal court; a copy of the transfer order and findings of fact must be maintained by the transferring court.

CHILD'S NAME:	CASE NUMBER:
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5. (4) A party that intends to seek appellate review of the transfer order is advised that the party must take an appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delay the effective date) of the transfer order will result in a loss of appellate jurisdiction.

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 tribal court or other administrative body of the child's tribe declines the transfer.

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)  After conducting an evidentiary hearing on \_\_\_\_\_ (date), as detailed on the record, the party opposing the transfer has established that there is good cause not to transfer the proceeding to tribal court.

(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 the 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:

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JUDICIAL OFFICER



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:	<b>FOR COURT USE ONLY</b>  <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>REQUEST FOR EX PARTE HEARING TO RETURN          PHYSICAL CUSTODY OF AN INDIAN CHILD</b>		CASE NUMBER:

1. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. Your information:
  - a. I am the:
   
 child or youth     mother     father     legal guardian
   
 Indian custodian     tribal representative or attorney     other party (*specify*):
  - b. My name: \_\_\_\_\_
  - c. My address:
   
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_
  - d. My telephone number: \_\_\_\_\_
  - e. *If you are an attorney:*
  
My client's name: \_\_\_\_\_
   
My client's relationship to the child or youth: \_\_\_\_\_
3. The child is or there is reason to know the child is an Indian child.
4. At a hearing on \_\_\_\_\_, the court found that detention or removal of the child from the custody of the child's parent, Indian custodian, or legal guardian was necessary to prevent imminent physical damage or harm to the child justifying an emergency removal and placement of the child.
5. There is new information showing a change in circumstances since that emergency removal, and the child's placement is no longer necessary to prevent imminent physical damage or harm to the child. The new information showing this is: \_\_\_\_\_

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)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>ORDER ON REQUEST FOR EX PARTE HEARING TO                  RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD</b>	CASE NUMBER:

1. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith, the court finds and orders:
- a.  The request for an ex parte hearing is denied because the evidence submitted to the court does not show new information establishing that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child.
- b.  The request for an ex parte hearing is granted and is scheduled for (*date*): \_\_\_\_\_  
 (*time*): \_\_\_\_\_ (*location*): \_\_\_\_\_

Date: \_\_\_\_\_

 \_\_\_\_\_  
 JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<i>FOR COURT USE ONLY</i>    <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>ORDER ON EX PARTE REQUEST TO RETURN PHYSICAL CUSTODY OF AN INDIAN CHILD</b>	CASE NUMBER:

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 (name):	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Child's attorney	<input type="checkbox"/> Parent (name):	<input type="checkbox"/> Parent's attorney
<input type="checkbox"/> Probation officer/social worker	<input type="checkbox"/> Guardian	<input type="checkbox"/> Indian custodian
<input type="checkbox"/> CASA	<input type="checkbox"/> County counsel	<input type="checkbox"/> District attorney
<input type="checkbox"/> Tribal representative:	<input type="checkbox"/> other ( <i>specify</i> ):	

  
3. Having read and considered the request to return physical custody of an Indian child and the evidence submitted therewith and the evidence and submissions at the hearing, the court finds and orders:

a.  The child's emergency removal or detention and placement continues to be necessary to prevent imminent physical damage or harm to the child.

b.  New information establishes that the child's emergency removal or detention and placement is no longer necessary to prevent imminent physical damage or harm to the child, and the child is ordered returned to the physical custody of:

\_\_\_\_\_

Date: \_\_\_\_\_



\_\_\_\_\_  
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>JUVENILE DEPENDENCY PETITION (VERSION ONE)</b> (Welf. & Inst. Code, § 300 et seq.) <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	CASE NUMBER:  RELATED CASE (if any):

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 (check applicable boxes; see attachment 1a for concise statements of facts): <input type="checkbox"/> (a) <input type="checkbox"/> (b)(1) <input type="checkbox"/> (b)(2) <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. Gender:
f. Name: <input type="checkbox"/> mother Address: <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	g. Name: <input type="checkbox"/> mother Address: <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: <input type="checkbox"/> mother Address: <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. 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.		
j. Prior to intervention, child resided with <input type="checkbox"/> parent (name): <input type="checkbox"/> parent (name): <input type="checkbox"/> guardian (name): <input type="checkbox"/> Indian custodian (name): <input type="checkbox"/> other (state name, address, and relationship to child):	k. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: Current place of detention (address):  <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other		

2. Indian Child Welfare Act Inquiry (check one):

- a.  I have asked as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
- b.  On information and belief, I am aware that inquiry has been completed by (insert name) and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:
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2. c.  Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing duty to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and submit it to the court as soon as possible.

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(A))

**— 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 STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>JUVENILE DEPENDENCY PETITION (VERSION TWO)</b> <b>(Welf. &amp; Inst. Code, § 300 et seq.)</b> <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 387—Supplemental	CASE NUMBER:
	RELATED CASE ( <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: none;"> <tr> <td style="width: 25%;"><u>Child's name</u></td> <td style="width: 15%;"><u>Age</u></td> <td style="width: 15%;"><u>Date of birth</u></td> <td style="width: 15%;"><u>Gender</u></td> <td style="width: 30%;"><u>Section 300 subdivisions (check all that apply):</u></td> </tr> <tr> <td>1.</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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> </table>		<u>Child's name</u>	<u>Age</u>	<u>Date of birth</u>	<u>Gender</u>	<u>Section 300 subdivisions (check all that apply):</u>	1.				<input type="checkbox"/> a <input type="checkbox"/> b(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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(1) <input type="checkbox"/> b(2) <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
<u>Child's name</u>	<u>Age</u>	<u>Date of birth</u>	<u>Gender</u>	<u>Section 300 subdivisions (check all that apply):</u>																											
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c. 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	d. 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																														
e. 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	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																														

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:
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2. Indian Child Welfare Act Inquiry

- a.  I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
- b.  On information and belief, I am aware that inquiry has been completed by *(insert name)* and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
- c.  Inquiry has been made by *(insert name)* as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)), and submit it to the court as soon as possible.

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.





CHILD'S NAME:	CASE NUMBER:
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8. a.  There is clear and convincing evidence that it is likely the child will be adopted.
- b.  The child is an Indian child or  there is reason to know that the child is an Indian child, and
- (1)  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and  
(Name of Witness)
- (2)  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
- (3)  The court finds by evidence beyond a reasonable doubt that continued physical custody by the  mother  father  Indian custodian  other: \_\_\_\_\_ is likely to result in serious emotional or physical damage to the child.

9. The parental rights of
- a.  parent (name): \_\_\_\_\_  Mother  Father
- b.  parent (name): \_\_\_\_\_  Mother  Father
- c.  alleged fathers (names): \_\_\_\_\_
- d.  unknown mother  all unknown fathers
- are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**  
(If item 9 is checked, go to item 18.)

10. This case involves an Indian child. The parental rights of
- a.  parent (name): \_\_\_\_\_
- b.  parent (name): \_\_\_\_\_
- c.  Indian custodians (names): \_\_\_\_\_
- d.  alleged fathers (names): \_\_\_\_\_
- e.  unknown mother  all unknown fathers
- are modified in accordance with the tribal customary adoption order of the (specify): \_\_\_\_\_ tribe, dated \_\_\_\_\_ and comprising \_\_\_\_\_ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.  
(If item 10 is checked, go to item 18.)

11.  The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. (If item 11 is checked, go to item 15 or 16.)

12.  Termination of parental rights would be detrimental to the child for the following reasons: (If item 12 is checked, check reasons below and go to item 15 or 16.)
- a.  The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b.  The child is 12 years of age or older and objects to termination of parental rights.
- c.  The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d.  The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:
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12. e.  There would be substantial interference with the child's sibling relationship.
- f.  The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would 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 or another permanent plan for the child.
13.  Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14)*:
- a.  is a member of a sibling group that should stay together.
- b.  has a diagnosed medical, physical, or mental disability.
- c.  is 7 years of age or older.
14. a.  Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:
- (Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 18.)*
- b.  Visitation between the child and
- parent *(name)*:  Mother     Father
- parent *(name)*:  Mother     Father
- legal guardian *(name)*:
- other *(name)*:
- is scheduled as follows *(specify)*:
- c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.
15.  The child's permanent plan is legal guardianship.
- (Name)*:  
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*
- a.  Visitation between the child and
- parent *(name)*:  Mother     Father
- parent *(name)*:  Mother     Father
- legal guardian *(name)*:
- other *(name)*:
- is scheduled as follows *(specify)*:
- b.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.
- c.  Dependency     Wardship    is terminated.
- d.  Dependency     Wardship    is terminated. The likely date for termination of the dependency or wardship is *(date)*:  
*(If this item is checked, go to item 17.)*

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

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16. a.  The child remains placed with *(name of placement)*:  
with a permanent plan of *(specify)*:
- |  |   |
|--|---|
| (1) <input type="checkbox"/> Returning home            | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative  |
| (2) <input type="checkbox"/> Adoption                  | (6) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
| (3) <input type="checkbox"/> Tribal customary adoption |   |
| (4) <input type="checkbox"/> Legal guardianship        |   |

**The child's permanent plan is likely to be achieved by (date):**  
*(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 18.)*

- b.  Visitation between the child and
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |
- is scheduled as follows *(specify)*:

- c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

17.  The child is an Indian child. The court finds that the child's permanent plan complies with the placement preferences because:

- a.  The permanent plan is not adoption, and *(choose one)*:
- (1)  The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
  - (2)  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (3)  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (4)  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
  - (5)  The child is placed in accordance with the preferences established by the tribe; or
  - (6)  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

- b.  The permanent plan is adoption *(choose one)*:
- (1)  The child is placed with a member of the child's extended family; or
  - (2)  A diligent search was made for a placement with a member of the child's extended family, those efforts are documented in detail in the record, and the child is placed with other members of the child's tribe; or
  - (3)  An diligent search was made for a placement with a member of the child's extended family or other member of the child's tribe, those efforts are documented in detail in the record, and the child is placed with another Indian family; or
  - (4)  The child is placed in accordance with the preferences established by the tribe; or
  - (5)  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in detail in the record.

CHILD'S NAME:	CASE NUMBER:
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- 18.  The child's placement is necessary.
- 19.  The child's placement is appropriate.
- 20.  The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
- 21.  The child is an Indian child and active efforts as detailed in the record  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. If active efforts were made, those efforts have proved  successful  unsuccessful.
- 22.  The child is, or there is reason to know the child is, an Indian child. Notice has been provided as required by Welf. & Inst. Code, § 224.3, and proof of such notice has been filed with the court.
- 23.  The child remains a  dependent  ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
- 24.  All prior orders not in conflict with this order will remain in full force and effect.
- 25.  Other *(specify)*:

26.  Next hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- a.  Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
  - b.  Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
  - c.  Six-month postpermanency review

27. The  Parent *(name)*:  Mother  Father  
 Parent *(name)*:  Mother  Father  
 Indian custodian *(name)*:  
 Child  
 Other *(name)*:  
 have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:          <b>FOR COURT USE ONLY</b>          <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>CONTINUANCE—DEPENDENCY DETENTION HEARING</b>	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (*specify*):  
 filed on (*date*):

**2. Dispositional hearing**

- |                                      |  |
|--------------------------------------|--|
| a. Date:                             | e. Court reporter ( <i>name</i> ):           |
| b. Department:                       | f. Bailiff ( <i>name</i> ):                  |
| c. Judicial officer ( <i>name</i> ): | g. Interpreter ( <i>name and language</i> ): |
| d. Court clerk ( <i>name</i> ):      |  |

	Present		Present	Appointed today
h. <u>Party (<i>name</i>):</u>		<u>Attorney (<i>name</i>):</u>		
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other ( <i>specify</i> ):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
- (1) Court Appointed Special Advocate (CASA) volunteer (*name*):
  - (2) Other (*name*):
  - (3) Other (*name*):

**THE COURT FINDS AND ORDERS:**

3.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
4.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

CHILD'S NAME:	CASE NUMBER:
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5.  A Court Appointed Special Advocate is appointed for the child.

6. **The court has informed and advised the**

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
  - the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
  - that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
  - that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

7. The court has considered the information contained in

- a.  the report of social worker dated:
- b.  other (*specify*):
- c.  other (*specify*):

and based on this information finds that continuance in the home is contrary to the child's welfare pending a further determination at the continued hearing.

8.  The court grants the motion for continuance under Welfare and Institutions Code section 322 made by the

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

9.  A motion for continuance was made by the

- mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

and good cause exists for granting the continuance in that

- a.  notice of the date, time, and location of the hearing was not given to (*name*):
- b.  the child did not receive proper notice of his or her right to attend the hearing.
- c.  other (*specify*):

The motion for the continuance is granted.

CHILD'S NAME:	CASE NUMBER:
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10.  **Contact with the child is ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

### 11. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

### 12. ICWA Inquiry

On the record, the court has:

- a.  Asked each participant present at the hearing:
- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native village and if yes, the name of the tribe or village;
  - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native village and if yes, the name of the tribe or village;
  - Whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
  - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native village, and if so, the name of the tribe or village.
- b.  Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native village.
- c. Based on this inquiry (*check one*):
- (1)  The court finds there is no reason to believe or reason to know the child is an Indian child. ICWA does not apply; or
- (2)  The court finds there is reason to believe the child is an Indian child; and (*check one*):
- (a)  The record includes evidence that the agency has complied with Welf. & Inst. Code, § 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or
- (b)  The agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services, and/or others; or
- (3)  The court finds that there is reason to know that the child is an Indian child, and
- (a)  The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status; or
- (b)  The agency is required to exercise due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status and provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and
- (c)  Notice has been provided as required by law; and
- (d)  The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
- (4)  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

13. The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

CHILD'S NAME:	CASE NUMBER:
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14. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

15. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete form ICWA-020 and to submit it to the court before leaving the courthouse today.

16.  There is reason to know the child is an Indian child, and the county agency must provide notice under Welf. & Inst. Code, § 224.3 of the for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

17. The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

18.  **Other findings and orders:**

- a.  See attached.  
b.  (Specify):

19. **All parties are ordered to return for the continued hearing:**

Hearing date:	Time:	Dept:	Room:
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20. **All prior orders not in conflict with this order remain in full force and effect.**

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

Date: \_\_\_\_\_  JUDGE  JUDGE PRO TEMPORE

Date: \_\_\_\_\_  COMMISSIONER  REFEREE



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:   <b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER DETENTION HEARING</b> (Welf. & Inst. Code, § 319)	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

2. **Dispositional hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:  
 (1) Court Appointed Special Advocate (CASA) volunteer (name):  
 (2) Other (name):  
 (3) Other (name):

3. **The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:  
 b.  Report of CASA volunteer dated:  
 c.  Other (specify):  
 d.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

4. a.  Notice of the date, time, and location of the hearing was given as required by law.  
 b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:
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5.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
6.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
7.  A Court Appointed Special Advocate is appointed for the child.

#### 8. Parentage

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

#### 9. ICWA Inquiry

On the record, the court has:

- a.  Asked each participant present at the hearing:
- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native village and if yes, the name of the tribe or village;
  - Whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native village and if yes, the name of the tribe or village;
  - Whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
  - If the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native village, and if so, the name of the tribe or village.
- b.  Instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native village.

#### 10. ICWA Status

- a.  The court finds there is no reason to believe or reason to know the child is an Indian child and ICWA does not apply; or
- b.  The court finds there is reason to believe the child is an Indian child; and
- (1)  The agency has completed further inquiry as required by Welf. & Inst. Code, § 224.2(e) and there is no reason to know that the child is an Indian child. ICWA does not apply; or
  - (2)  The agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services, and/or others.
- c.  The court finds that there is reason to know that the child is an Indian child, and
- (1)  The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status; or
  - (2)  The agency is required to exercise due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status and provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and
  - (3)  Notice has been provided as required by law; and
  - (4)  The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

CHILD'S NAME:	CASE NUMBER:
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10. d.  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

11. ICWA Jurisdiction

- a. It is known or there is reason to know that the child is an Indian child. The court finds (*select one*):
- (1)  That it has jurisdiction over the proceeding because:
    - (a) The court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and
    - (b) The court finds that the child is not already under the jurisdiction of a tribal court; or
  - (2)  The court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or
  - (3)  The court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with 25 U.S.C. § 1922.

Advisements and waivers

12. The court has informed and advised the

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
  - the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
  - that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
  - that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian, or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

13.  The  mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

CHILD'S NAME:	CASE NUMBER:
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**14.  CHILD NOT DETAINED**

- a.  Services that would prevent the need for further detention, including those set forth in item 17, are available.
- b.  The child is returned to the custody of
  - mother
  - biological father
  - legal guardian
  - other (specify):
  - presumed father
  - alleged father
  - Indian custodian

**15.  CHILD DETAINED**

- a. Services that would prevent the need for further detention are not available.
- b. A prima facie showing has been made that the child comes within Welf. & Inst. Code, § 300.
- c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND (select at least one):
  - (1)  there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.
  - (2)  there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.
  - (3)  the child has left a placement in which he or she was placed by the juvenile court.
  - (4)  the child has been physically abused by a person residing in the home and is unwilling to return home.
  - (5)  the child has been sexually abused by a person residing in the home and is unwilling to return home.
- d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welf. & Inst. Code, § 355 or further order of the court.
- e. The initial removal of the child from the home was necessary for the reasons stated on the record.
- f. The facts on which the court bases its decision to order the child detained are stated on the record.
- g. The child is placed in
  - (1)  the approved home of a relative.
  - (2)  an emergency shelter.
  - (3)  other suitable licensed place.
  - (4)  a place exempt from licensure designated by the juvenile court.
  - (5)  the approved home of a nonrelative extended family member as defined in Welf. & Inst. Code, § 362.7.
- h. Services, including those set forth in item 17, are to be provided to the family as soon as possible to reunify the child with his or her family.
- i.  Reasonable efforts were made to prevent or eliminate the need for removal from the home.
- j.  Reasonable efforts were not made to prevent or eliminate the need for removal from the home.
- k.  There is a relative who is able, approved, and willing to care for the child.
- l.  A relative who is able, approved, and willing to care for the child is not available. *This is a temporary finding and does not preclude later placement with a relative under Welf. & Inst. Code, § 361.3.*

**16.  CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

- a.  The evidence includes all of the requirements of Welf. & Inst. Code, § 319(b).
- b.  As detailed in the record, the agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved  successful  unsuccessful; or
  - The agency has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and

The agency is ordered to initiate or continue active efforts.

CHILD'S NAME:	CASE NUMBER:
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16. c.  For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

d.  The child's placement complies with the placement preferences set forth in Welf. & Inst. Code, § 361.31. The child is placed:

- With a member of the child's extended family;
- In a foster home licensed, approved, or specified by the child's tribe;
- In an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- In an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

OR

For the reasons stated on the record, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences.

17.  The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other (specify):
a. <input type="checkbox"/> Alcohol and drug testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Substance abuse treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Parenting education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

18.  Contact with the child is ordered as stated in (check appropriate boxes and attach indicated forms):

- a.  Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person (form JV-400).
- b.  Visitation Attachment: Sibling (form JV-401).
- c.  Visitation Attachment: Grandparent (form JV-402).

19.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

21.  There is reason to know the child is an Indian child and the county agency must provide notice under Welf. & Inst. Code, § 224.3 for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

22.  Other findings and orders:

- a.  See attached.
- b.  (Specify):

23.  The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

CHILD'S NAME:	CASE NUMBER:
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24.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept.:	Room:
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- a.  Jurisdictional hearing
- b.  Dispositional hearing
- c.  Settlement conference
- d.  Mediation
- e.  Other (*specify*):

25. All prior orders not in conflict with this order remain in full force and effect.

26. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE     JUDGE PRO TEMPORE

Date: \_\_\_\_\_

COMMISSIONER     REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  <b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER JURISDICTIONAL HEARING</b> <b>(Welf. &amp; Inst. Code, § 356)</b>	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

2. **Jurisdictional hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

i. Others present in courtroom:  
 (1) Court Appointed Special Advocate (CASA) volunteer (name):  
 (2) Other (name):  
 (3) Other (name):

3. **The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:  
 b.  Report of CASA volunteer dated:  
 c.  Case plan dated:  
 d.  Other (specify):  
 e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

4. a.  Notice of the date, time, and location of the hearing was given as required by law.  
 b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:
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5.  The child is an Indian child or  there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
6.  The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
7.  a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds:
- (1) the child understands the nature of the proceedings;
  - (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
  - (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.
- b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.
8.  A Court Appointed Special Advocate is appointed for the child.
9. The child's county of residence is:
10. The child's date of birth is (*specify*):

**11. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

12. a.  The petition was read to those present at the beginning of this jurisdictional hearing.
- b.  Reading of the petition was waived by all those present at the beginning of this jurisdictional hearing.

**13. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following:

- a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.
- b. The right to be informed by the court of the following:
- the contents of the petition;
  - the nature of and possible consequences of juvenile court proceedings;
  - the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
  - the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
  - that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;



CHILD'S NAME:	CASE NUMBER:
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13. b. • that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.
- c. The right to a hearing by the court on the issues presented by the petition.
- d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian; or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

14.  On the motion of the petitioner, the following allegations are stricken:

15.  The  mother  biological father  legal guardian  child  
 presumed father  alleged father  Indian custodian  
 other (specify):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

16.  The  mother  biological father  legal guardian  
 presumed father  alleged father  Indian custodian  
 other (specify):

understands the nature of the conduct alleged in the petition and the possible consequences of his or her admission, plea of no contest, or submission.

17. <input type="checkbox"/> Party	Admits	Submits	Pleads no contest	To petition as amended on (specify date):
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. <input type="checkbox"/> Alleged father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
e. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
f. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
g. <input type="checkbox"/> (Specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

18.  There is a factual basis for the admission.

19.  By a preponderance of the evidence, the allegations stated below are true:

- a.  as stated in the petition as originally filed.
- b.  as stated in the petition as amended on (date):
- (1)  by agreement of the parties.
- (2)  by the court to conform to proof.

CHILD'S NAME:	CASE NUMBER:
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20.  The allegations (*specify*):

as stated in the petition     as amended on (*date*): \_\_\_\_\_ are not proven and are ordered stricken.

21.  The allegations of the petition are not sustained.

22.  The petition is sustained under, and the child is a person described by, Welf. & Inst. Code, § 300 (*check all that apply*):

- |                                 |                                 |                                 |                                 |                                 |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 300(a) | <input type="checkbox"/> 300(c) | <input type="checkbox"/> 300(e) | <input type="checkbox"/> 300(g) | <input type="checkbox"/> 300(i) |
| <input type="checkbox"/> 300(b) | <input type="checkbox"/> 300(d) | <input type="checkbox"/> 300(f) | <input type="checkbox"/> 300(h) | <input type="checkbox"/> 300(j) |

23.  The previous disposition has not been effective in the protection of the child.

24.  The county agency is ordered to immediately return the child to the

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> mother                          | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian   |
| <input type="checkbox"/> presumed father                 | <input type="checkbox"/> alleged father    | <input type="checkbox"/> Indian custodian |
| <input type="checkbox"/> other ( <i>specify</i> ): _____ |  |   |

25.  The child and the

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> mother                          | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian   |
| <input type="checkbox"/> presumed father                 | <input type="checkbox"/> alleged father    | <input type="checkbox"/> Indian custodian |
| <input type="checkbox"/> other ( <i>specify</i> ): _____ |  |   |

are placed under the supervision of the county agency for a minimum of six months under their voluntary agreement to informal supervision and the provision of services designed to keep the family together as stated in the family's case plan.

26.  **Contact with the child is ordered as stated in** (*check appropriate boxes and attach indicated forms*):

- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

27. **All prior orders not in conflict with this order remain in full force and effect.**

28.  **Other findings and orders:**

- a.  See attached.
- b.  (*Specify*): \_\_\_\_\_

29.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
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- a.  Dispositional hearing
- b.  Settlement conference
- c.  Mediation
- d.  Other (*specify*): \_\_\_\_\_

30.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

31. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>     <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING</b> <b>(Welf. &amp; Inst. Code, § 361 et seq.)</b>	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):
  
2. **Dispositional hearing**
  - a. Date:
  - b. Department:
  - c. Judicial officer (name):
  - d. Court clerk (name):
  - e. Court reporter (name):
  - f. Bailiff (name):
  - g. Interpreter (name and language):

	Present		Present	Appointed today
h. <u>Party (name):</u>		<u>Attorney (name):</u>		
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

  - i. Others present in courtroom:
    - (1) Court Appointed Special Advocate (CASA) volunteer (name):
    - (2) Other (name):
    - (3) Other (name):
  
3. **The court has read and considered and admits into evidence:**
  - a.  Report of social worker dated:
    - (1)  For the purposes of establishing a guardianship, the report of the social worker includes an assessment as specified in Welf. & Inst. Code, §§ 360(a), 361.5(g).
    - (2)  In the case of an Indian child, the report of the social worker includes:
      - (a) Evidence that the agency  has  has not provided affirmative, active, thorough, and timely efforts to prevent the breakup of the Indian family and make it possible for the child to be returned home, and these efforts have proved  successful  unsuccessful;
      - (b) An assessment in consultation with the Indian child's tribe, as specified in Welf. & Inst. Code, § 358.1(j), whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

CHILD'S NAME:	CASE NUMBER:
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- 3. b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):
- f.  Testimony of qualified expert witness under the Indian Child Welfare Act

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 4. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
- 5. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
- 6.  A Court Appointed Special Advocate is appointed for the child.

**7. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
  - (1) alleged parent (name):
  - (2) alleged parent (name):
  - (3) alleged parent (name):

**8. ICWA Inquiry**

- a.  The court finds that the social worker or probation officer has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, \_\_\_\_\_, whether there is information that provides reason to know the child is an Indian child.
- b.  The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all participants in the proceedings, and the following relatives, \_\_\_\_\_, whether there is information indicating the child is an Indian child.
- c.  The parties were instructed to inform the court if they receive any information indicating that the child is an Indian child.
- d. (1)  The court finds that there is no reason to know that the child is an Indian child. Unless new information is received indicating that the child is an Indian child, ICWA does not apply. OR
  - (2)  The court finds that there is reason to know that the child is an Indian child; and
    - (a) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes of which the child may be a member or eligible for membership to verify the child's status;
    - (b) Notice has been provided as required by law; and
    - (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.
  - (3)  The court finds that the child is an Indian child and a member of the \_\_\_\_\_ tribe.

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**Advisements and waivers****9. The court informed and advised the**

- mother       biological father       legal guardian       child  
 presumed father       alleged father       Indian custodian  
 other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

- 10.** The  mother       biological father       legal guardian       child  
 presumed father       alleged father       Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**11.  Sibling group**

The child and the child's siblings listed below form a sibling group in which at least one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.

Sibling (*name*):

- a.  
b.  
c.  
d.  
e.  
f.

**12. Disposition is ordered as stated in** (*check appropriate box and attach indicated form*):

- a.  *Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision (Welf. & Inst. Code, § 360(b))* (form JV-416), which is attached and incorporated by reference.
- b.  *Dispositional Attachment: In-Home Placement With Formal Supervision (Welf. & Inst. Code, § 361)* (form JV-417), which is attached and incorporated by reference.
- c.  *Dispositional Attachment: Appointment of Guardian (Welf. & Inst. Code, § 360(a))* (form JV-418), which is attached and incorporated by reference.
- d.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-420), which is attached and incorporated by reference.
- e.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-421), which is attached and incorporated by reference.

**13. The child's rights** under Welf. & Inst. Code, § 388 and the procedure for bringing a petition under Welf. & Inst. Code, § 388, including the availability of appropriate and necessary forms, were provided to the child as follows:

- a.  Child under the age of 12 years, through the child's attorney of record or guardian ad litem
- b.  Child 12 years of age or older who was present at the hearing, on the record and in writing by handing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)
- c.  Child 12 years of age or older who was not present at the hearing, in writing by mailing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)

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14.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person (form JV-400).
  - b.  Visitation Attachment: Sibling (form JV-401).
  - c.  Visitation Attachment: Grandparent (form JV-402).

15. The child's medical, dental, mental health, and educational information required by Welfare and Institutions Code section 16010 was provided by the  mother  biological father  legal guardian  presumed father  alleged father  Indian custodian  other (specify):

16. **All prior orders not in conflict with this order remain in full force and effect.**

17.  **Other findings and orders:**
- a.  See attached.
  - b.  (Specify):

18.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Six-month permanency hearing (Welf. & Inst. Code, § 366.21(e))
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept.:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

19.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

20. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_  JUDGE  JUDGE PRO TEMPORE

Date: \_\_\_\_\_  COMMISSIONER  REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**DISPOSITIONAL ATTACHMENT: APPOINTMENT OF GUARDIAN**  
(Welf. & Inst. Code, § 360(a))

1.  The child is a person described under Welf. & Inst. Code, § 300 (check all that apply):  
 300(a)    300(c)    300(e)    300(g)    300(i)  
 300(b)    300(d)    300(f)    300(h)    300(j)
  
2.  The child is adjudged a dependent of the court.
  
3. a.  Reasonable efforts    were    were not   made to prevent or eliminate the need for removal from the home; or  
 b.  The child is an Indian child and active efforts as detailed in the record    were    were not   made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. If active efforts were made, those efforts have proved    successful    unsuccessful.
  
4. a.  The county agency solicited and integrated into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_.  
 b.  The county agency did not solicit and integrate into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_, and the agency is ordered to do so and submit an updated case pan within 30 days of the date of this hearing.  
 c.  The county agency did not solicit and integrate into the case plan the input of the    child    mother    father    representative of child's identified Indian tribe    other (specify): \_\_\_\_\_, and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.
  
5. The court advised the  
 mother    biological father    legal guardian  
 presumed father    Indian custodian    other (specify): \_\_\_\_\_  
 that no reunification services will be provided as a result of the guardianship of the child established in this matter.
  
6. The    mother    biological father    legal guardian  
 presumed father    Indian custodian    other (specify): \_\_\_\_\_  
 signed a *Guardianship (Juvenile)—Consent and Waiver of Rights* (form JV-419), agreeing to the guardianship of the child, the waiver of his or her rights to family maintenance services and family reunification services, and, in the case of an Indian child, the waiver of his or her rights under the Indian Child Welfare Act. A signed form JV-419 for each individual indicated above was filed with the court.
  
7. a.  The child signed a *Guardianship (Juvenile)—Child's Consent and Waiver of Rights* (form JV-419A), agreeing to the establishment of the guardianship and the waiver of his or her rights to family maintenance services and family reunification services. The child's signed form JV-419A was filed with the court.  
 b.  The child is prevented from providing a meaningful response to the request for guardianship and a waiver of his or her rights to family maintenance services and family reunification services because of the child's  
 (1)  age.  
 (2)  physical condition.  
 (3)  emotional condition.  
 (4)  mental condition.
  
8.  The child is an Indian child, and an authorized representative of the child's tribe signed a form JV-419 stating the tribe's agreement to the guardianship of the child, the waiver of the tribe's interests in family maintenance services and family reunification services, and the waiver of the tribe's rights under the Indian Child Welfare Act.
  
9.  The establishment of a legal guardianship is in the child's best interest.
  
10.  The county agency is ordered to release the child to the legal guardian named in item 11.
  
11. The court appoints (name):  
 as the legal guardian of the child's    person    estate   and orders the clerk of the court to issue letters of guardianship.

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**DISPOSITIONAL ATTACHMENT:  
REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT  
(Welf. & Inst. Code, §§ 361, 361.2)**

1.  The child is a person described by Welf. & Inst. Code, § 300 (check all that apply):
- |                                 |                                 |                                 |                                 |                                 |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 300(a) | <input type="checkbox"/> 300(c) | <input type="checkbox"/> 300(e) | <input type="checkbox"/> 300(g) | <input type="checkbox"/> 300(i) |
| <input type="checkbox"/> 300(b) | <input type="checkbox"/> 300(d) | <input type="checkbox"/> 300(f) | <input type="checkbox"/> 300(h) | <input type="checkbox"/> 300(j) |
- and is adjudged a dependent of the court.**

**Circumstances justifying removal from custodial parent**

2.  There is clear and convincing evidence of the circumstances stated in Welf. & Inst. Code, § 361 regarding the persons specified below (check all that apply):

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.  The child is an Indian child or  there is reason to know that the child is an Indian child, and

- a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and
- b.  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
- c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other (specify):		

4. Reasonable efforts  were  were not made to prevent or eliminate the need for removal from the home.

5.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e. The active efforts have proved  successful  unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** (check all that apply):

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> mother           | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian |
| <input type="checkbox"/> presumed father  | <input type="checkbox"/> Indian custodian  |   |
| <input type="checkbox"/> other (specify): |  |   |



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**Family finding and engagement**

- 7. a.  The county agency has exercised due diligence to identify, locate, and contact the child's relatives.
- b.  The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.
  - (1)  The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with the family or domestic violence.
  - (2)  The county agency must submit a report to the court on or before (date): detailing the diligent efforts made and the results of such efforts.

**Case plan development**

- 8. a.  The county agency solicited and integrated into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (specify):
- b.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (specify): and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
- c.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (specify): and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

**Custody and placement**

- 9.  The  mother  presumed father  biological father did not reside with the child at the time the petition was filed and  does  does not desire custody of the child.
  - a.  By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:
    - Mother  Presumed father  Biological father
  - b.  The factual basis for the findings in this item is stated on the record.
- 10.  **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
  - a.  in the approved home of a relative.
  - b.  in the approved home of a nonrelative extended family member.
  - c.  in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
  - d.  with a foster family agency for placement in a foster family home.
  - e.  in a suitable licensed community care facility.
- 11.  **Placement with the child's relative, (name):** has been independently considered by the court and is denied for the reasons stated on the record.

- 12.  The child is an Indian child or there is reason to know the child is an Indian child. Currently (choose one):
  - a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
  - b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  A diligent search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - d.  A diligent search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

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12. e.  The child is placed in accordance with the preferences established by the tribe; or  
 f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.
13.  **The child's out-of-home placement is necessary.**
14.  **The child's current placement is appropriate.**
15.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.  
 a.  The matter is continued to the date and time indicated in form JV-415, item 18 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.  
 b.  Other (*specify*):
16.  **The child is placed outside the state of California and that out-of-state placement**  
 a.  continues to be the most appropriate placement for the child and is in the best interest of the child.  
 b.  is not the most appropriate placement for the child and is not in the best interest of the child.  
 The matter is continued to the date and time indicated in form JV-415, item 18 for a  written  oral report by the county agency on the progress made toward  
 (1)  returning the child to California and locating an appropriate placement within California.  
 (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.  
 (3)  other (*specify*):

**Reunification services**

17.  **Provision of reunification services to the biological father**  will  will not benefit the child.
18.  **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.  
 a.  Participation in the program  is  is not in the child's best interest.  
 b.  The program  is  is not suitable to meet the needs of the mother and child.
19.  **The following person is incarcerated:**  
 mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 and reasonable reunification services are  
 a.  granted.  
 b.  denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.
20.  **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**  
 a. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § (*specify*):  
 361.5(b)(3)  361.5(b)(7)  361.5(b)(9)  361.5(b)(11)  361.5(b)(13)  361.5(b)(16)  
 361.5(b)(4)  361.5(b)(8)  361.5(b)(10)  361.5(b)(12)  361.5(b)(15)  361.5(b)(17)  
 and reunification services are  
 (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.  
 (2)  denied.

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20. b. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.
- c. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(2), and reunification services are  
 (1)  granted.  
 (2)  denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.
- d. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are  
 (1)  granted, because  
     (a)  reunification services are likely to prevent reabuse or neglect.  
     (b)  the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.  
 (2)  denied.
- e. The  mother  legal guardian  
 presumed father  Indian custodian  
 other person who is a legal parent of the child (*name*):  
 is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are  
 (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.  
 (2)  denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.  
 (3)  The factual basis for the findings in this item is stated on the record.
- f. The  mother  legal guardian  other (*specify*):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to services. Reunification services are denied.
- g. **The county agency must provide reunification services**, and the following must participate in the reunification services stated in the case plan:  
 Mother  Biological father  Legal guardian  Presumed father  
 Indian custodian  Other (*specify*):
21. **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is (*specify*):

**Efforts**

22. The county agency  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

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**23. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

24.  **The child does not have siblings under the court's jurisdiction.**
25.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

26.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

27. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

28. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

29. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on (*date*):

30.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
- a.  stated in the social worker's report.
- b.  specified here:

31.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 30:
- a.  Social worker.
- b.  Parent (*name*):
- c.  Surrogate parent (*name*):
- d.  Educational representative (*name*):
- e.  Other (*name*):

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32.  The child's education placement has changed since the date the child was physically removed from the home.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
- b.  The child is enrolled in school.
- c.  The child is attending school.
33.  **Child 14 years of age or older:**
- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
- (1)  stated on the record.
- (2)  as follows:

#### Advisements

34.  **Child under the age of three years or member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).**  
The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group:
- a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date the child entered foster care under Welf. & Inst. Code, § 366.21(e).

**Six-month hearing date:**

- b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:
- Whether the sibling group was removed from parental care as a group;
  - The closeness and strength of the sibling bond;
  - The ages of the siblings;
  - The appropriateness of maintaining the sibling group;
  - The detriment to the child if sibling ties are not maintained;
  - The likelihood of finding a permanent home for the sibling group;
  - Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
  - The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
  - The best interest of each child in the sibling group.
- c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

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35.  **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, § 366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

<b>Twelve-month permanency hearing date:</b>
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36.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).
- c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(10) of the California Rules of Court to any party not present.
- e.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who had relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- f. **The likely date** by which the permanent plan will be achieved is *(specify date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING</b> (Welf. & Inst. Code, § 366.21(e))	CASE NUMBER:

**1. Six-month status review hearing**

- a. Date: \_\_\_\_\_
- b. Department: \_\_\_\_\_
- c. Judicial officer (name): \_\_\_\_\_
- d. Court clerk (name): \_\_\_\_\_
- e. Court reporter (name): \_\_\_\_\_
- f. Bailiff (name): \_\_\_\_\_
- g. Interpreter (name and language): \_\_\_\_\_

	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name): \_\_\_\_\_
  - (2) Other (name): \_\_\_\_\_
  - (3) Other (name): \_\_\_\_\_

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated: \_\_\_\_\_
- b.  Report of CASA volunteer dated: \_\_\_\_\_
- c.  Case plan dated: \_\_\_\_\_
- d.  Other (specify): \_\_\_\_\_
- e.  Other (specify): \_\_\_\_\_

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):



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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

- 11.  The child is an Indian child or  there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e. The active efforts have proved  successful  unsuccessful.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  The child does not have siblings under the court's jurisdiction.
- 14.  The child has siblings under the court's jurisdiction. *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 15. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
  - b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- 16. a. The child's educational needs  are  are not being met.
  - b. The child's physical needs  are  are not being met.
  - c. The child's mental health needs  are  are not being met.
  - d. The child's developmental needs  are  are not being met.

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17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
- stated in the social worker's report.
  - specified here:
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
20.  The child's education placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - The child is enrolled in school.
  - The child is attending school.
21.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
  - Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
  - Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.
23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).

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24. All prior orders not in conflict with this order remain in full force and effect.

25.  Other findings and orders:

- a.  See attached.
- b.  (Specify):

26.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept.:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept.:	Room:
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- d.  Other (specify):

27.  The petition is dismissed. Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
(Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (*specify*):
5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):
  - a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
  - b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
  - e.  The child is placed in accordance with the preferences established by the tribe; or
  - f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.
6.  **The child is placed outside the state of California and that out-of-state placement**
  - a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made toward
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  Other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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**Reunification services**

7.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family member, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e. The active efforts have proved  successful  unsuccessful.

**8. For child under the age of three years at time of initial removal or a member of a sibling group**

- a.  Having considered the relevant evidence, including the following factors
  - (1)  Whether there has been significant progress in resolving the problems that led to the removal;
  - (2)  Whether the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs has been demonstrated; and
  - (3)  Whether there has been consistent and regular contact and visitation with the child.

The court finds there is a substantial probability that the child may be returned to the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):  
 within six months of the date of this hearing or within 12 months of the date the child entered foster care, whichever is sooner.

- b. Reasonable services have not been provided to the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):  
 by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has (*specify*):

**9. Reunification services are continued for the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):
- a.  as previously ordered.
  - b.  as modified
    - (1)  on the record.
    - (2)  in the case plan.

10.  **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, placed with a fit and willing relative or in another planned permanent living arrangement is (*specify date*):

CHILD'S NAME:	CASE NUMBER:
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**Important individuals**

11.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
  - b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
  - c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:

**Health**

12.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

13. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twelve-month permanency hearing date:
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CHILD'S NAME:	CASE NUMBER:
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**SIX-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(e))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):
- a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
- b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.
6.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 26 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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**Reunification services**

7.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e. The active efforts have proved  successful  unsuccessful.

8.  The child is an Indian child or there is reason to know that the child is an Indian child, and:
- a.  Qualified expert witness testimony was provided by \_\_\_\_\_ ; and
  - b.  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
    - mother  biological father  legal guardian
    - presumed father  Indian custodian
    - other (specify): \_\_\_\_\_

9.  **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
- a.  The child was under the age of three years on the date of the initial removal from the home.
  - b.  The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
    - (1)
    - (2)
    - (3)
    - (4)
    - (5)
    - (6)
  - c. By clear and convincing evidence the
    - mother  biological father  Indian custodian
    - presumed father  legal guardian
    - other (specify): \_\_\_\_\_
 failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
  - d. Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.



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10.  **Reunification services terminated: Child of any age**

- a.  Reunification services are terminated for the
  - mother                       biological father                       Indian custodian
  - presumed father                       legal guardian
  - other (*specify*):
 because the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence,
  - (1)  the person's whereabouts remain unknown.
  - (2)  the person has not had contact with the child for six months.
  
- b.  Reunification services are terminated for the
  - mother                       biological father                       Indian custodian
  - presumed father                       legal guardian
  - other (*specify*):
 because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.
  
- c.  Reunification services are terminated for the
  - mother                       biological father                       Indian custodian
  - presumed father                       legal guardian
  - other (*specify*):
 because it is determined that the person is deceased.

11. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

12.  **Child in out-of-home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- b.  The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
  - (1)  as stated on the record.
  - (2)  as follows:

**Health**

13.  The  mother                       biological father                       other (*specify*):  
 presumed father                       legal guardian  
 is  unable                       unwilling                       unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Setting for selection of permanent plan**

- 14.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
- c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).

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14. d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ (Juvenile Dependency)* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):  
 (2) (name):  
 (3) (name):  
 (4) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):
15.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b.  The child remain in foster care with a permanent plan of (*specify*):
- (1)  Return home.  
 (2)  Adoption.  
 (3)  Tribal customary adoption.  
 (4)  Legal guardianship.  
 (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
- return home                       establish legal guardianship  
 place for adoption                 place with a relative  
 other (*specify*): \_\_\_\_\_
- The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

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16.  For children 16 years of age or older placed in another planned permanent living arrangement:

a. The court asked the child where he or she wants to live and the child provided the following information (*describe*):

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*):

c. The compelling reasons why the other permanent plan options are not in the child's best interests are (*describe*):

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER</b> <b>12-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

**1. Twelve-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4.  The child is an Indian child or  there is reason to know the child is an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to  
 (1) alleged parent (*name*):  
 (2) alleged parent (*name*):  
 (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child  
 presumed father                       alleged father                       Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.  
 child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.  
 child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.  
 child                       mother                       father                       representative of child's identified Indian tribe  
 other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

**11.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:**

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e. The active efforts have proved  successful  unsuccessful.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  **The child does not have siblings under the court's jurisdiction.**
- 14.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

- 15. a.  **A limitation on the right of the parents to make educational decisions for the child is not necessary.** The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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- 16. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*:

18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
- a.  stated in the social worker's report.
  - b.  specified here:

19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
- a.  Social worker.
  - b.  Parent *(name)*:
  - c.  Surrogate parent *(name)*:
  - d.  Educational representative *(name)*:
  - e.  Other *(name)*:

20.  The child's education placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - b.  The child is enrolled in school.
  - c.  The child is attending school.

21.  **Child 14 years of age or older:**
- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - (1)  stated on the record.
    - (2)  as follows:

22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:
- a.  *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.
  - b.  *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.
  - c.  *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.

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23.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person (form JV-400).
  - b.  Visitation Attachment: Sibling (form JV-401).
  - c.  Visitation Attachment: Grandparent (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25.  **Other findings and orders:**
- a.  See attached.
  - b.  (Specify):

26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  18-month permanency hearing (Welf. & Inst. Code, § 366.22)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept.:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.



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**TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
**(Welf. & Inst. Code, § 366.21(f))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**

3.  **The child's current placement is appropriate.**

4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

- a.  The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

5.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):

- a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
- b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6.  **The child is placed outside the state of California and that out-of-state placement**

- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made toward
  - (1)  returning the child to California and locating an appropriate placement within California.
  - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
  - (3)  Other (*specify*):

**Reunification services**

7. a.  **There is substantial probability that the child may be returned** to the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):  
 by the date set for the 18-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has

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7. a. (1) made significant progress in resolving the problems that led to the removal;  
 (2) demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the safety, protection, physical and emotional health, and special needs of the child; and  
 (3) consistently and regularly contacted and visited the child.

- b.  Reasonable services have not been provided to the  
 mother       biological father       Indian custodian  
 presumed father       legal guardian       other (specify):

8. Reunification services are continued for the  
 mother       biological father       Indian custodian  
 presumed father       legal guardian       other (specify):

- a.  as previously ordered.  
 b.  as modified  
 (1)  on the record.  
 (2)  in the case plan.

9.  **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, or in an identified placement with a specific goal is (specify date):

**Important individuals**

10.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
 (1)  as stated on the record.  
 (2)  as follows:

**Health**

11.  The  mother       biological father       Indian custodian  
 presumed father       legal guardian       other (specify):  
 is  unable       unwilling       unavailable      to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 18-month permanency hearing set on a date within 18 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Eighteen-month permanency hearing date:
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CHILD'S NAME:	CASE NUMBER:
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**TWELVE-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(f))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**
3.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a.  Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b.  These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c.  To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d.  These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e.  The active efforts have proved  successful  unsuccessful.
4.  The child is an Indian child or there is reason to know that the child is an Indian child, and
  - a.  Qualified expert witness testimony was provided by (*name*): \_\_\_\_\_ ; and
  - b.  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other ( <i>specify</i> ): _____		

**Placement**

5. **The child's out-of-home placement is necessary.**
6.  **The child's current placement is appropriate.**
7.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (*specify*): \_\_\_\_\_
8.  There has been a change in the child's placement and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):
  - a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
  - b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or

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8. c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

9.  **The child is placed outside the state of California and that out-of-state placement**

- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child.  
 The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

11.  **Child in out-of home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

**Health**

12.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian

is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

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**Selection of permanent plan**

13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a.  The child's permanent plan is placement with *(name)*: \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is *(specify date)*:

b.  The child remains in foster care with a permanent plan of *(specify)*:

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

return home

establish legal guardianship

place for adoption

place with a relative

other *(specify)*:

**The likely date** by which the child's permanent plan will be achieved is *(specify date)*:

c.  The court finds that the barriers to achieving the child's permanent plans are *(describe)*:

14.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe)*:

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*:

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe)*:

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15.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
- c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.21(i).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
9. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING</b> <b>(Welf. &amp; Inst. Code, § 366.22)</b>	CASE NUMBER:

**1. Eighteen-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. Party (name):				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):



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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e. The active efforts have proved  successful  unsuccessful.

**13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 14.  The child does not have siblings under the court's jurisdiction.
- 15.  The child has siblings under the court's jurisdiction. Sibling Attachment: Contact and Placement (form JV-403) is attached and incorporated by reference.

**Health and education**

- 16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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17. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*:
19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:  
 a.  Social worker.  
 b.  Parent *(name)*:  
 c.  Surrogate parent *(name)*:  
 d.  Educational representative *(name)*:  
 e.  Other *(name)*:
21.  The child's education placement has changed since the last review hearing.  
 a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.  
 b.  The child is enrolled in school.  
 c.  The child is attending school.
22.  **Child 14 years of age or older:**  
 a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.  
 b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.  
 c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services  
 (1)  stated on the record.  
 (2)  as follows:
23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:  
 a.  *Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22) (form JV-441), which is attached and incorporated by reference.*  
 b.  *Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22) (form JV-442), which is attached and incorporated by reference.*  
 c.  *Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.22) (form JV-443), which is attached and incorporated by reference.*

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24.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

26.  **Other findings and orders:**
- a.  See attached.
  - b.  (Specify):

27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept.:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.22)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**
3.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e. The active efforts have proved  successful  unsuccessful.
4.  The child is an Indian child or there is reason to know that the child is an Indian child, and
  - a.  Qualified expert witness testimony was provided by (name): \_\_\_\_\_ ; and
  - b.  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other (specify): _____		

**Placement**

5. **The child's out-of-home placement is necessary.**
6.  **The child's current placement is appropriate.**
7.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (specify): \_\_\_\_\_
8.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (choose one):
  - a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
  - b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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- 8. d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

- 9.  **The child is placed outside the state of California and that out-of-state placement**
  - a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made toward
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  Other (*specify*):

10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

- 11.  **Child in an out-of-home placement for six months or longer**
  - a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:

**Health**

12.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Selection of permanent plan**

- 13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
  - a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

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13. b.  The child remains in foster care with a permanent plan of (*specify*):
- (1)  Return home.
  - (2)  Adoption.
  - (3)  Tribal customary adoption.
  - (4)  Legal guardianship.
  - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
    - return home
    - place for adoption
    - other (*specify*):
    - establish legal guardianship
    - place with a relative

**The likely date** by which the child's permanent plan will be achieved is (*specify date*):

- c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*):

14.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

- a. The court asked the child where he or she wants to live and the child provided the following information (*describe*):
  
  
  
  
  
  
  
  
  
  
- b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*):
  
  
  
  
  
  
  
  
  
  
- c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*):

15.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
  - c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.22(c).

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- 15.
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
    - (1) (name):
    - (2) (name):
9. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):

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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

5.  There has been a change in the child's placement and the child is an Indian child, or there is reason to know that the child is an Indian child. Currently (*choose one*):
- a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
- b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- e.  The child is placed in accordance with the preferences established by the tribe; or
- f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

6.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 27 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

**Reunification services**

7. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
- a.  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):



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7. (1)  who is making significant and consistent progress in a substance abuse treatment program.
- (2)  who is recently discharged from incarceration, institutionalization, or the custody of the Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return.
- (3)  who was a minor parent or a nonminor dependent parent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

and

b. **There is a substantial probability that the child may be returned to the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.25 because the person has

- (1) consistently and regularly contacted and visited the child;
- (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
- (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and
- (a)  to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
- (b)  to complete a treatment plan postdischarge from incarceration or institutionalization.

c. The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause pursuant to Welf. and Inst. Code section 352 to continue the 18-month status review to (*specify date*):

8. **Reunification services are continued for the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

- a.  as previously ordered.
- b.  as modified
- (1)  on the record.
- (2)  in the case plan.

9.  **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or for a child 16 years of age or older in another planned permanent living arrangement is (*specify date*):

**Important individuals**

10.  **Child in out-of-home placement for six months or longer**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

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**Health**

11.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

12. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. **That hearing may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twenty-four-month permanency hearing date:
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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING</b> <b>(Welf. &amp; Inst. Code, § 366.25)</b>	CASE NUMBER:

**1. Twenty-four-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

<u>Party (name):</u>	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:

- a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
- b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
- c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
- e. The active efforts have proved  successful  unsuccessful.

13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

14.  The child does not have siblings under the court's jurisdiction.

15.  The child has siblings under the court's jurisdiction. Sibling Attachment: Contact and Placement (form JV-403) is attached and incorporated by reference.

**Health and education**

- 16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

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- 17. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.
  
- 18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date)*: .
  
- 19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
  - a.  stated in the social worker's report.
  - b.  specified here:
  
- 20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:
  - a.  Social worker.
  - b.  Parent *(name)*:
  - c.  Surrogate parent *(name)*:
  - d.  Educational representative *(name)*:
  - e.  Other *(name)*:
  
- 21.  The child's education placement has changed since the last review hearing.
  - a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - b.  The child is enrolled in school.
  - c.  The child is attending school.
  
- 22.  **Child 14 years of age or older:**
  - a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - (1)  stated on the record.
    - (2)  as follows:
  
- 23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms)*:
  - a.  *Twenty-Four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.
  - b.  *Twenty-Four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.
  
- 24.  **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form)*:
  - a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).
  
- 25. **All prior orders not in conflict with this order remain in full force and effect.**

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26.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept.:	Room:
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- c.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- d.  Other (specify):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.25)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4.  The child is an Indian child or there is reason to know that the child is an Indian child, and as set out in detail in the record:
  - a. Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
  - b. These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
  - c. To the maximum extent possible, the efforts  were  were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - d. These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - e. The active efforts have proved  successful  unsuccessful.
5.  The child is an Indian child or  there is reason to know that the child is an Indian child, and
  - a.  Qualified expert witness testimony was provided by (*name*): \_\_\_\_\_ ; and
  - b.  Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
  - c.  There was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
 

<input type="checkbox"/> mother	<input type="checkbox"/> biological father	<input type="checkbox"/> legal guardian
<input type="checkbox"/> presumed father	<input type="checkbox"/> Indian custodian	
<input type="checkbox"/> other ( <i>specify</i> ): _____		
6.  There has been a change in the child's placement, and the child is an Indian child or there is reason to know that the child is an Indian child. Currently (*choose one*):
  - a.  The child is placed with a member of the child's extended family as defined by 25 U.S.C. § 1903; or
  - b.  A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - c.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - d.  A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
  - e.  The child is placed in accordance with the preferences established by the tribe; or
  - f.  The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.
7.  **The child's current placement is appropriate.**



CHILD'S NAME:	CASE NUMBER:
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8.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-455, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

9.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-455, item 27 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

**Selection of permanent plan**

10. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

11.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b.  The child remains in foster care with a permanent plan of (*specify*):
- (1)  Return home.
- (2)  Adoption.
- (3)  Tribal customary adoption.
- (4)  Legal guardianship.
- (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
- return home                       establish legal guardianship  
 place for adoption               place with a relative  
 other (*specify*): \_\_\_\_\_

**The likely date** by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

12.  **For children 16 years of age or older placed in another planned permanent living arrangement:**
- a. The court asked the child where he or she wants to live and the child provided the following information (*describe*): \_\_\_\_\_
- b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*): \_\_\_\_\_
- c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*): \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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13.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
- c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.25(b).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):

#### Important individuals

14.  **Child in out-of-home placement for six months or longer**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

#### Health

15.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>JUVENILE WARDSHIP PETITION</b> <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) <input type="checkbox"/> § 602	CASE NUMBER:

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 sections of the Welfare and Institutions Code (*check applicable boxes; see attachments for concise statements of facts*):  
 601(a)     601(b)     602    Violation (*specify code section*):

b.  Under a previous order of this court, dated \_\_\_\_\_, the child was declared a ward under Welfare and Institutions Code section  601(a)     601(b)     602

c. Child's name and address:	d. Age:	e. Date of birth:	f. Gender:
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g. Name:  mother  
 Address:  father  
            guardian  
            unknown

If mother or father (*check all that apply*):  
 legal     biological     presumed     alleged

h. Name:  mother  
 Address:  father  
            guardian  
            unknown

If mother or father (*check all that apply*):  
 legal     biological     presumed     alleged

i. Name:  mother  
 Address:  father  
            guardian  
            unknown

If mother or father (*check all that apply*):  
 legal     biological     presumed     alleged

j. Other (*name, address, and relationship to child*):

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  
 not detained.     detained.  
 Date and time of detention (*custody*):  
 Current place of detention (*address*):

(See important notices on page 2.)

CHILD'S NAME:	CASE NUMBER:
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2. Petitioner requests that the court find these allegations to be true.
  3.  Petitioner requests a hearing to determine whether the child should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707 for the following alleged offense(s) (*specify code section(s)*):
- 4. Indian Child Welfare Act Inquiry**
- a.  I have asked whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
  - b.  On information and belief, I am aware that inquiry has been completed by (*insert name*) and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
  - c.  Inquiry has been made by (*insert name*) as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing obligation to complete this inquiry, and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and submit it to the court as soon as possible.

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: \_\_\_\_\_

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

You and your child may be required to pay any *restitution* owed to the victim and any fines or penalties ordered by the court. In addition, if you or family members other than your child receive services or legal assistance paid for by the court or county, you may be required to pay back the cost of those services unless the court or county decides that you can't afford to pay.

**RECORD SEALING**

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms), for more information about record sealing.

**SPRING 19-42**

**Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children** (Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 5.485, and 5.486; renumber rule 5.487; adopt forms ICWA-070, ICWA-080, and ICWA-90; revise forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, JV-100, JV-110, JV-320, JV-405, JV-410, JV-412, JV-415, JV-418, JV-421, JV-430, JV-432, JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, JV-457, and JV-600)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	<p>Agua Caliente Band of Cahuilla Indians By: Joanne Willis Newton Law Office of Joanne Willis Newton Escondido, CA</p>	NI	<p>*The entire comments are attached as appendix A:</p> <p>Throughout the rules it sometimes refers to Indian custodian (singular) and other times Indian custodians (plural) this should be consistent throughout the rules.</p> <p>Rule 5.480 - Conservatorships are for adults and therefore would not meet the definition of “child custody proceeding” in ICWA. It’s true that ICWA can now apply pursuant to state law to an Indian child who is a non-minor dependent, but in a guardianship case arising under the WIC, the case would remain a guardianship; it would not become a probate conservatorship.</p> <p>Remove the words conservator and conservatorship throughout the rules.</p> <p>Rule 5.481(a)(4)(C) – The specific details on how to contact a tribe, as outlined in 25 CFR section 23.105 should be set out here to improve inquiry and notice compliance. This is one of</p>	<p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee have considered this comment but decided to retain the conservatorship language consistent with section 1459.5 of the Probate Code. Although generally conservatorships apply to adults, an individual who has previously been married and whose marriage has been dissolved, is subject to conservatorship proceedings rather than guardianship proceedings under the Probate Code even if that individual is under the age of 18. Accordingly, section 1459.5(a)(3) of the Probate Code stipulates that ICWA requirements apply to these conservatorship proceedings if the proposed conservatee comes within the definition of “Indian child”.</p> <p>The Forum and Committee considered this comment but concluded that, consistent with Judicial Council policy, not to repeat the text of the regulations in the rules of court. Instead the Forum</p>

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	Commenter	Position	Comment	Committee Response
			<p>the questions we most often get at Tribal STAR trainings from social workers.</p> <p>The word “tribe” should be capitalized throughout the rules, as it is in 25 CFR Part 23.</p> <p>Rule 5.481(b) – Add a subsection stating:</p> <p>Information that a child has Native American ancestry does not in and of itself provide reason to know the child is an Indian child. There must be some information suggesting that the child is an Indian child (i.e. a child who is a member of a federally-recognized Tribe or a child who is eligible for membership in a federally-recognized Tribe and has a parent who is a member of such a Tribe).</p> <p>5.481(b)(3)(A) – remove the word that after “reason to know” in the first line.</p> <p>5.481(b)(3)(B) – revise this section to apply when it is known that the child is an Indian child and add a new section (C) to apply when there “is reason to know” rather than it being known.</p> <p>Add a subsection (4) to rule 5.481(b) to specify that a tribe’s determination of membership status is conclusive and to clarify that enrollment is not required unless the tribe confirms in writing that</p>	<p>and Committee have included an advisory committee comment.</p> <p>Generally the words state, federal, etc. are not capitalized when they are being referred to in a general manner (ie. state and federal rules...) and are only capitalized when they are part of a proper name (ie. State of California). Similarly the word tribe is generally not capitalized when used generally and not referring to a specific tribe. (see <a href="#">AMA Writing Style</a> guide.)</p> <p>The Forum and Committee considered this comment, but concluded that it is not appropriate to create an evidentiary standard in the rule of court that is not expressly set out in the statute or the regulations.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p>

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			<p>enrollment is a prerequisite for membership in the tribe.</p> <p>Rule 5.481(c)(1) – take out the word “that” after “reason to know” in the first line. Remove “and conservatorship” in fourth line. Change statutory reference in eighth line to 224.3 rather than 224.2.</p> <p>Include language to require notice for every subsequent hearing. As drafted, the rule suggests that notice is only required for certain hearings, such as detention, disposition and the 366.26 hearing. It is required for every hearing held in an Indian child custody proceeding. The rule should make it clear that once notice is triggered, notice must be provided for all hearings in the proceeding.</p> <p>Rule 5.482(a)(1) – remove word “that” after reason to know in first line.</p> <p>Why are (a)(2) and (3) referenced as exceptions to the 10-day rule but shown as deleted below? Language consistent with WIC 224.3(d) provisions regarding exception to 10-day rule and continuances should be reflected in (a)(2) and (3).</p> <p>Revise subsection (f) to add to existing language the specific examples of “active efforts” set out in 25 CFR section 23.2 that involve consultation</p>	<p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment but concluded that the proposal to require formal ICWA notice for each hearing is inconsistent with the requirements of the federal regulations and the Welf. &amp; Inst. Code as amended by AB 3176. As revised, Welf. &amp; Inst. Code 224.3(a) &amp; (b) require ICWA notice only for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement. However, the proposal was revised to clarify that the where a tribe has been identified, the tribe is entitled to notices for other hearings in accordance with section 224.3(g).</p> <p>The proposal was revised in response to this comment.</p> <p>This error has been corrected. Subsection subsections (a)(2) and (3) were reinstated in response to this comment.</p> <p>Subsections (e) and (f) address requirements related to the placement of a child and do not relate to active efforts, so the Forum and Committee</p>

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	Commenter	Position	Comment	Committee Response
			<p>with Tribe, e.g., (1), (2), (3), (4), (5), (8), (10)]</p> <p>Rule 5.483(a)(1) – add the word “already” before “a ward of a tribal court...” in first line</p> <p>It would be helpful to clarify whether a “ward” is a child who is the subject of any tribal court custody orders or only custody orders vesting custody with the tribe for protective reasons.</p> <p>Revise subsection (a)(3) as follows:</p> <p><u>This section does not preclude an emergency removal pursuant to Welfare and Institutions Code section 319 if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the local agency to the tribe.</u></p> <p>Revise subsection (c) to reflect the requirements of 25 CFR Section 23.116 by adding the following to the end of the existing text:</p> <p>Upon receipt of a transfer petition, the court must ensure that the Tribal court is promptly notified in writing of the transfer petition. The notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.”</p> <p>Revise subsection (d)(1)(B) as follows:</p> <p>The tribal court of the child’s tribe <b>or, if the</b></p>	<p>declined to revise the proposal in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment but determined that it was not appropriate to create this legal standard through rule of court when it was not established in the federal or state statutes or regulations.</p> <p>The proposal was revised in response to this comment to add references to the emergency removal provisions in the federal statute and regulations and the Welfare and Institutions Code.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee did not follow this recommendation. The subsection regarding lack of a tribal court was removed from the rule to conform</p>

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	Commenter	Position	Comment	Committee Response
			<p>child's tribe does not have a tribal court, the child's tribe declines the transfer.</p> <p>Revise subsection (d)(2)(E) as follows:</p> <p>Socioeconomic conditions or <del>any negative perception</del> the perceived adequacy of tribal or BIA</p> <p>Revise rule 5.484(a) as follows:</p> <p><u>Whenever it is known or there is reason to know that the case involves an Indian child, the court may not order an emergency removal or placement of the child without a finding that the removal or placement is necessary to prevent imminent physical damage or harm to the child, and <del>Whenever it is known or there is reason to know that the case involves an Indian child,</del> the petition requesting emergency removal or continued emergency placement of the child or its accompanying documents must contain the following:</u></p> <p>(4) <u>The steps taken to provide notice to the child's parents, Indian custodians, and tribe about the emergency proceeding;</u></p> <p>Revise the last sentence of subsection (b) as follows:  ..... the court shall order the child returned</p>	<p>it to 25 C.F.R. §23.117 which lists only objections from either parent, declination of jurisdiction by the tribal court or a finding of good cause as reasons not to transfer. Similarly AB 3176 revised WIC 305.5 (e) by removing previous subsection (1)(B) which had discussed the existence of a tribal court.</p> <p>Subsection (d)(2) was revised in its entirety to mirror the requirements of WIC 305.5(e)(2).</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p>

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	Commenter	Position	Comment	Committee Response
			<p>to the physical <u>custody</u> of the parent(s) <del>or parents or of</del> Indian custodian(s).</p> <p>Add the words “if applicable” to the end of subsection(c) (2).</p> <p>Revise rule 5.485 (b) (1) as follows:</p> <p><del>Unless the court finds good cause to deviate from them the contrary, w</del><u>Whenever it is known or there is reason to know the child is</u> an Indian child, all placements <del>of Indian children</del> in any proceeding listed in rules 5.480 <del>and 5.484</del> must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31, <del>unless the court finds good cause to deviate from those placement preferences.</del></p> <p>Revise rule 5.486 to add “Removal” to the title.</p> <p>Revise rule 5.486(a) [to add various requirements concerning evidentiary standards for removal and placement of an Indian child. See specific recommended language in the attachment].</p> <p>Revise subsection (b)(3) by adding the words “tribal customary adoption without termination of parental rights,” immediately following “the child’s tribe has identified...”</p> <p>Add a subsection (d) to rule 5.531 as follows:</p>	<p>The Forum and Committee declined to follow this recommendation as unnecessary and inconsistent with the statute.</p> <p>The Forum and Committee declined to follow this stylistic recommendation.</p> <p>The Forum and Committee declined to follow this recommendation because rule 5.486 does not apply to removals.</p> <p>The Forum and Committee declined to follow this recommendation because the issue of evidentiary standards for placement of an Indian child are addressed in Rule 5.485 (Formerly 5.484).</p> <p>The proposal was revised in response to this comment.</p>

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			<p><u>(d) Notwithstanding (c), if it possesses the capability, the court should allow alternative methods of participation in child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.</u></p> <p>This reflect 25 CFR section 23.133.</p> <p>Remove the word “that” immediately following reason to know in subsection (c)(1)(A) of rule 5.668</p> <p>Revise rule 5.676 (d) by removing the word “that” immediately following “reason to know” in the first line and revise subsections (2) and (8) as follows:</p> <p>(2) <u>The steps taken to provide notice to the child’s parents, Indian custodians, and tribe about the hearing pursuant to <del>this section</del>the Welfare and Institutions Code section 224.3;</u></p> <p>(8) <u>If the child is believed to be a ward of a tribal court or to reside or be domiciled on a reservation in which the...</u></p> <p>Revise rule 5.678 (c)(2) to remove the word “that” following “reason to know” in the first line.</p> <p>Add language to rule 5.678 to address what the court must do if it finds that the active efforts requirement has not been met, i.e., order the child returned and that active efforts be made.</p>	<p>The Forum and Committee have considered this comment and acknowledge that it is consistent with the federal regulations, however, the Forum and Committee have concluded that it is not appropriate to implement this through rule of court when there is no statutory basis in the WIC or other California statute for this provision.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was not revised because the proposed revision does not align with the language of the statute at WIC 319(b)(8).</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p>

	Commenter	Position	Comment	Committee Response
			<p>Revise subsection 5.678(c)(2)(A) as follows:</p> <p><u>Active efforts have been made and were successful;</u></p> <p>and create a new subsection (B) as follows:</p> <p><u>Active efforts have been made and were not successful; or</u></p> <p>Re-number subsection (B) and (C) accordingly.</p> <p>Delete subsection (f)(2) of rule 5.678. WIC does not permit detention hearings to be continued for 30 days. 25 CFR section 23.113(e) is inconsistent with state law in this regard. This subsection of the rule should be deleted.</p> <p>Delete subsection (f)(2)(C). An Indian child custody proceeding is initiated by the filing of the 300 petition (or other petition in probate or family court). There is never a scenario in which a 300 petition could not be filed within 30 days.</p>	<p>The proposal was revised in response to this comment.</p> <p>Notwithstanding this comment, WIC 319(e)(2) specifies what is required to continue a detention hearing beyond 30 days. The rule is consistent with the statutory language.</p> <p>The Forum and Committee do not agree that filing a petition is sufficient to “initiate an Indian child custody proceeding...” WIC 224.1(l) defines an emergency proceeding as the initial petition hearing held pursuant to section 319. Under the <a href="#">Guidelines issued by the BIA</a> the initiation of a child custody proceeding requires a proceeding “...to which the full set of ICWA protections would apply.” (see page 25) In California this is generally not until the dispositional hearing at which a QEW would testify.</p>
2.	Alliance for Children’s Rights Per Kristin Power, Senior Policy Associate	NI	Our experience representing caregivers in probate proceedings provides a breadth of information on the knowledge caregivers and the court would find most useful in understanding ICWA and associated court processes. We offer these comments to provide further clarification to ensure compliance.	

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	Commenter	Position	Comment	Committee Response
			<p>Page 17, Rule 5.481(c)(1) Notice – currently 5.481(b)(1)</p> <p>The current and proposed rule both state that notice requirements under ICWA are triggered for probate if it is known or there is reason to believe that an Indian child is involved in the proceedings. However, the proposed language states that notice must be given for all hearing that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement. The new language fails to provide an option under which notice would be triggered for probate court because probate proceedings do not result in foster care placement, termination of parental rights, preadoptive placement or adoptive placement.</p> <p>To include probate, the Judicial Council may want to consider amending their new proposed language to read as follows:  “for all hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, appointment of guardian or adoptive placement.</p> <p>As probate guardianship is one of the many available child custody options, we think inclusion of such information in this form offers judges and court personnel consistent and clear information to better ensure ICWA compliance.</p>	<p>The proposal was revised in response to this comment. A guardianship of the person under the California Probate Code comes within the definition of “foster care placement” under the Indian Child Welfare Act and California law if the case involves and Indian child.</p> <p>Under 25 U.S.C. §1903(1)(i) a foster care placement includes “...any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or <b>the home of a guardian or conservator</b> where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.</p> <p>This definition is incorporated into the California Probate Code at section 1449 (c). The ICWA notice requirements are applied to probate proceedings through Rule 7.1015 (c).</p>
3.	California Lawyers Association Executive Committee of the Family Law Section	A	FLEXCOM agrees with this proposal.	No response required.

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	By: Saul Bercovitch, Director of Governmental Affairs Sacramento, CA			
4.	California Tribal Families Coalition Per: Delia Sharpe, Executive Director	A	<p>The California Tribal Families Coalition (CTFC), a non-profit organization dedicated to protecting Indian children, families and tribes, submits these comments on behalf of its member tribes to the Invitation to Comment regarding the “Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children.” CTFC was the sponsor of AB 3176 and seeks through these comments to ensure the intent of the legislation is carried forward through implementing regulations, rules and forms. To that end, we find the proposed rules and forms closely mirror the language of AB 3176, and where appropriate, incorporate language of the 2016 federal ICWA regulations as additional guidance. In order to achieve consistency in the application of ICWA, this mirroring state and federal law and regulations is critical. We strongly recommend retaining the language of the rules and forms as proposed, limiting wherever possible interpretation of applicable laws and regulations.</p> <p><u>Specific comments:</u></p> <p><b>Rule 5.481 Inquiry</b> <i>The December 2016 – Guidelines for Implementing the Indian Child Welfare Act</i> (BIA ICWA Guidelines) provide the following guidance regarding how often inquiry must occur: Inquiry each proceeding. The rule does not require an inquiry at each hearing</p>	<p>No response required</p> <p>The proposal was revised in response to this comment to indicate that inquiry had to be made on the record at the beginning of each “proceeding”.</p>

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	Commenter	Position	Comment	Committee Response
			<p>within a proceeding; but, if a new child-custody proceeding (such as a proceeding to terminate parental rights or for adoption) is initiated for the same child, the court must make a finding as to whether there is “reason to know” that the child is an Indian child. In situations in which the child was not identified as an Indian child in the prior proceeding, the court has a continuing duty to inquire whether the child is an Indian child. (citing <i>In re Isaiah W.</i>, 1 Cal.5th 1 (2016).)</p> <p>As stated in Rule 5.481, the California standard includes additional language making inquiry an affirmative and continuing duty. We recommend adding clarifying language that a finding on the record regarding inquiry must be made at each proceeding.</p> <p><b>Rule 5.690 General conduct of disposition hearing</b></p> <p>We recommend adding the language regarding continuances from amended WIC § 352(b): “a continuance shall not be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days, or 30 days in the case of an Indian child...”</p> <p><b>Do the proposed findings and orders set out in forms JV-405 and JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information?</b></p> <p>Regarding Inquiry and the “Reason to Know” standard, the <i>BIA ICWA Guidelines</i> state the following:</p>	<p>The Forum and Committee recognize the need to address the specific requirements governing continuances in cases governed by ICWA. The Forum and Committee have addressed these by revising Rule 5.550 governing continuances, in addition to revising rule 5.690.</p>

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	Commenter	Position	Comment	Committee Response
			<p>The regulation lists factors that indicate a “reason to know” the child is an “Indian child.” State courts and agencies are encouraged to interpret these factors expansively. When in doubt, it is better to conduct further investigation into a child’s status early in the case; this establishes which laws will apply to the case and minimizes the potential for delays or disrupted placements in the future. States or courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child.</p> <p>The proposed findings and orders in forms JV-405 and JV-410 reflect the intention of AB 3176 in both distinction between “reason to believe” and “reason to know” and the obligations each trigger. However, we recommend the important guidance from the BIA be added to the forms. Additionally, the following guidance from the BIA ICWA Guidelines would be useful guidance in the forms:</p> <p>Treating the Child as an Indian Child, unless and Until Determined Otherwise</p> <p>This requirement (triggered by a “reason to know” the child is an “Indian child”) ensures that ICWA’s requirements are followed from the early stages of a case and that harmful delays and duplication resulting from the potential late application of ICWA are avoided. For example, it makes sense to place a child that the court has reason to know is an Indian child in a placement that complies with ICWA’s placement preferences from the start of a proceeding, rather than having to consider a change a placement later in the proceeding once the court confirms that the child actually is an Indian child.</p> <p>Notably, the early application of ICWA’s</p>	<p>The Forum and Committee have considered this comment but concluded that it is not appropriate to include this lengthy language in the forms.</p>

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	Commenter	Position	Comment	Committee Response
			<p>requirements—which are designed to keep children, when possible, with their parents, family, or Tribal community—should benefit children regardless of whether it turns out that they are Indian children as defined by the statute. If, based on feedback from the relevant Tribe(s) or other information, the court determines that the child is not an “Indian child,” then the State may proceed under its usual standards.</p> <p><b>Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?</b></p> <p>It is the strong position of CTFC that the use of forms JV-419 and JV-419(A) do <u>not</u> waive the rights and protections of the Indian Child Welfare Act. Neither federal nor state law provide for such a wavier of ICWA’s protections. ICWA is often called the “gold standard” of child welfare because of the protections it provides to children, families and their tribes in difficult, often vulnerable, situations.</p> <p>We are hopeful the implementation of AB 3176 will serve to increase ICWA compliance in California, thereby protecting and promoting the health, safety and welfare of Indian children, families and their tribes. The commitment of state agencies is necessary and appreciated. Thank you for allowing us an opportunity to submit these comments.</p>	<p>No response required.</p> <p>No response required.</p>

5.	Children’s Law Center of California By: Sue Abrams, Director of Policy & Training Los Angeles, CA	NI	<p>*The entire comments are attached as appendix A</p> <p>Rule 5.481(a) –</p> <ul style="list-style-type: none"> <li>• change the word “seeking” to “requesting” in line 2;</li> <li>• Include “preadoptive placement” after “termination of parental rights”;</li> <li>• Revise the language after “...all proceedings identified in rule 5.480.” as follows:  <b>This imposes a duty on the court, court-connected investigators, county welfare departments, probation departments, licensed adoption agencies, adoption service providers, investigators, petitioners, appointed guardian or conservators of the person, and appointed fiduciaries. <del>The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.</del></b></li> <li>• Include “preadoptive placement” after “termination of parental rights” in subsection (1) and after “custody and control of one or more parents” in subsection (2);</li> <li>• Revise the language of subsection (2)(C) as follows:  <b>(C) Order the parent, Indian custodian, guardian or any other relative present in</b></li> </ul>	<p>The Forum and Committee considered this comment and decided not to make this change because the words “seeking” and “requesting” are both used extensively throughout the division five rules with respect to seeking or requesting orders.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment but determined the revision was not necessary.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee declined to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know of have reason to know the child is an</p>
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		<p><del>court to complete the <i>Parental Notification of Indian Status</i> Form (ICWA-020). <del>Order the parent, Indian custodian, or guardian if available, to complete Parental Notification of Indian Status (form ICWA-020).</del></del></p> <ul style="list-style-type: none"> <li>• Add the following language to the end of subsection (4)(C):  <i>Any information obtained by the petitioner must be documented in the ICWA-020 form. If the petitioner had previously sent notices and the information obtained is new information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020 then the petitioner must complete a new ICWA-020 with all the information and re-notice all the identified Tribes.</i></li> </ul> <p>It is important to ensure this language is included because it is the most common ground in which ICWA reversals come down from the Court of Appeal.</p> <p>Rule 5.481(b)</p> <ul style="list-style-type: none"> <li>• Revise the language in subsection (1) as follows:  <u>(1) The court has reason to know a child involved in a proceeding is an Indian child if: <del>the child is an Indian child if:</del></u></li> <li>• Revise the language in subsection (3)(A) as follows:  <u>(A) Find that there is no reason to know that the child is an Indian child and that the Indian Child Welfare Act does not</u></li> </ul>	<p>Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance.</p> <p>The Forum and Committee did revise the proposal in response to this comment, but not in the exact language set out in the comment. The comment would require all information to be provided to a tribe or tribes on form ICWA-030, however, under the regulations and revised California statute, ICWA Notice in form ICWA-030 is only required when there is “reason to know” and only for specified hearings. The federal regulations and California statute otherwise allow the information to be provided to tribes by email, fax or phone. So long as there is sufficient evidence that all relevant information has been provided to the tribe(s), it does not need to be on the ICWA-030 form.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment, but concluded that the proposed language of the subsection was sufficiently clear without this change.</p>
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		<p><u>apply. Notwithstanding this determination, if the court or a party subsequently receives any information required by section 224.3 that was not previously available or included in the notice issued under Section 224.3, the court must order the party seeking placement shall provide the additional information to any tribes entitled to notice under section 224.3 and to the Secretary of the Interior’s designated agent and the court must reconsider the previous ICWA finding.</u></p> <p>Rule 5.481(c)</p> <ul style="list-style-type: none"> <li>• Revise subsection (1) by adding the word “or” after “probate or guardianship and conservatorship proceedings,”. Correct the statutory reference from 224.2 to 224.3</li> </ul> <p>Rule 5.482</p> <p>Revise subsection (a)(1) and add a subsection (2) as follows: [see complete proposed language in appendix A]</p> <p>The changes the JC made would strike through an important provision regarding the detention hearing. Their language keeps in section (1) a reference to (a)(2)&amp;(3) but they delete it from the language. I put it together in one paragraph which includes all the language.</p> <p>This language makes it in compliance with the WIC section 224.3 and the previous rule of court.</p>	<p>The statutory reference was corrected in response to this comment, however, the Forum and Committee declined to add the word “or” as suggested because it would have altered the meaning inconsistent with the statute.</p> <p>The proposal has been revised to reinstate the language in the former sections 5.482(2) and (3).</p>
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		<ul style="list-style-type: none"> <li>• Revise subsection (b) as follows:   <b>Proof of compliance with the notice provisions must be filed with the court in advance of the hearing except for a hearing held pursuant to Section 319 of the Welfare and Institutions Code and must include:</b> <ol style="list-style-type: none"> <li>(1) Notice of Child Custody Proceedings for Indian Child (form ICWA-030),</li> <li>(2) Copies of the notices sent to all parties, tribes, parents, and Indian Custodians, and</li> <li>(3) All return receipts and responses received to the notices.</li> </ol> </li> </ul> <p>Revise subsection (c) as follows:</p> <p>(c) <b>Determination the ICWA Is Not Applicable</b>  <del>When there is no information or response from a tribe</del></p> <p>(1) <b>If the court makes a finding that proper and adequate inquiry and due diligence were conducted pursuant to section 224.2 and 224.3 of the Welfare and Institutions Code and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) does not apply to the proceedings.</b> <del>If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the Indian Child Welfare Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it</del></p>	<p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p>
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		<p>prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.</p> <p>(2) <b>The determination of the court that the Indian Child Welfare Act of 1978 does not apply in subsection (c)(1) is subject to reversal based on sufficiency of the evidence. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3 of the Welfare and Institutions Code. If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.</b></p> <p>(3) <del>The court is not required to delay proceedings until a response to notice is received.</del></p> <p>I do not think they can take out this section without guidance as to what to do when you have done everything and there is no response because it is a common situation. Since tribes get over 20,000 inquires a day sometimes they are not always timely to respond to inquiries and it would delay proceedings without some direction.</p> <ul style="list-style-type: none"> <li>Revise subsection (d) as follows: The Indian child's tribe and Indian custodian <b>have an absolute right to intervene in the proceedings. The tribe or Indian custodian may intervene, orally or in writing, at any point in the proceedings. and The tribe, at its</b></li> </ul>	<p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment, to clarify that the right to intervene is not discretionary, although the exact language recommended was not adopted.</p>
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		<p><del>to</del> own discretion may, <del>but are is not required</del> file with the court <i>the Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child</i> (form ICWA-040) to give notice of their intent to intervene.</p> <p>I think it is good to clearly state this since some court are confused if they have the absolute right to intervention</p> <p>Rule 5.483</p> <ul style="list-style-type: none"> <li>• Add the following to the beginning of subsection (a)(1): <p style="text-align: center;"><del>At any stage of the proceeding as defined under Section 224.1 of the Welfare and Institutions Code</del></p> </li> <li>• Revise subsection (a)(3) as follows: <p style="padding-left: 40px;">(3) This section does not preclude <del>a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 of the Welfare and Institutions Code if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe. an emergency removal.</del></p> </li> <li>• Revise subsection (b) as follows: <p style="padding-left: 40px;">(b) <del>The state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the</del></p> </li> </ul>	<p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this and other comments.</p> <p>The Forum and Committee considered the comment but concluded the requested revisions are unnecessary.</p>
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		<p style="color: red;">Indian custodian, or the child’s tribe, unless the state court finds good cause under subdivision (d) not to transfer the proceedings.</p> <ul style="list-style-type: none"> <li>• Change the word must to shall in subsection (d)(2).</li> <li>• Revise subsection (d)(2)(A), (D) and (E).</li> <li>• Rule 5.484 – We recommend many changes to this section as follows to reflect the actual code section language and ensure that it matches with the federal as well as state codes. We suggest revising the rule as follows: [see attached comments]</li> </ul> <p>Rule 5.484<u>5</u></p> <ul style="list-style-type: none"> <li>• Revise subsection (b)(1) as follows:</li> </ul> <p>[See appendix for complete recommended language]</p> <p>It is very important to put in the language of clear and convincing evidence standard as this was in dispute prior to the codification in the code.</p> <ul style="list-style-type: none"> <li>• Add the following language to the end of the first sentence of subsection (2):</li> </ul>	<p>This suggested change is not consistent with the style for the California Rules of Court, as set forth in rule 1.5(b)(1). The proposal has been revised to follow the language in WIC 305.5(e)(2)(A) through (E).</p> <p>The Forum and Committee have considered this comment but concluded that it is unnecessary to duplicate statutory language regarding social worker duties into the rule of court. The proposed rule of court reflects the requirements of WIC 319 regarding the court duties and requirements. Further, this rule (and other ICWA rules) apply to family and probate proceedings governed by ICWA and therefore do not reference all of the requirements of the WIC.</p> <p>The proposal was revised in response to this comment to add reference to the clear and convincing evidence standard consistent set out in WIC 361.31(i)</p> <p>The language was added as subsection (1) in response to this comment.</p>
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		<p>The Indian child shall be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met.</p> <ul style="list-style-type: none"> <li>Start a new subsection (3) with the second sentence of subsection (2) and revise as follows: <p>(3) The court may deviate from the placement preference order only if the court finds by clear and convincing evidence there is good cause, which may include the following considerations:</p> </li> <li>Renumber subsection (3) and (4) and revise subsection (4) (now (5)) as follows: <p>(5) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the placement preference order not be followed. <u>A placement may shall not depart from the placement preferences based on the socioeconomic status of any placement relative to another. A placement shall not depart from the placement preferences solely on the basis of ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the Indian Child Welfare Act.</u></p> </li> <li>Add a new subsection (6) as follows:</li> </ul>	<p>The clear and convincing language was added.</p> <p>The sections have been renumbered.</p> <p>The Forum and Committee declined to follow this recommendation as unnecessary.</p> <p>The Forum and Committee added language to subsection (4) in response to this comment.</p>
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		<p>(6) If the court knows or has reason to know that the child is an Indian child and the court finds at the hearing held pursuant to section 319 of the Welfare and Institutions Code that there is good cause to deviate from the placement preferences set forth in Section 361.31 of the Welfare and Institutions Code, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.</p> <p>This is a very important part that was left out because it discusses their ongoing duty to find a compliant placement (WIC sec. 319(h)(1)(C).)</p> <ul style="list-style-type: none"> <li>• Add the following language to the end of subsection 5.485(c)(2)</li> </ul> <p>In considering if active efforts were taken the court shall consider if the agency utilized the available resources of the Indian child's extended family, tribe, tribal or other Indian social service agencies, and individual Indian caregiver service providers. Active efforts shall include the pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe.</p> <p>It is important to have this language here so it ties in with the active efforts requirement.</p> <ul style="list-style-type: none"> <li>• Remove the discussion of obtaining tribal membership in subsection (c)(3);</li> <li>• Include the following at the end of</li> </ul>	<p>The Forum and Committee declined to follow this recommendation. The substance of the recommended language is already included as 5.485(c)(3).</p>
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		<p>subsection (c)(3):</p> <p>The court shall not order a foster care placement or guardianship in a proceeding described in rule 5.480 absent a determination by clear and convincing evidence including the testimony of a qualified expert witness as defined by Section 224.6 of the Welfare and Institutions Code, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> <p>This is a very important provision which was not part of the active efforts provision.</p> <p>Rule 5.570</p> <ul style="list-style-type: none"> <li>• Revise subsection (h)(1)(B) as follows:</li> </ul> <p>(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. In the case involving an Indian child, the petitioner must show by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful.</p> <p>Rule 5.668</p>	<p>The substance of this recommended language is already included in the opening paragraph of rule 5.485(a)</p> <p>The proposal was revised in response to this comment.</p>
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		<ul style="list-style-type: none"> <li>• Revise subsection (c)(1) by adding “At the first appearance in court of each party” at the beginning.</li> <li>• Revise subsection (c)(2) by adding the following at the end:   <p style="color: red;">Newly obtained information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020, then the court shall order the petitioner to complete a new ICWA -020 with all the information and re-notice all the identified Tribes.</p> </li> </ul> <p>Again important to include because #1 reason for reversal from COA in published ICWA cases is not providing tribes with all the updated information or correcting misinformation.</p> <ul style="list-style-type: none"> <li>• Revise subsection (c)(3) as follows:   <p style="color: red;">When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence as described in rule 5.481 and determines that the Indian Child Welfare Act does not apply as described in subsection (b)(3)(A) of rule 5.481. <u>If it is known, or there is reason, to know that case involves an Indian child, the court shall proceed in accordance with rules 5.481 et seq.</u></p> </li> </ul> <p>Rule 5.674.</p>	<p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment but concluded that it was not appropriate to include here in the rule governing the conduct of this hearing. Instead revisions were made to the language of Rule 5.481(a)(4) confirming the ongoing nature of the obligation to provide information to the tribe(s).</p> <p>The proposal was revised in response to this comment.</p>
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		<ul style="list-style-type: none"> <li>• Revise subsection (b)(2)(E) as follows:   <u>When it is known or there is reason to know the case involves an Indian child, the court must make the heightened findings under the Indian Child Welfare Act in order to remove the child from the custody of the parent, or Indian custodian that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected if maintained in the physical custody of his or her parent or parents or Indian custodian.</u> </li> <li>• (c)–(e) * * * <b>add Indian custodian to each section</b></li> </ul> <p>Rule 5.676.</p> <ul style="list-style-type: none"> <li>• Revise subdivision (b) as follows:   <u>If it is known, or there is reason to know the child is an Indian child, in addition to the requirement in section (a) the court <del>the child</del> may not <del>be ordered detained</del> order an Indian child to be detained unless the court <del>also</del> finds that detention is necessary to prevent imminent physical damage or harm to the child, and the court states the facts supporting this finding on the record.</u> </li> <li>• Add to subsection (d) “, in addition to the requirements under section (c)” following “...reason to know that the child is an Indian child” in the first line.</li> </ul>	<p>The Forum and Committee considered this comment, but concluded that it was not necessary. The language in the rule reflects the heightened requirements under the Indian Child Welfare Act.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this recommendation but did not feel the changes were necessary.</p> <p>The Forum and Committee considered this recommendation but did not feel the changes were necessary.</p>
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		<p>Rule 5.678</p> <ul style="list-style-type: none"> <li>Revise subsection (c)(4) as follows: <p>(34) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services. <u>If <b>where</b> it is known or there is reason to know the child is an Indian child, the court shall determine if the county agency made active efforts to provide remedial services and rehabilitation programs</u> that would prevent or eliminate the need to detain the child or that would permit the child to return home.</p> </li> <li>Revise subsection (f)(1) as follows: <p><u>If it is known, or there is reason to know the child is an Indian child, the child must be detained in a home that complies with the placement preferences in section 361.31 unless the court finds <b>by clear and convincing evidence</b> good cause exists not to follow the placement preferences pursuant to rule 5.485.</u></p> </li> </ul> <p><b>Request for Specific Comments</b></p> <p>Proposal appropriately addresses the stated purpose with the additional changes I made to the language.</p> <p>ICWA-020 is sufficiently broad. I believe there needs to be an information sheet here which suggest that the court put a parent or family member under oath and question to get the</p>	<p>The Forum and Committee considered this recommendation and incorporated some of the suggested language into the proposal.</p> <p>The proposal was revised in response to this comment.</p> <p>The Forum and Committee considered this comment but do not feel it is appropriate to mandate such a court process.</p>
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		<p>information to provide in the ICWA-030 as well.</p> <p>The distinction between reason to believe and reason to know are not flushed out well in the code/rules of the court or the forms.</p> <p>The JV-419 forms do appropriately waive the ICWA rights as stated in the provisions regarding qualified expert witness that it needs to be in writing. I believe there needs to be the tribal representative signing off on this if the tribe has been noticed or the child is identified as a member/citizen.</p> <p>Gender identify should be on the JV-100 and should include nonbinary. Additionally incorporate language of gender identify if it is known to the petitioner.</p> <p><b>Form ICWA-020</b> #3e Plain language would be more appropriate on these forms – “I am a resident of or I live on a reservation or in an Alaska Native Village.”</p> <p><b>Form ICWA-060</b> #5d(3) I think this needs to be changed to: “After conducting an evidentiary hearing on _____ (Date), as detailed on the record, the party that opposed the request for transfer established that there was good cause not to transfer the case to tribal court.”</p> <p><b>Form ICWA-070</b> #5 This is not an accurate reflection of the language. There is no requirement of new evidence of changed circumstances in the language of the code, it simply says if the</p>	<p>The Forum and Committee cannot through rule of court create a legal standard for reason to believe.</p> <p>No response required.</p> <p>No response required.</p> <p>The Forum and Committee decided to keep the language that is in the federal statute and regulations.</p> <p>The proposal was revised in response to this request.</p> <p>The Forum and Committee considered this comment but concluded that there is a risk of multiple frivolous applications unless the language is retained.</p>
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		<p>emergency which was the original basis for removal is no longer necessary to prevent imminent physical damage or harm to the child.</p> <p><b>Form JV-100</b> #2a Although most tribal membership is based on biological connection that is not the requirements for all tribes, therefore I would recommend taking out the biological child language.</p> <p><b>Form JV-320</b> #8b Need to add #4 that the court made a finding of active efforts</p> <p>#17a(6) The court finds by clear and convincing evidence that there is good cause to depart from the placement preference based on the reasons set forth in the record. This does not account for the other placement preferences in the code.</p> <p><b>Form JV-405</b> #12c(2)(b) subsections (a) and (b) are two specifically different findings under the law – I believe these should be two different check boxes of possible findings.</p> <p><b>Form JV-410</b> #16d Would change to: After an evidentiary hearing on the matter, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences.</p> <p><b>Form JV-600</b> #1f I believe they wanted Gender Identity with option of Male/Female/Nonbinary and a section</p>	<p>The Forum and Committee decided to retain the existing language as it tracks the federal statute.</p> <p>Active efforts are addressed in item 19.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>There is no legal requirement for an evidentiary hearing on the matter, but the proposal has been revised to reflect the clear and convincing evidence standard.</p> <p>The proposal was revised to use “gender” rather than “sex”.</p>
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			on if the child's gender identity was known to the social worker.	
6.	<p>Joint Rules Subcommittee of TCPJAC/CEAC By: Cory Rada, Senior Analyst Sacramento, CA</p>	A	<p>The proposal is required to conform to a change of law.</p> <p>The Joint Rules Subcommittee notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on local or statewide justice partners.</li> </ul> <p>Local justice partners will be required to use updated and modified forms to address compliance with ICWA. These forms are regularly updated over the years in response to changes in the law. These updates are no different. The cost impact is minimal and not significant. Ultimately, the forms are a cost saver to the justice partners and the Court. Compliance with ICWA is a major appellate issue and non-compliance results in delayed permanency for children and prolonged litigation. The forms are intended and should make it easier for the parties and the Court to comply with ICWA.</p> <p><b>Requests for Specific Comments, SPR19-42</b></p> <p>Q. Does the proposal appropriately address the stated purpose? Answer: Yes. The changes and modifications to the Rules of Court and the Judicial Council forms are necessary because of changes in federal and state law.</p> <p>Q. Are the questions about Indian status in the proposed revision to form ICWA-020, Parental Notification of Indian Status Form, broad enough to ensure that Indian children are identified?</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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		<p>Answer: Yes.</p> <p>Q. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 of form JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information? Answer: Yes.</p> <p>Q. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? Answer: Yes and No. Yes, all parties may waive their statutory rights if the waiver is knowing, intelligent and voluntary. ICWA, however, serves the purposes of not just the parties but also the Native American tribal communities. Thus, the Child Welfare Agency has a non-delegable and non-waivable duty to provide notice and to make active efforts if required, which the Tribe may deem satisfied by an express waiver.</p> <p>Q. Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary? Answer: The question should be directed at “gender” and not the sex of the child so that the Court can properly address the child in Court which is required by law. The child’s biological sex is not as relevant to the Court as the child’s gender under the law.</p> <p>Q. Would the proposal provide cost savings? If so, please quantify.</p>	<p>No response required.</p> <p>No response required.</p> <p>The proposal references “gender”.</p> <p>No response required.</p>
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			<p>Answer: The more the Judicial Council forms bring clarity to Findings and Orders of the Court, the greater the cost savings to the Branch in reduced appeals. This is true when updating the forms on ICWA issues and gender identity issues.</p> <p>Q. 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?  Answer: No cost to the Court. These are standard forms and are being updated in regular course.</p> <p>Q. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?  Answer: Yes.</p> <p>Q. How well would this proposal work in courts of different sizes?  Answer: There would be no difference to courts of varying sizes.</p>	<p>No response required.</p> <p>No response required.</p> <p>No. response required.</p>
7.	Los Angeles County Counsel By: Alyssa Skolnick Principal Deputy County Counsel	AM	<p>There is very little if any guidance on how juvenile courts are expected to proceed in the absence of a tribal response now that the 60 day rule has been eliminated. Without the 60 day rule when we do not hear back from a tribe, we will need to proceed as if the ICWA applies, including applying the heightened standards and needing expert testimony before removal or termination of parental rights. Without the 60-day rule, the ICWA will be applied to many non-Indian children.</p>	<p>The Forum and Committee cannot give practice advice, but note that there is nothing in ICWA, the federal regulations or state law that mandates a tribal response or puts a time limit on a tribe’s ability to make a determination of a child’s status, respond to a notice, or intervene in a case. A court or agency’s duty to apply ICWA depends upon the totality of the evidence concerning Indian status. Section 224.2(i)(2) authorizes the court to make a finding at any time that ICWA does not apply after review of evidence of further inquiry and due</p>

				diligence based on an evaluation of the totality of the evidence before the court and whether there is or continues to be evidence supporting a “reason to know”.
8.	Orange County Bar Association By: Deirdre Kelly, President	AM	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Are the questions about Indian status in the proposed revision to form ICWA-020, Parental Notification of Indian Status Form, broad enough to ensure that Indian children are identified?</p> <p>Yes.</p> <p>• Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 of form JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information?</p> <p>Yes.</p> <p>Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?</p> <p>A tribe can waive its rights under ICWA, as could the other parties, but if the tribe does not waive its rights then none of the other waivers would override that refusal.</p> <p>Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>than sex and add an instruction that gender can include nonbinary?</p> <p>An option for the person to describe their gender preference/identification should be included, e.g. preferred gender: male/female/nonbinary.</p>	<p>The Forum and Committee considered the comment, but decided to leave the current “gender” language as is to be broad enough to cover instances when the child is too young to express a preference regarding gender identification.</p>
9.	<p>Orange County Children and Family Services, Bldg 135C Social Service Agency By: Chuck Griffin Policy Analyst, Policy Development Unit</p>	NI	<p>In reference to JV-320:</p> <p>Item 17 uses the term “exhaustive” regarding search efforts. This would be a new measure where historically we’ve used “due diligence” regarding search efforts. Agencies and Court are familiar with “due diligence” and its application whereas exhaustive search has no established level of effort.</p> <p>Item 17 also states that “permanent plan complies with placement preferences”. I’m unclear regarding the relationship of permanent plan to placement preference as my understanding is they are mutually exclusive.</p> <p>In reference to JV-100:</p> <p>Item 2, Indian Child Welfare Inquiry:</p> <p>The wording states: “I have asked whether the child is or may be a member of an Indian tribe or eligible for</p>	<p>The proposal has been revised in response to this comment to require a “diligent search” rather than exhaustive search, consistent with the language in the federal regulations. (25 C.F.R. 23.2 (4); ) and the federal Guidelines H.3 regarding placement preferences.</p> <p>A child’s permanent plan under state law, may fall either under the definition of an ICWA foster care placement “...the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.” (25 U.S.C. §1903(1)(i)) or an adoptive placement “...the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.” (25 U.S.C. §1903(1)(iv)) The foster-care or adoptive placement preferences apply to all such placements.</p>

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			<p>membership and the biological child of a member or on information and belief, am aware that inquiry has been completed and attach the Indian Child Inquiry Attachment (form ICWA-010(A)).”</p> <p>It was difficult to determine what the social worker was attesting to. Would the following wording achieve the same purpose?</p> <p>I have asked whether the child is or may be a member of an Indian tribe, eligible for membership or a biological child of a member. Based on information from this inquiry, the Indian Child Inquiry Attachment (form ICWA-010(A)) has been completed and attached.</p> <p>Orange County wishes to thank you for the opportunity to respond to the proposed changes in Court Rules and Forms as they pertain to ICWA. Should you have question, feel free to contact me.</p>	<p>The proposal has been revised in response to this comment, but not exactly as suggested. This proposed revision of the form reflected comments that in some counties the petition is not completed and filed by the social worker or other individual who is responsible for conducting inquiry, but instead by county counsel or some other party. The proposal has been revised to have these as two separate options. The same change has been made on the JV-110 and JV-600 forms.</p>
10.	<p>Superior Court of California, County of Orange Per – Cynthia Beltran, Administrative Analyst, Family and Juvenile Court</p>	NI	<p><b>Juvenile Dependency Petition (JV-110)</b> Revise section 2b, to provide additional space below the section to allow sufficient space for reasons to provided. <i>Would the proposal provide a cost savings?</i> No, the proposal would not provide a cost savings. <i>What would the implementation requirements be for courts?</i> Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system. <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	<p>The proposal was revised in response to this comment.</p> <p>No response required.</p> <p>No response required.</p>

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			Yes, three months would be sufficient time for implementation.	No response required.
11.	Sacramento County Counsel By: Christopher S. Costa Deputy County Counsel	AM	<p>Question 1: Does the proposal address the stated purpose?</p> <p>-Overall, yes, the proposal addresses the stated purpose. However, the following areas should be included or clarified, as applicable, to provide juvenile court participants additional practical guidance.</p> <p>(1) Addressing Continuances of Hearings/Indian Child Custody Proceedings that Require Initial Formal Notice under WIC section 224.3. As the law is currently written, it appears that all continued hearings, that qualify as Indian child custody proceedings, require compliance with WIC section 224.3 (e.g., certified mail with return receipt). The Rules of Court should clarify that subsequent notifications for continued hearing dates, following the initial formal notice of the proceedings, can be by first class mail.</p> <p>a. WIC section 224.1(d)(1) defines an “Indian child custody proceeding” as “a hearing during a juvenile court proceeding...that may culminate in...foster care placement”, etc. WIC section 224.3(a)(1) indicates that “[n]otice shall be sent by registered or certified mail with return receipt requested...Additional notice by first class mail is recommended, but not required.” WIC section 224.3(b) says “[n]otice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in an order for foster care placement...” [emphasis added]. WIC section 224.3(b) goes on to say that “[a]fter a</p>	<p>The proposal has been revised in response to this comment. The Forum and Committee agree with the commenter, that the federal regulations and state law are both silent on the issue of tribal notice when a hearing for which ICWA notice is required is continued. The federal regulations (25 CFR §23.111(a)) stipulate that notice by registered mail, return receipt requested must be sent at the commencement of each “proceeding”.</p> <p>The Forum and Committee conclude that similar to the law concerning a parent’s right to notice of a continued hearing under Welf. &amp; Inst. Code §366.26 and the specific noticing requirements set out in section 366.23 concerning this hearing, the more stringent noticing requirements apply only to the initial hearing. If the stringent noticing requirements were complied with for the initial hearing and the party is present in court when the hearing is continued that satisfies the parties right to notice of the continued hearing. (<i>In re Malcolm D.</i>, (1996) 42 Cal.App.4th 904 at p.913) If the party does not participate in the original hearing they are entitled to receive notice of the continued date that</p>

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		<p>tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (H) of paragraph (5) of subdivision (a) need not be included with the notice.”</p> <p>b. The above cited subsections of WIC sections 224.1 and 224.3 imply that all continued hearings that qualify as Indian child custody proceedings should meet the requirements of WIC section 224.3(a), unless the tribe intervenes or acknowledges that the child is a member or eligible for membership. However, 25 USC section 1912(a) and 25 CFR section 23.2, subd. (2) (under the definition of “Child-custody proceeding”), indicate that each action (e.g., an action for foster care placement) is a separate child custody proceeding. Thus, under federal law/regulation, an action for a foster care placement is one child custody proceeding (that requires registered or certified mail) and, an action for termination of parental rights is a separate child custody proceeding.</p> <p>c. Therefore, the Rules of Court (and the proposed JV-405 at section 16) should clarify that, after the initial formal noticing under WIC section 224.3 is accomplished (e.g., certified mail with return receipt and all required information included) for a tribe, all subsequent notification for continued hearing dates can be by first class mail. This would alleviate unnecessary burden and costs on child welfare agencies and tribes, given that federal law/regulation only requires that the initial notice of a particular child custody proceeding comply with formal noticing requirements.</p>	<p>is reasonably calculated under all the circumstances to apprise them of the hearing and afford them an opportunity to present any objections (<i>Id.</i> at pp. 258-259). Such notice does not need to be by certified mail, return receipt requested.</p>
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		<p>(2) Providing Guidance to the Court and Child Welfare Agencies after Completion of Further Inquiry when There is/has Only ever been “Reason to Believe”. The Rules of Court should clarify whether WIC section 224.2(i)(2) applies when there has not been a “reason to know” at any previous point in the proceeding.</p> <p>a. WIC section 224.2(g) provides that, “[i]f there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm...” [emphasis added] that the agency has been duly diligent in working with the tribes to verify whether the child is an Indian child. WIC section 224.2(i)(2) indicates that “[i]f the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know that the child is an Indian child, the court may make a finding that...” [emphasis added] the federal ICWA does not apply.</p> <p>b. WIC section 224.2(i)(2), by its reference to the “due diligence as required in this section”, appears to be referring back to WIC section 224.2(g) – a subsection that applies only when a “reason to know” has been established. Further, WIC section 224.2(i)(2) follows WIC section 224.2(i)(1), which starts with the phrase “[w]hen there is reason to know that the child is an Indian child...” Thus, without clarification, it appears that WIC section 224.2(i)(2) applies only after a “reason to know” has been established at some previous point in the proceeding.</p>	<p>The Forum and Committee considered this comment, but determined that the revision was not necessary because under the statutes and the rule the requirement to apply ICWA to the case only arises when there is information providing “reason to know”. The Forum and Committee believe that the statute and rules are clear that the only duty that is triggered by “reason to believe” is the duty to conduct further inquiry under WIC section 224.2(e).</p>
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		<p>c. The Rules of Court should clarify that, when there is a “reason to believe” and the Child Welfare Agency has been diligent in its further inquiry efforts, and the Court does not have sufficient evidence to find there is a “reason to know” (e.g., because the tribes have not responded or have refused to respond informally), that WIC section 224.2(i)(2) would allow the court to find that (subject to reversal/further information) that the ICWA does not apply to the proceedings.</p> <p>d. This clarification would be consistent with the proposed JV-405 at section 12c(2)(a), where the court is given the option to choose that the agency has complied with WIC section 224.2(e) and there is not a reason to know (and thus, ICWA does not apply).</p> <p>Question 2: Are the questions about Indian status in the proposed revision to form ICWA-020, Parental Notification of Indian Status Form, broad enough to ensure that Indian children are identified?</p> <p>-Overall, yes, the questions about Indian status in the proposed revision are broad enough. However, it may be helpful to add an additional category under section 3 to assist with further inquiry: “One or more of my parents, grandparents, or other lineal ancestors is or was domiciled on a reservation or in an Alaska Native Village. (Include Name and relationship of ancestor(s) and name and location of reservation or Alaska Native Village).”</p> <p>Question 3: Do the proposed findings and orders set out in item 12c of form JV-405 and item [10] of form JV-410 correctly reflect the distinction</p>	<p>The Forum and Committee considered this comment, but determined that the questions on the ICWA-020 should remain closely related to the information that would give the court or agency “reason to know” as defined in the federal regulations and California statutes. Residence or domicile of an ancestor on a reservation or Alaska Native Village is not among the listed factors.</p>
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		<p>between “reason to believe” and “reason to know,” and the obligations triggered by each level of information?</p> <p>-Overall yes, with exception of the JV-410, item 10b(1), which, without further clarification from the Rules of Court, does not correctly distinguish the “reason to believe” and “reason to know” standards (see number (6) below). The following changes are recommended.</p> <p>(1) JV-405, item 12c(1). Item c(1) would be easier to understand if the words “reason to” were also added before the word “know” so the sentence reads: “The court finds that there is no reason to believe or reason to know that the child is an Indian child. ICWA does not apply....”</p> <p>(2) JV-405, item 12c(2). There should be separate checkboxes for subdivision (a) and subdivision (b) to clearly identify whether the agency has complied with WIC section 224.2(e) or whether the agency is now ordered to comply with WIC section 224.2(e). Therefore, it is recommended that checkboxes be added next to the (a) and (b) under this section.</p> <p>(3) JV-405, item 12c(3)(b). This item reads that “[n]otice has been provided as required by law”. This item should clarify that notice complies with WIC section 290.1 or 290.2 to avoid confusion about whether formal noticing under WIC section 224.3 has somehow been accomplished at this stage in the proceeding.</p> <p>(4) JV-410, item 10a. Item 10a would be easier to understand if the words “reason to” were also added before the word “know” so the</p>	<p>The proposal was revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p>
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		<p>sentence reads: “The court finds that there is no reason to believe or reason to know that the child is an Indian child. ICWA does not apply....”</p> <p>(5) JV-410, item 10b. Item 10b uses the words “may be” instead of “is” regarding the Indian child. The word “is” should replace “may be” to be consistent with WIC section 224.2(e) (“...an Indian child is involved in the proceeding” [emphasis added]. The word “is” is also used in the proposed JV-405, item 12c(1), and these items should be consistent.</p> <p>(6) JV-410, item 10b(1). See response number (2) to Question 1 on page 2 of this document. Unless clarified in the Rules of Court, the “due diligence” standard discussed in item 10b(1), based on WIC sections 224.2(g) and 224.2(i)(2), appears to only apply when there has been a “reason to know” at some point in the proceeding. Therefore, without clarification that WIC section 224.2(i)(2)’s due diligence standard is independent of the due diligence standard referred to in WIC section 224.2(g) (which requires that there is a “reason to know”), this reference to due diligence as it relates to working with the tribes, seems misplaced in item 10b(1)’s references to “reason to believe”. To this end, item 10b(1) of the JV-410 should be consistent with item 12c(2)(a) of the JV-405 (which does not refer to due diligence in working with the tribe at the “reason to believe” stage).</p> <p>Question 4: Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?</p>	<p>The proposal has been revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p> <p>No response required.</p>
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		<p>-Probably not. The definition of an “Indian child custody proceeding” in WIC section 224.1(d)(1)(A) includes situations where the child is removed from the home of a parent and placed in the “home of a guardian”. This language is consistent with 25 USC section 1912 and 25 USC section 1903(1)(i) (definition of “foster care placement”). Technically, in an upfront guardianship under WIC section 360(a) the child is never legally removed from the parent under WIC section 361 (and it is more akin to a voluntary placement). However, this technicality does not appear to be consistent with the spirit of the ICWA since the hearing that will result in an upfront guardianship likely began, and was likely first scheduled, as an involuntary child custody proceeding (a disposition hearing where the agency recommended removal and placement in foster care). In essence, the term “removal” under the ICWA does not necessarily mirror the legal removal requirement under California law; and, ultimately, a tribe(s)’ rights (nor the parents’ or child’s rights) should not be hindered since the proceeding very likely was initiated as an involuntary child custody proceeding. To that end, this waiver process also would not be consistent with the definition of a “voluntary proceeding” under WIC section 224.1(q) or the requirements of WIC section 16507.4</p> <p>Question 5: Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary?</p>	<p>The form has been modified to use the word gender instead of sex.</p>
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			-The modification to remove the word “sex” and replace it with the word “gender” seems most instructive to court participants.	
12.	Marin County Counsel’s Office Deidre K. Smith, Deputy County Counsel	A	<p>I wholeheartedly agree with the proposed ICWA 020 form. The proposed form appropriately narrows the inquiry to align with the statutory definition of "reason to know." Having conducted hundreds of these inquiries, I can confidently state that parents know when they and their child are members or citizens of an Indian tribe. There is no confusion about this. The previous practice, which required the court to ask parents about "Indian ancestry" was far too vague, and had nothing to do with a parent or child's actual citizenship/membership in a tribe (the crux of ICWA). Moreover, with genetic ancestry testing widely available online, many people can now attest that they have "Indian ancestry," resulting in more confusion in court. The prior overly-broad inquiry wasted time, resources, and resulted in the needless mailing of thousands of notices containing highly confidential ICWA 030 information (petitions, birth certificates, dates of birth and death, addresses, mother's maiden names) to thousands of tribes. ICWA is a political, not a race-based, statute and the proposed ICWA 020 reflects this. Please adopt the new ICWA 020 in order to tailor the court's inquiry toward the proper statutory factors.</p> <p>Thank you for all of your work on this issue.</p>	No response required.
13.	Superior Court of San Bernardino County By: Executive Office Court Executive Office	A	<p>Does the proposal appropriately address the states purpose?</p> <ul style="list-style-type: none"> <li>o Yes</li> </ul> <p>Are the questions about Indian Status in the proposed revision to form ICWA-020, Parental</p>	<p>No response required.</p> <p>No response required.</p>

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			<p>Notification of Indian Status Form, broad enough to ensure that Indian children are identified?</p> <ul style="list-style-type: none"> <li>o Yes</li> </ul> <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> <li>o No</li> </ul> <p>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?</p> <ul style="list-style-type: none"> <li>o Minimal training would be required, less than 1 hour - Court Investigators, Judicial Assistants, Legal Processing Assistants, Probate Examiners, and supervisors. Procedures would need to be updated as well as the addition or modification of minute codes.</li> </ul> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> <li>o Yes</li> </ul>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>
14.	San Diego Office of County Counsel, Juvenile Dependency Division By: Evangelina Woo Senior Deputy County Counsel	A	<p>Rules of Court 5.481(b): if we have “reason to know” do you still recommend conducting investigation/due diligence before the court orders notice? Courts in my county are ordering notice based on the mere hint of ancestry (which is a separate problem) but I’m wondering if attorneys should be asking the court to hold off on the making the order for notice until we can try to narrow down which tribes to notice?</p>	<p>The Forum and Committee cannot give practice advice, but note that an agency’s duty to do further inquiry under section 224.2 (e) arises when a social worker has “reason to believe” that a child may be an Indian child. The duty to send notice arises under 224.2 (f) whenever there is “reason to know” as defined by 224.2 (d) and the duty to use due diligence to identify and work with tribes under 224.2 (g) arises when there is “reason to know”. None of these suggest the agency’s obligations depend on an order from the court. Section 224.2</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

		<p>5.482(a): should the clause “except as provided in section (a)(2) and (3)” be deleted, since subdivisions (2) and (3) are proposed to be stricken?</p> <p>Also: how that there is no more 60-day rule, how do you propose we proceed? We’re still setting out ICWA specials to ensure follow up is done with the tribes we noticed so they can make a determination regarding membership/eligibility but are there any proposed guidelines? Particularly since the mandate is to “treat the child like an Indian child” when there’s reason to know until we hear otherwise: what constitutes a reasonable amount of time to wait? What about those situations where we make attempts and can’t get a response?</p> <p>5.483(d)(2)  (A): can the remainder of 305.5(e)(2)(B) be added to this subdivision?  (D): could this be amended to match the language in 305.5(e)(2)(E)?  (e)(2): The amended WIC code allows the good cause to be stated on the record, as an alternative to being written</p> <p>5.484  (b): is there a process for notifying counsel when a party requests the Indian child be returned? Is</p>	<p>(g) clearly anticipates that the agency has an obligation to conduct due diligence prior to a court hearing and prior to any findings by the court about ICWA status.</p> <p>In response to this and other comments the proposal has been revised to reinstate subdivisions (a)(2) and (3).</p> <p>The Forum and Committee cannot give practice advice, but note that there is nothing in ICWA, the federal regulations or state law that mandates a tribal response or puts a time limit on a tribe’s ability to make a determination of a child’s status, respond to a notice, or intervene in a case. A court or agency’s duty to apply ICWA depends upon the totality of the evidence concerning Indian status. Section 224.2(i)(2) authorizes the court to make a finding at any time that ICWA does not apply after review of evidence of further inquiry and due diligence based on an evaluation of the totality of the evidence before the court and whether there is or continues to be evidence supporting a “reason to know”.</p> <p>The proposal was revised in response to this comment to track the language in WIC 305.5(e)(2).</p> <p>The proposal was revised in response to this comment by revising rule 5.483 (e).</p> <p>The Forum and Committee conclude that it is not appropriate to establish an evidentiary standard by rule of court. In terms of notice of ex parte</p>
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		<p>the evidentiary standard a preponderance of the evidence? And will any party opposing the return have an opportunity to respond, or is it a true ex parte?</p> <p>5.4845 (b)(2): to me, the phrase “the court must analyze the availability of placements within the placement preferences in descending order” is clear without the added phrase “without skipping.”</p> <p>(b)(2)(D): can the child’s extraordinary mental needs be added as something to consider here, as it is in the statute?</p> <p>5.674(b)(2)(C): this should be “active efforts” when it is known or reason to know that the child is an Indian child, right?</p> <p>Forms ICWA 005 INFO #2(c) – considering adding “or on a reservation” to the phrase “Indian country”?</p> <p>ICWA 020 #3(g) could you also add a space for the parent/guardian/Indian custodian to write down the membership/citizenship number in this area?</p> <p>ICWA 030</p>	<p>applications, the proposal has been revised to reference rule 3.10 of the rules of court, the general civil rules governing ex parte applications found in Chapter 4 of Title 3 of the rules of court apply.</p> <p>The Forum and Committee have considered the comment, but feel that the language “without skipping” adds clarity consistent with the federal <a href="#">Guidelines for Implementing the Indian Child Welfare Act</a><sup>1</sup> issued by the U.S. Department of the Interior Office of the Assistant Secretary – Indian Affairs Bureau of Indian Affairs in December 2016. Implementing 25 CFR §23.130 at page 56 of the guidelines it specifically states that preferences should be considered without being skipped.</p> <p>The proposal was revised in response to this comment to add “mental” consistent with WIC 361.31 (h)(4).</p> <p>The proposal was revised in response to this comment to reference “active efforts” when it is known or there is reason to know the child is an Indian child.</p> <p>The proposal was revised in response to this comment to add a more expansive definition.</p> <p>The proposal was revised in response to this comment to add a space for this information.</p>
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<sup>1</sup> Available at: <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>

		<p>General question: what do you want Agencies to do when a paternity finding is still pending, but the alleged father claims ancestry and provides contact for relatives/lineal ancestors? Do we include that information in item #6d? Or wait and file an amended 030 once a paternity finding is made? The 030 is also framed in terms of the child’s biological father, but dependency also recognizes presumed fathers as well, and the advice we’ve been giving to our client is to put the presumed father on the 030 if he claims heritage, even if we’re not 100% sure he is the biological father.</p> <p>#5(g)(h) – item (g) is for the mother’s grandparents (the minor’s maternal great-grandparents) and the father’s grandparents (the minor’s paternal great-grandparents) but item (h) is for two more sets of the father’s grandparents (the minor’s paternal great-grandparents again). Is that supposed to be one item for maternal great-grandparents and one for paternal great-grandparents?</p> <p>Can we get a definition of a “lineal ancestor”? My client often asks what to do if relatives by marriage claim ancestry, and it would be really helpful if we could clarify that term either on the info sheet or in the 030 itself.</p> <p>Lastly, regarding “lineal ancestors” could you include a box in #5(i) for the client to check if there are more than 2 lineal ancestors and attach a separate page?</p> <p>ICWA 060 My understanding is that when a child is a member of a tribe that has exclusive jurisdiction</p>	<p>The Forum and Committee cannot give practice advice.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment to reference a biological connection.</p> <p>The proposal was revised in response to this comment to add reference to additional individuals if necessary.</p> <p>Section 25 U.S.C. 1911(a) does not specify what procedure should be followed when a state court determines that a tribe has exclusive jurisdiction over a child that has been brought before the state</p>
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		<p>under 25 U.S.C. 1911(a), the court must transfer the case and then dismiss the juvenile case once transfer has been effectuated. If so, perhaps some of the language in #5 can be added or amended to state that the case shall be transferred and dependency petition dismissed upon confirmation of receipt, as opposed to “jurisdiction has been terminated?” I’m not sure if it’s just a distinction without a difference, but 305.5(c) specifically uses the word “dismissed” and not “terminated.”</p> <p>ICWA 070-090 Is there a procedure in place to notice the parties? Who provides the notice? The party moving to return the child? Or the court, once it sets a hearing?</p> <p>JV 320 Is it possible to add findings regarding when the court no longer has “reason to know” or “reason to believe” based on the inquiry?</p> <p>JV 405(c)(3)(C) I understand the mandate to “treat the child like an Indian child” until a determination has been made that we no longer have reason to know, but what do you suggest in terms of finding a QEW or a tribally approved home where there is no identified tribe yet and/or where ICWA doesn’t apply yet and a tribally approved home is not RFA approved? I am not aware of any authority allowing the Agency to place a child in a tribally approved, but non-RFA/ERFA approved home unless ICWA applies.</p> <p>JV 410(15)(g)(6)-(7)</p>	<p>court in “child custody proceeding” governed by ICWA. Prior California law (prior WIC 305.5(a)) specified that such cases should be transferred to the tribal court. The federal regulations published in 2016 clarified that, subject to any agreement between the state and tribe under 25 U.S.C. §1919, the proper procedure was for the state court to expeditiously notify the tribe and dismiss the case based on the tribe’s exclusive jurisdiction (see 25 C.F.R. §23.110).</p> <p>Ex parte applications in juvenile cases are governed by Chapter 4, Title 3 of the rules of court.</p> <p>The Forum and Committee considered this request but concluded it was not appropriate to include in this form.</p> <p>The Forum and Committee cannot give practice advice in a comment chart.</p> <p>The proposal was revised in response to this comment.</p>
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			<p>These options appear to be covered under 16(d), which is precipitated by the finding that the child is an Indian child or that there is reason to know. Is there any reason the 361.31 placement preferences need to be in the section that doesn't seem to pertain to children who are Indian, or for whom we have reason to know are Indian?</p> <p>JV 412 (5) The tribe has the right to intervene “if the child is a member of a federally recognized tribe or is eligible for membership and the biological child of a member of a federal y recognized tribe” right? Is it possible to add that into the language?</p>	<p>The Forum and Committee declined to follow this recommendation.</p>
15.	<p>Superior Court of San Diego County By: Mike Roddy Executive Officer</p>	AM	<p>* See complete text of comments in appendix A</p> <p>1. Does the proposal appropriately address the stated purpose? <b>Yes.</b></p> <p>2. Are the questions about Indian status in the proposed revision to form ICWA-020 broad enough to ensure that Indian children are identified? <b>The committee might wish to consider adding “federal trust land, rancheria, allotment” to items 3d and 3e, which inquire about residence or domicile on a reservation or in Alaska Native Village. (See form ICWA-030, p. 7.)</b></p> <p>3. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 <b>[Is “item 10” is intended?]</b> of form JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information? <b>Yes, but as noted below, on form JV-405, checkboxes are needed for the text in</b></p>	<p>No response required.</p> <p>The Forum and Committee considered this comment, and did make some revisions to the language in response to this and other comments by adding the phrase “...any tribal trust lands.” Throughout the country, “Indian country” is referred to by different names: reservation, rancheria, pueblo, etc. The Forum and Committee did not want to appear to set out a comprehensive list of names and instead chose to include all tribal trust land.</p> <p>The proposal was revised in response to this and other similar comments.</p>

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		<p>items 12c(2)(a) and 12c(2)(b) so that the court can indicate which statement applies.</p> <p>4. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? <b>Good question. Is it clear whether the tribe’s authorized representative has the legal authority to waive the tribe’s rights under ICWA? More generally speaking, are ICWA rights waiveable at all? These questions must be answered.</b></p> <p>5. Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary? <b>It should ask about gender (because this is important information for the court) with a note that “nonbinary” can be entered.</b></p> <p>6. Would the proposal provide cost savings? <b>Unknown.</b></p> <p>7. What would the implementation requirements be for courts? <b>Informing bench officers, court staff, county agencies, probation departments, and attorneys of changes. Making changes as appropriate to information provided to the public on each court’s website.</b></p> <p>8. Would three months provide sufficient time for implementation? <b>Unknown. This proposal contains a large number of revisions.</b></p> <p>9. How well would this proposal work in courts of different sizes? <b>Unknown.</b></p> <p>Comments page 2 – Rule 5.481(b)(1)</p>	<p>No response required.</p> <p>The form was revised to reference “gender”.</p> <p>No response required.</p> <p>No response required. Bench guides and job aids will be prepared.</p> <p>No response required.</p> <p>No response required.</p>
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			<p>Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (F).</p> <p>Comments page 3 – Rule 5.483(d)(2) Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (E)</p> <p>The comment recommended changing the word biological (ie. biological father) to genetic throughout the proposal to conform to AB 2684 which amends the Uniform Parentage Act.</p>	<p>The Forum and Committee have considered this comment and acknowledge the general preference not to needlessly repeat statutory language in the rules. However, because the ICWA rules cover case types generally governed by the Family and Probate codes as well as those governed by the Welf. &amp; Inst. Code, the Forum and Committee determined that there was value in repeating the statutory language from the federal regulations and Welf. &amp; Institutions Code here in the rules.</p> <p>See response above.</p> <p>The Forum and Committee declined to follow this recommendation. Although AB 2684 did add the term “genetic parent” to some sections of the Uniform Parentage Act and replace the term biological father with genetic father or genetic parent in several places, the terms biological and biological father are still used throughout the Family Code including in the provisions recently revised by the Family Law Omnibus, AB 1817.</p>
16.	Shettigar, Prabhath Deputy County Counsel, Office of the Riverside County Counsel	NI	Section 224.2(e) "reason to believe" is undefined in the statutes. Please provide definition. Also, please reorder the statute so that "reason to believe" comes after section 224.2(c), assuming the intent of the statute is to make further inquiry if the court does not have sufficient information to make a determination one way or the other and needs more information to do so.	The Judicial Council cannot, through rules of court, create a definition that was not provided in the statute. Nor can a rule of court reorder or reword the statute.

17.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	A	<p>The proposal is required to conform to a change of law.  The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on local or statewide justice partners.</li> </ul> <p>Page 20 of 21  Local justice partners will be required to use updated and modified forms to address compliance with ICWA. These forms are regularly updated over the years in response to changes in the law. These updates are no different. The cost impact is minimal and not significant. Ultimately, the forms are a cost saver to the justice partners and the Court. Compliance with ICWA is a major appellate issue and non-compliance results in delayed permanency for children and prolonged litigation. The forms are intended and should make it easier for the parties and the Court to comply with ICWA.</p> <p><b>Requests for Specific Comments, SPR19-42</b>  Q. Does the proposal appropriately address the stated purpose?  Answer: Yes. The changes and modifications to the Rules of Court and the Judicial Council forms are necessary because of changes in federal and state law.</p> <p>Q. Are the questions about Indian status in the proposed revision to form ICWA-020, Parental Notification of Indian Status Form, broad enough to ensure that Indian children are identified?  Answer: Yes.</p> <p>Q. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 of form JV-410 correctly reflect the distinction between “reason to believe” and “reason</p>	No response required.
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		<p>to know,” and the obligations triggered by each level of information?  Answer: Yes.</p> <p>Q. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?  Answer: Yes and No. Yes, all parties may waive their statutory rights if the waiver is knowing, intelligent and voluntary. ICWA, however, serves the purposes of not just the parties but also the Native American tribal communities. Thus, the Child Welfare Agency has a non-delegable and non-waivable duty to provide notice and to make active efforts if required, which the Tribe may deem satisfied by an express waiver.</p> <p>Q. Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary?  Answer: The question should be directed at “gender” and not the sex of the child so that the Court can properly address the child in Court which is required by law. The child’s biological sex is not as relevant to the Court as the child’s gender under the law.</p> <p>Q. Would the proposal provide cost savings? If so, please quantify.  Answer: The more the Judicial Council forms bring clarity to Findings and Orders of the Court, the greater the cost savings to the Branch in reduced appeals. This is true when updating the forms on ICWA issues and gender identity issues.</p> <p>Q. What would the implementation requirements be for courts—for example, training</p>	
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		<p>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?</p> <p>Answer: No cost to the Court. These are standard forms and are being updated in regular course.</p> <p>Q. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Answer: Yes.</p> <p>Q. How well would this proposal work in courts of different sizes?</p>	
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## Comments From the Agua Caliente Band

### Rule 5.480. Application

2  
3 This chapter addressing the Indian Child Welfare Act (25 United States Code section  
4 1901 et seq.) as codified in various sections of the California Family, Probate, and  
5 Welfare and Institutions Codes, applies to most proceedings involving Indian children  
6 that may result in an involuntary foster care placement; guardianship ~~or conservatorship~~  
7 placement; custody placement under Family Code section 3041; declaration freeing a  
8 child from the custody and control of one or both parents; termination of parental rights;  
9 preadoptive placement or adoptive placement. This chapter applies to:

10  
11 \* \* \*

### Rule 5.481. Inquiry and notice

#### (a) Inquiry

16  
17 The court, court-connected investigator, and party seeking a foster-care placement,  
18 guardianship, ~~conservatorship~~, custody placement under Family Code section 3041,  
19 declaration freeing a child from the custody or control of one or both parents,  
20 termination of parental rights, or adoption have an affirmative and continuing duty  
21 to inquire whether a child is or may be an Indian child in all proceedings identified  
22 in rule 5.480. The court, court-connected investigator, and party include the county  
23 welfare department, probation department, licensed adoption agency, adoption  
24 service provider, investigator, petitioner, and appointed guardian ~~or conservator~~ of the  
25 person, ~~and appointed fiduciary~~.

- 26  
27 (1) The party seeking a foster-care placement, guardianship, ~~conservatorship~~,  
28 custody placement under Family Code section 3041, declaration freeing a  
29 child from the custody or control of one or both parents, termination of  
30 parental rights, or adoption must ask the child, if the child is old enough, and  
31 the parents, Indian custodian, or legal guardians, extended family members,  
32 others who have an interest in the child, and where applicable the party  
33 reporting child abuse or neglect whether the child is or may be an Indian  
34 child and whether the residence or domicile of the child, the parents, or  
35 Indian custodian is on a reservation or Alaska Native Village, and must  
36 complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and  
37 attach it to the petition unless the party is filing a subsequent petition, and  
38 there is no new information.  
39  
40 (2) At the first appearance by a parent, Indian custodian, ~~or guardian~~, and all or  
41 other participants in any dependency case; or in juvenile wardship

**Commented [J1]:** Conservatorships are for adults and therefore would not meet the definition of "child custody proceeding" in ICWA. It's true that ICWA can now apply pursuant to state law to an Indian child who is a non-minor dependent, but in a guardianship case arising under the WIC, the case would remain a guardianship; it would not become a probate conservatorship.

1 proceedings in which the child is at risk of entering foster care or is in foster  
2 care; or at the initiation of any guardianship, ~~conservatorship~~, proceeding for  
3 custody under Family Code section 3041, proceeding to terminate parental  
4 rights proceeding to declare a child free of the custody and control of one or  
5 both parents, or adoption proceeding; the court must:

6  
7 (A) Ask each participant present whether the participant knows or has  
8 reason to know ~~that~~ the child is an Indian child;

9  
10 (B) Instruct the parties to inform the court if they subsequently receive  
11 information that provides reason to know the child is an Indian child;  
12 and

13  
14 (C) ~~e~~Order the parent, Indian custodian, or guardian, if available, to  
15 complete *Parental Notification of Indian Status* (form ICWA-020).

16  
17 (3) \* \* \*

18  
19 (4) If the social worker, probation officer, licensed adoption agency, adoption  
20 service provider, investigator, or petitioner knows or has reason to ~~know~~  
21 believe that an Indian child is or may be involved, that person or entity must  
22 make further inquiry as soon as practicable by:

23  
24 (A) Interviewing the parents, Indian custodian, and “extended family  
25 members” as defined in 25 United States Code sections 1901 and  
26 1903(2) , to gather the information listed in Welfare and Institutions  
27 Code section 224.2(a) (5), Family Code section 180(b) (5), or Probate  
28 Code section 1460.2(b) (5), ~~which is required to complete the *Notice of*~~  
29 ~~*Child Custody Proceeding for Indian Child* (form ICWA-030);~~

30  
31 (B) \* \* \*

32  
33 (C) Contacting the tribes and any other person that reasonably can be  
34 expected to have information regarding the child’s membership status  
35 or eligibility. These contacts must at a minimum include the contacts  
36 listed in Welfare and Institutions Code section 224.2 (e)(3).

37  
38 The petitioner must include in its filings a detailed description of all  
39 inquiries, further inquiries it has undertaken, and all information received  
40 pertaining to the child’s Indian status.

41  
42 (5) ~~The circumstances that may provide reason to know the child is an Indian~~  
43 ~~child include the following:~~

Commented [J2]: The specific details on how to contact a tribe, as outlined in 25 CFR section 233.105 should be set out here to improve inquiry and notice compliance. This is one of the questions we most often get at Tribal STAR trainings from social workers.

- 2 (A) ~~The child or a person having an interest in the child, including an~~  
3 ~~Indian tribe, an Indian organization, an officer of the court, a public or~~  
4 ~~private agency, or a member of the child's extended family, informs or~~  
5 ~~otherwise provides information suggesting that the child is an Indian~~  
6 ~~child to the court, the county welfare agency, the probation department,~~  
7 ~~the licensed adoption agency or adoption service provider, the~~  
8 ~~investigator, the petitioner, or any appointed guardian or conservator~~  
9  
10 (B) ~~The residence or domicile of the child, the child's parents, or an Indian~~  
11 ~~custodian is or was 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 (b) **Reason to know the child is an Indian child**

- 20  
21 (1) The court has reason to know the child is an Indian child- if: 22

- 23 (A) A person having an interest in the child, including the child, an officer  
24 of the court, a tribe, an Indian organization, a public or private agency,  
25 or a member of the child's extended family informs the court that the  
26 child is an Indian child;  
27  
28 (B) The residence or domicile of the child, the child's parents, or Indian  
29 custodian is on a reservation or in an Alaska Native Village;  
30  
31 (C) Any participant in the proceeding, officer of the court, Indian tribe,  
32 Indian organization, or agency informs the court that it has discovered  
33 information indicating that the child is an Indian child;  
34  
35 (D) The child who is the subject of the proceeding gives the court reason to  
36 know he or she is an Indian child;  
37  
38 (E) The court is informed that the child is or has been a ward of a tribal  
39 court; or  
40  
41 (F) The court is informed that either parent or the child possess an  
42 identification card indicating membership or citizenship in an Indian  
43 tribe.

2  
3 (2) Information that a child has Native American ancestry does not in and of itself provide  
4 reason to know the child is an Indian child. There must be some information suggesting  
5 that the child is an Indian child (i.e., a child who is a member of a federally-recognized  
6 Tribe or a child who is eligible for membership in a federally-recognized Tribe and has a  
7 parent who is a member of such a Tribe).

Commented [J3]: The word "tribe" should be capitalized throughout the rules, as it is in 26 CFR Part 23.

8  
9 (23) When there is reason to know the child is an Indian child, but the court does  
10 not have sufficient evidence to determine that the child is or is not an Indian  
11 child, the court must confirm, by way of a report, declaration, or testimony  
12 included in the record that the agency or other party used due diligence to  
13 identify and work with all of the tribes of which there is reason to know the  
14 child may be a member, or eligible for membership, to verify whether the  
15 child is in fact a member or whether a biological parent is a member and the  
16 child is eligible for membership. Due diligence must include the further  
17 inquiry and tribal contacts discussed in (a)(4) above.

18  
19 (3) Upon review of the evidence of due diligence, further inquiry, and tribal  
20 contacts, if the court concludes that the agency or other party has fulfilled its  
21 duty of due diligence, further inquiry, and tribal contacts, the court may:

22  
23 (A) Find that there is no reason to know ~~that~~ the child is an Indian child and  
24 that the Indian Child Welfare Act does not apply. Notwithstanding this  
25 determination, if the court or a party subsequently receives information  
26 that was not previously available relevant to the child's Indian status,  
27 the court must reconsider this finding.

28  
29 (B) Find that it is known the child is an Indian child, find that the Indian Child Welfare  
30 Act does apply, and order compliance with the requirements of the Act, including  
31 notice in accordance with (c) below.

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32  
33 (C) Find that ~~or~~ there is reason to know ~~that~~ the child is an  
34 Indian child, order notice in accordance with (c) below, and treat the  
35 child as an Indian child unless and until the court determines on the  
36 record that there is no reason to know the child is ~~not~~ an Indian child and that the  
37 Indian Child Welfare Act does not apply.

38  
39 (4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in,  
40 that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that  
41 determination, shall be conclusive. Information that the child is not enrolled, or is not eligible for enrollment  
42 in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing  
43 that enrollment is a prerequisite for membership under tribal law or custom.

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28 **(c) Notice**

29  
30 (1) If it is known or there is reason to know ~~that~~ an Indian child is involved in a  
31 proceeding listed in rule 5.480, except for a wardship proceeding under  
32 Welfare and Institutions Code sections 601 and 602 et seq., the social worker,  
33 petitioner, or in probate guardianship ~~and conservatorship~~ proceedings, if the  
34 petitioner is unrepresented, the court must send *Notice of Child Custody*  
35 *Proceeding for Indian Child* (form ICWA-030) to the parent or legal  
36 guardian and Indian custodian of an Indian child, and the Indian child's tribe,  
37 in the manner specified in Welfare and Institutions Code section ~~224.2224.3~~,  
38 Family Law Code section 180, and Probate Code section 1460.2 for all  
39 hearings-proceedings that may result in the foster care placement, termination of parental  
40 rights, preadoptive placement, or adoptive placement  
and every subsequent hearing. ~~41~~

42 (2)-(4) \* \* \*

**Commented [J4]:** As drafted, the rule suggests that notice is only required for certain hearings, such as detention, disposition and the 366.26 hearing. It is required for every hearing held in an Indian child custody proceeding. The rule should make it clear that once notice is triggered, notice must be provided for all hearings in the proceeding.

2 **Rule 5.482. Proceedings after notice**

3  
4 **(a) Timing of proceedings**

- 5  
6 (1) If it is known or there is reason to know ~~that~~ a child is an Indian child, the  
7 court hearing that may result in a foster care placement, termination of  
8 parental rights, preadoptive placement, or adoptive placement must not  
9 proceed until at least 10 days after the parent, Indian custodian, the tribe, or  
10 the Bureau of Indian Affairs have received notice, except as stated in sections  
11 ~~(a)(2) and (3).~~
- 12  
13 ~~(2) The detention hearing in dependency cases and in delinquency cases in which~~  
14 ~~the probation officer has assessed that the child is in foster care or it is~~  
15 ~~probable the child will be entering foster care described by rule 5.480(2) (A)~~  
16 ~~–(C) may proceed without delay, provided that:~~
- 17  
18 ~~(A) Notice of the detention hearing must be given as soon as possible after~~  
19 ~~the filing of the petition initiating the proceeding; and~~
- 20  
21 ~~(B) Proof of notice must be filed with the court within 10 days after the~~  
22 ~~filing of the petition.~~
- 23  
24 ~~(3) The parent, Indian custodian, or tribe must be granted a continuance, if~~  
25 ~~requested, of up to 20 days to prepare for the proceeding, except for specified~~  
26 ~~hearings in the following circumstances:~~
- 27  
28 ~~(A) The detention hearing in dependency cases and in delinquency cases~~  
29 ~~described by rule 5.480(2) (A) –(C);~~
- 30  
31 ~~(B) The jurisdiction hearing in a delinquency case described by rule~~  
32 ~~5.480(2) (A) –(C) in which the court finds the continuance would not~~  
33 ~~conform to speedy trial considerations under Welfare and Institutions~~  
34 ~~Code section 657; and~~
- 35  
36 ~~(C) The disposition hearing in a delinquency case described by rule~~  
37 ~~5.480(2) (A) –(C) in which the court finds good cause to deny the~~  
38 ~~continuance under Welfare and Institutions Code section 682. A good~~  
39 ~~cause reason includes when probation is recommending the release of a~~  
40 ~~detained child to his or her parent or to a less restrictive placement. The~~  
41 ~~court must follow the placement preferences under rule 5.484 when~~  
42 ~~holding the disposition hearing.~~
- 43

Commented [J5]: Why are (a)(2) and (3) referenced as exceptions to the 10-day rule but shown as deleted below? Language consistent with WIC 224.3(d) provisions regarding exception to 10-day rule and continuances should be reflected in (a)(2) and (3).

1 (b) Proof of notice

2  
3 \* \* \*

4  
5 (e) ~~When there is no information or response from a tribe~~

6  
7 (1) ~~If after notice has been provided as required by federal and state law and~~  
8 ~~neither the tribe nor the Bureau of Indian Affairs has provided a~~  
9 ~~determinative response within 60 days after receiving that notice, then the~~  
10 ~~court may determine that the Indian Child Welfare Act does not apply to the~~  
11 ~~proceedings, provided that the court must reverse its determination of the~~  
12 ~~inapplicability of the act and must apply it prospectively if a tribe or the~~  
13 ~~Bureau of Indian Affairs subsequently confirms that the child is an Indian~~  
14 ~~child.~~

15  
16 (2) ~~If at any time, based on the petition or other information, the court knows or~~  
17 ~~has reason to know the child is an Indian child, the court must proceed as if~~  
18 ~~the child were an Indian child.~~

19  
20 (3) ~~The court is not required to delay proceedings until a response to notice is~~  
21 ~~received.~~

22  
23 (d) Intervention

24  
25 The Indian child's tribe and Indian custodian may intervene, orally or in writing, at  
26 any point in the proceedings, ~~and The tribe~~ may, but ~~are is~~ not required to, file with  
27 the court the *Notice of Designation of Tribal Representative and Notice of*  
28 *Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to  
29 give notice of their intent to intervene.

30  
31 (e) ~~(f)~~ \* \* \*

32  
(f) Consultation with Tribe

[Add to existing language the specific examples of "active efforts" set out in 25 CFR section 23.2 that involve consultation with Tribe, e.g., (1), (2), (3), (4), (5), (8), (10)]

33 **Rule 5.483. Dismissal and transfer of case**

34  
35 (a) ~~Mandatory transfer of case to tribal court with Dismissal when tribal court~~  
36 ~~has exclusive jurisdiction~~

37  
38 ~~The court must order transfer of a case to the tribal court of the child's tribe if:~~  
39 Subject to the terms of any agreement between the state and the tribe pursuant to 25



40 United States Code section 1919:

41

42 (1) If the court receives information suggesting that the Indian child is already a ward of

43 ~~the~~ a tribal court or is domiciled or resides within a reservation of an Indian

**Commented [J6]:** It would be helpful to clarify whether a "ward" is a child who is the subject of any tribal court custody orders or only custody orders vesting custody with the tribe for protective reasons.

1 tribe that has exclusive jurisdiction over Indian child custody proceedings  
2 under section 1911 or 1918 of title 25 of the United States Code, the court  
3 must expeditiously notify the tribe and the tribal court ~~that~~ it intends to  
4 dismiss the case upon receiving confirmation from the tribe or tribal court  
5 that the child is a ward of the tribal court or subject to the tribe's exclusive  
6 jurisdiction.

7  
8 (2) When the court receives confirmation that the child is already a ward of a  
9 tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the  
10 state court shall dismiss the proceeding and ensure that the tribal court is sent  
11 all information regarding the proceeding, including, but not limited to, the  
12 pleadings and any state court record. If the local agency has not already  
13 transferred physical custody of the Indian child to the child's tribe, the state  
14 court shall order that the local agency do so forthwith and hold in abeyance  
15 any dismissal order pending confirmation that the Indian child is in the  
16 physical custody of the tribe.

17  
18 (3) This section does not preclude an emergency removal pursuant to Welfare and Institutions  
19 Code section 319, if emergency removal is necessary to protect the child from imminent physical damage  
20 or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the local  
21 agency to the tribe.<sup>19</sup>

22 (b) ~~(e)~~ \* \* \*

23 (c) [Add to end of existing text:] Upon receipt of a transfer petition, the court must ensure that  
24 the Tribal court is promptly notified in writing of the transfer petition. The notification may request  
25 a timely response regarding whether the Tribal court wishes to decline the transfer.

Commented [J7]: This reflects the requirements of 25 CFR section 23.116.

26 (d) **Cause to deny a request to transfer to tribal court with concurrent state and**  
27 **tribal jurisdiction**

28 (1) ~~One or more~~ Either of the following circumstances constitutes mandatory  
29 good cause to deny a request to transfer:

30 (A) One or both of the child's parents objects to the transfer in open court  
31 or in an admissible writing for the record; or

32 ~~(B) The child's tribe does not have a "tribal court" or any other~~  
33 ~~administrative body as defined in section 1903 of the Indian Child~~  
34 ~~Welfare Act: "a court with jurisdiction over child custody proceedings~~  
35 ~~and which is either a Court of Indian Offenses, a court established and~~  
36 ~~operated under the code or custom of an Indian tribe, or any other~~  
37 ~~administrative body of a tribe which is vested with authority over child~~  
38 ~~custody proceedings;" or~~

39 ~~(B)~~ The tribal court of the child's tribe or, if the child's

~~tribe does not have a tribal court, the child's tribe declines the transfer.~~<sup>40</sup>

41           (2) ~~One or more of the following circumstances may constitute discretionary~~  
42           ~~good cause to deny a request to transfer~~ In assessing whether good cause to  
43           deny the transfer exists, the court must not consider:

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41

~~(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 request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;~~

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

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

(A) Whether the foster care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage;

(B) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(C) Whether transfer could affect the placement of the child;

(D) The Indian child's cultural connections with the tribe or its reservation; or

(E) Socioeconomic conditions or ~~any negative perception~~ the perceived adequacy of social services or judicial systems.

(3) \* \* \*

tribal or BIA

38

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1 **(e) Evidentiary considerations**

2  
3 The court may not consider socioeconomic conditions and the perceived adequacy  
4 of tribal social services, tribal probation, or the tribal judicial systems in its  
5 determination that good cause exists to deny a request to transfer to tribal court  
6 with concurrent state and tribal jurisdiction.  
7

8 **(f) Evidentiary burdens**

9  
10 \* \* \*

11 **(g) Order on request to transfer**

12  
13 \* \* \*

14 **(h) Advisement when transfer order granted**

15  
16 \* \* \*

17 **(i) Proceeding after transfer**

18  
19 \* \* \*

21 **Rule 5.484. Emergency proceedings involving an Indian child**

22  
23 **(a) Standards for removal**

24  
25 Whenever it is known or there is reason to know that the case involves an Indian  
26 child, the court may not order an emergency removal or placement of the child  
27 without a finding that the removal or placement is necessary to prevent imminent  
28 physical damage or harm to the child, and -29

30 ~~Whenever it is known or there is reason to know that the case involves an Indian~~  
31 ~~child,~~ the petition requesting emergency removal or continued emergency  
32 placement of the child or its accompanying documents must contain the following:

33 ~~31~~ ~~33~~  
34 (1) A statement of the risk of imminent physical damage or harm to the child and  
35 any evidence that the emergency removal or placement continues to be  
36 necessary to prevent such imminent physical damage or harm to the child;

37  
38 (2) The name, age, and last known address of the Indian child;

39  
40 (3) The name and address of the child's parents and Indian custodians, if any;

41  
42 (4) The steps taken to provide notice to the child's parents, Indian custodians, and tribe  
43 about the emergency proceeding;

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- 1  
2 (5) If the child's parents and Indian custodians are unknown, a detailed  
3 explanation of what efforts have been made to locate and contact them;  
4  
5 (6) The residence and the domicile of the Indian child;  
6  
7 (7) If either the residence or the domicile of the Indian child is believed to be on  
8 a reservation or in an Alaska Native Village, the name of the tribe affiliated  
9 with that reservation or village;  
10  
11 (8) The tribal affiliation of the child and of the parents or Indian custodians;  
12  
13 (9) A specific and detailed account of the circumstances that led to the  
14 emergency removal of the child;  
15  
16 (10) If the child is believed to reside or be domiciled on a reservation where the  
17 tribe exercises exclusive jurisdiction over child custody matters, a statement  
18 of efforts that have been made and are being made to contact the tribe and  
19 transfer the child to the tribe's jurisdiction; and  
20  
21 (11) A statement of the efforts that have been taken to assist the parents or Indian  
22 custodian so the Indian child may safely be returned to their custody.

23  
24 **(b) Return of Indian child when emergency situation has ended**

25  
26 Whenever it is known or there is reason to know ~~that~~ the child is an Indian child  
27 and there has been an emergency removal of the child from parental custody, any  
28 party who asserts that there is new information indicating that the emergency  
29 situation has ended may request an ex parte hearing by filing a request in form  
30 ICWA-070 to determine whether the emergency situation has ended;

31  
32 If the request provides evidence of new information establishing that the  
33 emergency placement is no longer necessary, the court shall promptly schedule a  
34 hearing. At the hearing the court shall consider whether the child's removal and  
35 placement is still necessary to prevent imminent physical damage or harm to the  
36 child. If the court determines that the child's emergency removal or placement is no  
37 longer necessary to prevent imminent physical damage or harm to the child, the  
38 court shall order the child returned to the physical custody of the parent(s) ~~or parents or~~  
38 ~~of~~ Indian custodian(s). ~~40~~

39  
41 **(c) Time limitation on emergency proceedings**

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1 An emergency removal shall not continue for more than 30 days unless the court  
2 makes the following determinations:

3  
4 (1) Restoring the child to the parent or Indian custodian would subject the child  
5 to imminent physical damage or harm;

6  
7 (2) The court has been unable to transfer the proceeding to the jurisdiction of the  
8 appropriate Indian tribe, if applicable; and 9

89  
10 (3) It has not been possible to have a hearing that complies with the substantive  
11 requirements of the Indian Child Welfare Act for a foster care placement  
12 proceeding.

13  
14 **Rule 5.4845. Placement of an Indian child**

15  
16 (a) \* \* \*

17  
18 (b) **Standards and preferences in placement of an Indian child**

19  
20 (1) ~~Unless the court finds good cause to deviate from them the contrary,~~  
21 ~~Whenever it is known or there is reason to know the child is an Indian child,~~  
22 ~~all placements of Indian children in any proceeding listed in rules 5.480 and~~  
23 ~~5.484 must follow the specified placement preferences in Family Code~~  
24 ~~section 177(a), Probate Code section 1459(b), and Welfare and Institutions~~  
25 ~~Code section 361.31, unless the court finds good cause to deviate from those placement~~  
26 ~~preferences. 26~~

27 (2) The court must analyze the availability of placements within the placement  
28 preferences in descending order without skipping. The court may deviate  
29 from the preference order only for good cause, which may include the  
30 following considerations:

31  
32 (A) The requests of the parent or Indian custodian if they attest that they  
33 have reviewed the placement options, if any, that comply with the order  
34 of preference;

35  
36 (B) The requests of the Indian child, when of sufficient age and capacity to  
37 understand the decision being made;

38  
39 (C) The presence of a sibling attachment that can be maintained only  
40 through a particular placement;

41  
42 (D) The extraordinary physical or emotional needs of the Indian child  
43 including specialized treatment services that may be unavailable in the

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1 community where families who meet the placement preferences live as  
2 established by a qualified expert witness; or

3  
4 (DE) The unavailability of suitable families within the placement preferences  
5 based on a documented diligent effort to identify families meeting the  
6 preference criteria. The standard for determining whether a placement  
7 is unavailable shall conform to the prevailing social and cultural  
8 standards of the Indian community in which the Indian child's parent or  
9 extended family resides or with which the Indian child's parent or  
10 extended family members maintain social and cultural ties.

11  
12 (3) The placement preferences shall be analyzed and considered each time there  
13 is a change in the child's placement.

14  
15 (4) The burden of establishing good cause for the court to deviate from the  
16 preference order is on the party requesting that the preference order not be  
17 followed. A placement may not depart from the preferences based on the  
18 socioeconomic status of any placement relative to another or solely on the  
19 basis of ordinary bonding or attachment that flowed from time spent in a  
20 nonpreferred placement that was made in violation of the Indian Child  
21 Welfare Act.

22  
23 (45)-(67) \* \* \*

24  
25 (c) **Active efforts**

26  
27 In addition to any other required findings to place an Indian child with someone  
28 other than a parent or Indian custodian, or to terminate parental rights, the court  
29 must find that active efforts have been made, in any proceeding listed in rule 5.480,  
30 to provide remedial services and rehabilitative programs designed to prevent the  
31 breakup of the Indian family, and must find that these efforts were unsuccessful.  
32 These active efforts must include affirmative, active, thorough, and timely efforts  
33 intended primarily to maintain or reunite the child with his or her family, must be  
34 tailored to the facts and circumstances of the case, and must be consistent with the  
35 requirements of section 224.1(f) of the Welfare and Institutions Code.

36  
37 (1) The active efforts must be documented in detail in the record.

38  
39 (42) The court must consider whether active efforts were made in a manner  
40 consistent with the prevailing social and cultural conditions and way of life of  
41 the Indian child's tribe.  
42



1 (23) Efforts to provide services must include pursuit of any steps necessary to  
2 secure tribal membership for a child if the child is eligible for membership in  
3 a given tribe, as well as attempts to use the available resources of extended  
4 family members, the tribe, tribal and other Indian social service agencies, and  
5 individual Indian caregivers.  
6

7 **Rule 5.4856. Removal: Termination of parental rights**

8  
9 (a) **\*\*\*Evidentiary Burdens**

(1) Where the court knows or has reason to know an Indian child is involved, the court may not order removal of the child from the physical custody of a parent or Indian custodian pursuant to Welfare and Institutions Code section 361, Family Code section 3041, or the Probate Code, or order continued removal under Welfare and Institutions Code sections 366.21(e)(1), (f)(1), 366.22(a)(1) or 366.25(a)(1), unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

[Make existing text a new paragraph (2) and subparagraphs (A) and (B).]

(3) For removal, continued removal, or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood the continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the proceeding.

(4) Without a causal relationship identifie in (3), evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

10  
11 (b) **When parental rights may not be terminated**

12  
13 The court may not terminate parental rights to an Indian child or declare a child  
14 free from the custody and control of one or both parents if the court finds a  
15 compelling reason for determining that termination of parental rights would not be  
16 in the child's best interest. Such a reason may include:

17  
18 (1) The child is living with a relative who is unable or unwilling to adopt the  
19 child because of circumstances that do not include an unwillingness to accept  
20 legal or financial responsibility for the child, but who is willing and capable  
21 of providing the child with a stable and permanent environment through legal  
22 guardianship, and the removal of the child from the custody of his or her  
23 relative would be detrimental to the emotional well-being of the child. For  
24 purposes of an Indian child, "relative" shall include an "extended family

25 member,” as defined in the federal Indian Child Welfare Act of 1978 (25  
26 U.S.C. § 1903(2));

27  
28 (4) Termination of parental rights would substantially interfere with the child’s  
29 connection to his or her tribal community or the child’s tribal membership  
30 rights; or

31  
32 (3) The child’s tribe has identified tribal customary adoption without termination of parental  
33 rights, guardianship, long-term foster care with a fit  
34 and willing relative, or another planned permanent living arrangement for the  
35 child.

36 **Rule 5.4867. Petition to invalidate orders**

37  
38 (a)–(c) \* \* \*

39  
40 **Rule 5.4878. Adoption record keeping**

41  
42 (a)–(b) \* \* \*

**Rule 5.531. Appearance by telephone**

**(d) Notwithstanding (c), if it possesses the capability, the court should allow alternative methods of participation in child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.**

Commented [J8]: This reflect 25 CFR section 23.133.

Commented [J9]:

43

- 9 (5) For a petition filed under section 388(c)(1)(A), the court may terminate  
10 reunification services during the time periods described in section 388(c)(1)  
11 only if the court finds by a preponderance of evidence that reasonable  
12 services have been offered or provided, and, by clear and convincing  
13 evidence, that the change of circumstance or new evidence described in the  
14 petition satisfies a condition in section 361.5(b) or (e). In the case of an  
15 Indian child, the court may terminate reunification services only if the court  
16 finds by clear and convincing evidence that active efforts have been made to  
17 provide remedial services and rehabilitative programs designed to prevent the  
18 breakup of the Indian family within the meaning of sections 224.1(f) and  
19 361.7 of the Welfare and Institutions Code and that these efforts have proved  
20 unsuccessful. The court may grant the petition after following the procedures  
21 in (f), (g), and (h).  
22
- 23 (6) For a petition filed under section 388(c)(1)(B), the court may terminate  
24 reunification services during the time periods described in section 388(c)(1)  
25 only if the court finds by a preponderance of evidence that reasonable  
26 services have been offered or provided, and, by clear and convincing  
27 evidence, that action or inaction by the parent or guardian creates a  
28 substantial likelihood that reunification will not occur. Such action or  
29 inaction includes, but is not limited to, failure to visit the child or failure to  
30 participate regularly and make substantive progress in a court-ordered  
31 treatment program. In determining whether the parent or guardian has failed  
32 to visit the child or to participate regularly or make progress in a court-  
33 ordered treatment plan, the court must consider factors including, but not  
34 limited to, the parent or guardian's incarceration, institutionalization, or  
35 participation in a residential substance abuse treatment program. In the case  
36 of an Indian child, the court may terminate reunification services only if the  
37 court finds by clear and convincing evidence that active efforts have been  
38 made to provide remedial services and rehabilitative programs designed to  
39 prevent the breakup of the Indian family within the meaning of sections  
40 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts  
41 have proved unsuccessful. The court may grant the petition after following  
42 the procedures in (f), (g), and (h).  
43

9 **(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))**

10  
11 (1) The court must ask each participant present at the hearing whether:

12  
13 (A) The participant knows or has reason to know ~~that~~ the child is an Indian  
14 child;

15  
16 (B) The residence or domicile of the child, the child's parents, or Indian  
17 custodian is on a reservation or in an Alaska Native Village;

18  
19 (C) The child is or has ever been a ward of a tribal court; and

20  
21 (D) Either parent or the child possess an identification card indicating  
22 membership or citizenship in an Indian tribe.

23  
24 (2) The court must also instruct all parties to inform the court if they  
25 subsequently receive information that provides reason to know the child is an  
26 Indian child, and order the parent(s), Indian custodian, or guardian, if  
27 available, to complete *Parental Notification of Indian Status* (form ICWA-  
28 020).

29  
30 (3) If it is known~~r~~ or there is reason~~r~~ to know that case involves an Indian child,  
31 the court shall proceed in accordance with rules 5.481 et seq.

32  
33 **(ed) \* \* \***

34  
35 **Rule 5.674. Conduct of hearing; admission, no contest, submission**

36  
37 **(a) \* \* \***

38  
39 **(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)**

40  
41 (1) The court must read, consider, and reference any reports submitted by the  
42 social worker and any relevant evidence submitted by any party or counsel.

1 All detention findings and orders must appear in the written orders of the  
2 court.

3  
4 (2) The findings and orders that must be made on the record are:

5  
6 (A)–(B) \* \* \*

7  
8 (C) Reasonable efforts have been made to prevent removal; ~~and~~

9  
10 (D) The findings and orders required to be made on the record under  
11 section 319; and

12  
13 (E) When it is known or there is reason to know the case involves an Indian  
14 child, that detention is necessary to prevent imminent physical damage  
15 or harm to the child, and there are no reasonable means by which the  
16 child can be protected if maintained in the physical custody of his or  
17 her parent or parents or Indian custodian.

18  
19 (c)–(e) \* \* \*

20  
21 **Rule 5.676. Requirements for detention**

22  
23 (a) \* \* \*

24  
25 **(b) Additional requirements for detention of an Indian child**

26  
27 If it is known, or there is reason to know the child is an Indian child, the child may  
28 not be ordered detained unless the court also finds that detention is necessary to  
29 prevent imminent physical damage or harm to the child, and the court states the  
30 facts supporting this finding on the record.

31  
32 (bc) \* \* \*

33  
34 **(d) Additional evidence required at a detention hearing for an Indian child**

35  
36 If it is known, or there is reason to know ~~that~~ the child is an Indian child, the  
37 reports relied upon must also include:

38  
39 (1) A statement of the risk of imminent physical damage or harm to the Indian  
40 child and any evidence that the emergency removal or placement continues to  
41 be necessary to prevent the imminent physical damage or harm to the child;  
42

- 1 (2) The steps taken to provide notice to the child’s parents, Indian custodians, and tribe  
 2 about the hearing pursuant to ~~this section~~the Welfare and Institutions Code section 224.3;  
 3  
 4 (3) If the child’s parents and Indian custodians are unknown, a detailed  
 5 explanation of what efforts have been made to locate and contact them,  
 6 including contact with the appropriate Bureau of Indian Affairs regional  
 7 director;  
 8  
 9 (4) The residence and the domicile of the Indian child;  
 10  
 11 (5) If either the residence or the domicile of the Indian child is believed to be on  
 12 a reservation or in an Alaska Native Village, the name of the tribe affiliated  
 13 with that reservation or village;  
 14  
 15 (6) The tribal affiliation of the child and of the parents or Indian custodians;  
 16  
 17 (7) A specific and detailed account of the circumstances that caused the Indian  
 18 child to be taken into temporary custody;  
 19  
 20 (8) If the child is believed to be a ward of a tribal court or to reside or be domiciled on a  
 21 tribe exercises exclusive jurisdiction over child custody matters, a statement  
 22 of efforts that have been made and that are being made to contact the tribe  
 23 and transfer the child to the tribe’s jurisdiction; and  
 24  
 25 (9) A statement of the efforts that have been taken to assist the parents or Indian  
 26 custodians so the Indian child may safely be returned to their custody.

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Commented [J10]: Sometimes this is plural and sometimes singular. It should be consistent, one way or the other.

**Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives**

**(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)**

The court must order the child released from custody unless the court makes the findings specified in section 319(b)(c), and where it is known, or there is reason to know the child is an Indian child, the additional finding specified in section 319(d).

**(b) \* \* \***

**(c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)**

(1) \* \* \*

1 (2) Where it is known or there is reason to know ~~that~~ the child is an Indian child,  
2 whether the child is released or detained at the hearing, the court must  
3 determine whether active efforts have been made to prevent or eliminate the  
4 need for removal, and that those active efforts are documented in detail in the  
5 record, and must make one of the following findings:

Commented [J11]: This rule should address what the court must do if it finds that the active efforts requirement has not been met, i.e., order the child returned and that active efforts be made.

6 (A) Active efforts have been made and were successful;

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7 (B) Active efforts have been made and were not successful; or §

9 (B) Active efforts have not been made; and

10 (C) The court orders the department to initiate or continue services in  
11 accordance with Welfare and Institutions Code section 358.

12 (23) The court must also determine whether services are available that would  
13 prevent the need for further detention.

14 (34) The court must not order the child detained unless the court, after inquiry  
15 regarding available services, finds that there are no reasonable services; or,  
16 where it is known or there is reason to know the child is an Indian child,  
17 active efforts that would prevent or eliminate the need to detain the child or  
18 that would permit the child to return home.

19 (45) If the court orders the child detained, the court must proceed under section  
20 319(~~dg~~)-(eh).

21 (d) **Orders of the court (§ 319; 42 U.S.C. § 672)**

22 If the court orders the child detained, the court must order that temporary care and  
23 custody of the child be vested with the county welfare department pending  
24 disposition or further order of the court and must make the other findings and  
25 orders specified in section 319(eg) and (h)(3).

26 (e) **Detention alternatives (§ 319)**

27 The court may order the child detained as specified in section 319(h).

28 (f) **Additional requirements regarding detention of an Indian child (§ 319)**

29 (1) If it is known, or there is reason to know the child is an Indian child, the child  
30 must be detained in a home that complies with the placement preferences in  
31 section 361.31 unless the court finds good cause exists not to follow the  
32 placement preferences.

1 (2) If it is known, or there is reason to know the child is an Indian child, the  
2 detention hearing may not be continued beyond 30 days unless the court finds  
3 all of the following:

4 (A) Restoring the child to the parent, parents, or Indian custodian would  
5 subject the child to imminent physical damage or harm;

6 (B) The court is unable to transfer the proceeding to the jurisdiction of the  
7 appropriate Indian tribe; and

8 (C) It is not possible to initiate an Indian child custody proceeding as  
9 defined in section 224.1.

10  
11  
12  
13  
14 **(g) Hearing for return of custody of Indian child after emergency removal when**  
15 **emergency has ended**

16  
17 If it is known or there is reason to know the child is an Indian child, a party may  
18 request a hearing under rule 5.484(b) for return of the child prior to disposition if  
19 the party asserts that there is new evidence that the emergency removal or  
20 placement is no longer necessary to prevent imminent physical damage or harm to  
21 the child.

22  
23 **Rule 5.690. General conduct of disposition hearing**

24  
25 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))**

26  
27 The petitioner must prepare a social study of the child. The social study must  
28 include a discussion of all matters relevant to disposition and a recommendation for  
29 disposition.

30  
31 (1) The petitioner must comply with the following when preparing the social  
32 study:

33 (A) \* \* \*

34 (B) If petitioner recommends removal of the child from the home, the  
35 social study must include:

36 (i) A discussion of the reasonable efforts made to prevent or  
37 eliminate removal; or, if it is known or there is reason to know the  
38 child is an Indian child, the active efforts to provide remedial  
39 services and rehabilitative programs designed to prevent the  
40  
41  
42

**Commented [J12]:** WIC does not permit detention hearings to be continued for 30 days. 25 CFR section 23.113(e) is inconsistent with state law in this regard. This subsection of the rule should be deleted.

**Commented [J13]:** An Indian child custody proceeding is initiated by the filing of the 300 petition (or other petition in probate or family court). There is never a scenario in which a 300 petition could not be filed within 30 days.



1 breakup of the Indian family, and a recommended plan for  
2 reuniting the child with the family, including a plan for visitation;

3  
4 (ii)-(iii) \* \* \*

5  
6 (C) The social study must include a discussion of the social worker's efforts  
7 to comply with § 309(e) and rule 5.637, including but not limited to:

8  
9 (i)-(ii) \* \* \*

10  
11 (iii) The number and relationship of those relatives described by item  
12 (ii) who are interested in ongoing contact with the child; ~~and~~

13  
14 (iv) The number and relationship of those relatives described by item  
15 (ii) who are interested in providing placement for the child; and

16  
17 (v) If it is known or there is reason to know the child is an Indian  
18 child, efforts to locate extended family members as defined in  
19 section 224.1, and evidence that all individuals contacted have  
20 been provided with information about the option of obtaining  
21 approval for placement through the tribe's license or approval  
22 procedure.

23  
24 (D)-(F) \* \* \*

25  
26 (2) \* \* \*

27  
28 (b)-(c) \* \* \*

29  
30 **Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)**

31  
32 (a)-(d) \* \* \*

33  
34 (e) **Procedures—adoption**

35  
36 (1) \* \* \*

37  
38 (2) An order of the court terminating parental rights, ordering adoption under  
39 section 366.26 or, in the case of an Indian child, ordering tribal customary  
40 adoption under section 366.24, is conclusive and binding on the child, the  
41 parent, and all other persons who have been served under the provisions of  
42 section 294. Once a final order of adoption has issued, tThe order may not be  
43 set aside or modified by the court, except as provided in section 366.26(e)(3)

1 a d (i)(3)  
n and rules

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Comments from the Children’s Law Center

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party ~~seeking requesting~~ a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, ~~pre-adoptive placement~~, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. ~~This imposes a duty on the court, court-connected investigators, county welfare departments, probation departments, licensed adoption agencies, adoption service providers, investigators, petitioners, appointed guardian or conservators of the person, and appointed fiduciaries. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.~~

- (1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, ~~pre-adoptive placement~~, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party reporting child abuse or neglect whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or Alaska Native Village, and must complete the Indian Child Inquiry Attachment (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.
- (2) At the first appearance by a parent, Indian custodian, or guardian, and all other participants in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, ~~pre-adoption~~, or adoption proceeding; the court must:
  - (A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;
  - (B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child; and
  - (C) ~~Order the parent, Indian custodian, guardian or any other relative present in court to complete the Parental Notification of Indian Status Form (ICWA-020). Order the parent, Indian custodian, or guardian if available, to complete Parental Notification of Indian Status (form ICWA-020).~~
- (3) \* \* \*
- (4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to ~~know~~ believe that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:
  - (A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 United States Code sections 1901 and 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 Notice of Child Custody Proceeding for Indian Child (form ICWA-030);~~

(B) \* \* \*

(C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility. These contacts must at a minimum include the contacts listed in Welfare and Institutions Code section 224.2 (e)(3). The petitioner must include in its filings a detailed description of all inquiries, further inquiries it has undertaken, and all information received pertaining to the child's Indian status. Any information obtained by the petitioner must be documented in the ICWA-020 form. If the petitioner had previously sent notices and the information obtained is new information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020 then the petitioner must complete a new ICWA-020 with all the information and re-notice all the identified Tribes.

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

(A) The child or a 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, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was 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.

**(b) Reason to know the child is an Indian child**

(1) The court has reason to know a child involved in a proceeding is an Indian child if: ~~the child is an Indian child if:~~

(A) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village;

(C) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(D) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(E) The court is informed that the child is or has been a ward of a tribal court; or

(F) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) When there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership. Due diligence must include the further inquiry and tribal contacts discussed in (a)(4) above.

**Commented [JM1]:** It is important to ensure this language is included because it is the most common ground in which ICWA reversals come down from the COA.

(3) Upon review of the evidence of due diligence, further inquiry, and tribal contacts, if the court concludes that the agency or other party has fulfilled its duty of due diligence, further inquiry, and tribal contacts, the court may:

(A) Find that there is no reason to know that the child is an Indian child and that the Indian Child Welfare Act does not apply. Notwithstanding this determination, if the court or a party subsequently receives any information required by section 224.3 that was not previously available or included in the notice issued under Section 224.3, the court must order the party seeking placement shall provide the additional information to any tribes entitled to notice under section 224.3 and to the Secretary of the Interior's designated agent and the court must reconsider the previous ICWA finding.

(B) Find that it is known or there is reason to know that the child is an Indian child, order notice in accordance with (c) below, and treat the child as an Indian child unless and until the court determines on the record that the child is not an Indian child.

(c) Notice

(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, or if the petitioner is unrepresented, the court must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.23, Family Law Code section 180, and Probate Code section 1460.2 for all hearings that may result in the foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement.

(2)-(4) \* \* \*

Rule 5.482. Proceedings after notice

(a) Timing of proceedings

(1) ~~At a court hearing that may result in a foster care placement, termination of parental rights of one or both parents, pre-adoptive placement, or adoptive placement, the court may not proceed with the hearing until at least 10 days after the parent, Indian custodian, the Tribe, or the Bureau of Indian Affairs have received notice of the proceedings except in a hearing held pursuant to section 319 of the Welfare and Institutions Code. if it is known or there is reason to know that a child is an Indian child, the court hearing that may result in a foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, except as stated in sections (a)(2) and (3).~~

(2) With the exception of the hearing held pursuant to Section 319 of the Welfare and Institutions Code, the parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days to prepare for that hearing or proceeding.

(2) ~~The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster care described by rule 5.480(2) (A) - (C) may proceed without delay, provided that:~~

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

**Commented [MJ2]:** The changes the JC made would strike through an important provision regarding the detention hearing. Their language keeps in section (1) a reference to (a)(2)&(3) but they delete it from the language. I put it together in one paragraph which includes all the language.

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

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

(A) The detention hearing in dependency cases and in delinquency cases described by rule 5.480(2)(A)–(C);

(B) The jurisdiction hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds the continuance would not conform to speedy trial considerations under Welfare and Institutions Code section 657; and

(C) The disposition hearing in a delinquency case described by rule 5.480(2)(A)–(C) in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.484 when holding the disposition hearing.

(b) Proof of notice

Proof of compliance with the notice provisions must be filed with the court in advance of the hearing except for a hearing held pursuant to Section 319 of the Welfare and Institutions Code and must include:

- (1) Notice of Child Custody Proceedings for Indian Child (form ICWA-030),
- (2) Copies of the notices sent to all parties, tribes, parents, and Indian Custodians, and
- (3) All return receipts and responses received to the notices.

**Commented [MJ3]:** This language makes it in compliance with the WIC section 224.3 and the previous rule of court.

(c) Determination the ICWA Is Not Applicable When there is no information or response from a tribe

(1) If the court makes a finding that proper and adequate inquiry and due diligence were conducted pursuant to section 224.2 and 224.3 of the Welfare and Institutions Code and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) does not apply to the proceedings. If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the Indian Child Welfare Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.

(2) The determination of the court that the Indian Child Welfare Act of 1978 does not apply in subsection (c)(1) is subject to reversal based on sufficiency of the evidence. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3 of the Welfare and Institutions Code. If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.

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

**Commented [MJ4]:** I do not think they can take out this section without guidance as to what to do when you have done everything and there is no response because it is a common situation. Since tribes get over 20,000 inquiries a day sometimes they are not always timely to respond to inquiries and it would delay proceedings without some direction.

(d) Intervention

The Indian child's tribe and Indian custodian have an absolute right to intervene in the proceedings. The tribe or Indian custodian may intervene, orally or in writing, at any point in the proceedings, and The tribe, at its own discretion may, but are is not required to, file with the court the Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child (form ICWA-040) to give notice of their intent to intervene.

**Commented [MJ5]:** I think it is good to clearly state this since some court are confused if they have the absolute right to intervention

(e)-(f) \* \* \*

Rule 5.483. Dismissal and transfer of case

(a) ~~Mandatory transfer of case to tribal court with~~ Dismissal when tribal court has exclusive jurisdiction. ~~The court must order transfer of a case to the tribal court of the child's tribe if:~~

Subject to the terms of any agreement between the state and the tribe pursuant to 25 United States Code section 1919:

- (1) ~~At any stage of the proceeding as defined under Section 224.1 of the Welfare and Institutions Code, if~~ ~~if the court receives information suggesting that~~ the Indian child is a ward of ~~the~~ a tribal court or is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under section 1911 or 1918 of title 25 of the United States Code, ~~the court must expeditiously notify the tribe and the tribal court that it intends to dismiss the case upon receiving confirmation from the tribe or tribal court that the child is a ward of the tribal court or subject to the tribe's exclusive jurisdiction.~~
- (2) ~~When the court receives confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe, the state court shall dismiss the proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record. If the local agency has not already transferred physical custody of the Indian child to the child's tribe, the state court shall order that the local agency do so forthwith and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe.~~
- (3) This section does not preclude ~~a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 of the Welfare and Institutions Code if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe. an emergency removal.~~

(b) ~~The state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, or the child's tribe, unless the state court finds good cause under subdivision (d) not to transfer the proceedings.~~

(c) \* \* \*

(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction

- (1) ~~One or more~~ Either of the following circumstances constitutes mandatory good cause to deny a request to transfer:
  - (A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record; or
  - ~~(B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated~~

under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or  
(BG) The tribal court of the child's tribe declines the transfer.

(2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer. In assessing whether good cause to deny the transfer exists, the court **shall** ~~must~~ not consider:

(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 request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;

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

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

(A) Whether the foster care, **child custody, pre-adoptive placement, adoptive placement, or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer;**

(B) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(C) Whether transfer could affect the placement of the child;

(D) **Whether or not** the Indian child **has** cultural connections with the tribe or its reservation;

or

(E) **Socioeconomic conditions or any ~~negative~~ perception of inadequacy of the tribal services or BIA social services or judicial systems of the tribe.**

(3) \* \* \*

(e) Evidentiary considerations

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.

(fe) Evidentiary burdens

\* \* \*

(gf) Order on request to transfer

\* \* \*

(hg) Advisement when transfer order granted

\* \* \*

(ih) Proceeding after transfer \* \* \*



Rule 5.484. Emergency proceedings involving an Indian child

(a) Standards for removal

Whenever it is known or there is reason to know that the case involves an Indian child, the court may not order an emergency removal or placement of the child without a finding that the removal or placement is necessary to prevent imminent physical damage or harm to the child.

Before taking a child into custody, a social worker shall consider whether the child may remain safely in his or her residence. The consideration of whether the child may remain safely at home shall include, but not be limited to, the following factors:

- (1) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the child would eliminate the need to remove the child from the custody of his or her parent, guardian, Indian custodian, or other caretaker.
- (2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the child. If those services are available, they shall be utilized.
- (3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.
- (4) If it is known or there is reason to know the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

(b) Agency Report Shall Contain

The social worker shall report to the court on the reasons why the child has been removed from the parent's, guardian's, or Indian custodian's, physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents, guardians, or Indian custodian, and whether there are any relatives who are able and willing to take temporary physical custody of the child. If it is known or there is reason to know the child is an Indian child, the report shall also include all of the following:

- (1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child.
- (2) The steps taken to provide notice to the child's parents, custodians, and tribe about the hearing pursuant to this section.
- (3) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director.
- (4) The residence and the domicile of the Indian child.
- (5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village.

**Commented [MJ6]:** I made a lot of changes to this section to reflect the actual code section language and ensure that it matches with the federal as well as state codes.

- (6) The tribal affiliation of the child and of the parents or Indian custodians.
- (7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody.
- (8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction.
- (9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

Whenever it is known or there is reason to know that the case involves an Indian child, the petition requesting emergency removal or continued emergency placement of the child or its accompanying documents must contain the following:

- (1) A statement of the risk of imminent physical damage or harm to the child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child;
- (2) The name, age, and last known address of the Indian child;
- (3) The name and address of the child's parents and Indian custodians, if any;
- (4) The steps taken to provide notice to the child's parents, custodians, and tribe about the emergency proceeding;
- (5) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them;
- (6) The residence and the domicile of the Indian child;
- (7) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native Village, the name of the tribe affiliated with that reservation or village;
- (8) The tribal affiliation of the child and of the parents or Indian custodians;
- (9) A specific and detailed account of the circumstances that led to the emergency removal of the child;
- (10) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and
- (11) A statement of the efforts that have been taken to assist the parents or Indian custodian, so the Indian child may safely be returned to their custody.

(c) Return of Indian child when emergency situation has ended

Whenever it is known or there is reason to know that the child is an Indian child and the child has been ordered detained pursuant to Section 319 of the Welfare and Institutions Code there has been an emergency removal of the child from parental custody, any party may request an ex parte hearing prior to disposition to present evidence to the court that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child by who asserts that there is new information indicating that the emergency situation has ended may request an ex parte hearing by filing a Request for Ex Parte Hearing to Return Physical Custody of an Indian Child request in (form ICWA-070) to determine whether the emergency situation has ended;  
If the request provides evidence of new information establishing that the emergency placement is no longer necessary, the court shall promptly schedule a hearing. At the hearing the court shall

consider whether the child's removal and placement is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the child's emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child, the court shall order the child returned to the physical custody of the parent or parents of Indian custodian.

**(de) Time limitation on emergency proceedings**

An emergency removal shall not continue for more than 30 days unless the court makes the following determinations:

- (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
- (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and
- (3) It has not been possible to have a hearing that complies with the substantive requirements of the Indian Child Welfare Act for a foster care placement proceeding.

**Rule 5.4845. Placement of an Indian child**

(a) \* \* \*

**(b) Standards and preferences in placement of an Indian child**

(1) ~~Whenever it is known, or the court has reason to know that a child is an Indian child in a proceeding listed under rule 5.480, the child's placement shall be in compliance with the specified placement preference in Welfare and Institutions Code section 361.31, Family Code section 1777(a), and Probate Code section 1459(b) unless the court finds good cause to deviate from the placement preference by clear and convincing evidence. Unless the court finds good cause to deviate from them the contrary, whenever it is known or there is reason to know the child is an Indian child, all placements of Indian children in any proceeding listed in rules 5.480 and 5.484 must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.~~

**Commented [MJ7]:** It is very important to put in the language of clear and convincing evidence standard as this was in dispute prior to the codification in the code

(2) The court must analyze the availability of placements within the placement preferences in descending order without skipping. The Indian child shall be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met.

- (3) The court may deviate from the placement preference order only if the court finds by clear and convincing evidence there is good cause, which may include the following considerations:
- (A) The requests of the parent or Indian custodian if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
  - (B) The requests of the Indian child, when of sufficient age and capacity to understand the decision being made;
  - (C) The presence of a sibling attachment that can be maintained only through a particular placement;
  - (D) The extraordinary physical or emotional needs of the Indian child including specialized treatment services that may be unavailable in the community where families who meet the placement preferences live as established by a qualified expert witness; or
  - (E) The unavailability of suitable families within the placement preferences based on a documented diligent effort to identify families meeting the preference criteria. The standard

for determining whether a placement is unavailable shall conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

~~(43)~~ The placement preferences shall be analyzed and considered each time there is a change in the child's placement.

(54) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the placement preference order not be followed. A placement may shall not depart from the placement preferences based on the socioeconomic status of any placement relative to another. A placement shall not depart from the placement preferences solely on the basis of ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the Indian Child Welfare Act.

(6) If the court knows or has reason to know that the child is an Indian child and the court finds at the hearing held pursuant to section 319 of the Welfare and Institutions Code that there is good cause to deviate from the placement preferences set forth in Section 361.31 of the Welfare and Institutions Code, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

~~(45)-(67)~~ (7)-(9) \* \* \*

(c) Active efforts

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

These active efforts must include affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite the child with his or her family, must be tailored to the facts and circumstances of the case, and must be consistent with the requirements of section 224.1(f) of the Welfare and Institutions Code.

(1) The active efforts must be documented in detail in the record.

~~(42)~~ The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe. In considering if active efforts were taken the court shall consider if the agency utilized the available resources of the Indian child's extended family, tribe, tribal or other Indian social service agencies, and individual Indian caregiver service providers. Active efforts shall include the pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe.

~~(23)~~ Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers. The court shall not order a foster care

**Commented [MJ8]:** I think this is a very important part that was left out because it discusses their ongoing duty to find a compliant placement (WIC sec. 319(h)(1)(C).)

**Commented [JM9]:** I think it is important to have this language here so it ties in with the active efforts requirement.

placement or guardianship in a proceeding described in rule 5.480 absent a determination by clear and convincing evidence including the testimony of a qualified expert witness as defined by Section 224.6 of the Welfare and Institutions Code, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**Commented [JM10]:** This is a very important provision which was not part of the active efforts provision so I added

Rule 5.4856. Termination of parental rights

(a) \* \* \*

(b) When parental rights may not be terminated

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 for determining that termination of parental rights would not be in the child's best interest. Such a reason may include:

- (1) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act of 1978 (25 U.S.C. § 1903(2));
- (2) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights; or
- (3) 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.

Rule 5.4867. Petition to invalidate orders

(a)-(c) \* \* \*

Rule 5.4878. Adoption record keeping

(a)-(b) \* \* \*

Rule 5.570. Request to change court order (petition for modification)

(a)-(d) \* \* \*

(e) Grounds for grant of petition (§§ 388, 778)

(1)-(4) \* \* \*

- (5) For a petition filed under section 388(c)(1)(A), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable services have been offered or provided, and, by clear and convincing evidence, that the change of circumstance or new evidence described in the petition satisfies a condition in section 361.5(b) or (e). In the case of an Indian child, the court may terminate reunification services only if the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of

sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful. The court may grant the petition after following the procedures in (f), (g), and (h).

- (6) For a petition filed under section 388(c)(1)(B), the court may terminate reunification services during the time periods described in section 388(c)(1) only if the court finds by a preponderance of evidence that reasonable services have been offered or provided, and, by clear and convincing evidence, that action or inaction by the parent or guardian creates a substantial likelihood that reunification will not occur. Such action or inaction includes, but is not limited to, failure to visit the child or failure to participate regularly and make substantive progress in a court-ordered treatment program. In determining whether the parent or guardian has failed to visit the child or to participate regularly or make progress in a court-ordered treatment plan, the court must consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a residential substance abuse treatment program. In the case of an Indian child, the court may terminate reunification services only if the court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful. The court may grant the petition after following the procedures in (f), (g), and (h).

(7) \* \* \*

(f)–(g) \* \* \*

(h) Conduct of hearing (§388)

(1) The petitioner requesting the modification under section 388 has the burden of proof.

(A) If the request is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist.

(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. **In the case involving an Indian child, the petitioner must show by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful.**

(C)–(E) \*\*\*

(2) \*\*\*

(i)–(j) \*\*\*

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

(a)–(b) \* \* \*

(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))

(1) At the first appearance in court of each party, the court must ask each participant present at the hearing whether:

(A) The participant knows or has reason to know that the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native Village;

(C) The child is or has ever been a ward of a tribal court; and

(D) Either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parent(s), Indian custodian, or guardian, if available, to complete Parental Notification of Indian Status (form ICWA- 020). ~~Newly obtained information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020, then the court shall order the petitioner to complete a new ICWA -020 with all the information and re-notice all the identified Tribes.~~

(3) When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence as described in rule 5.481 and determines that the Indian Child Welfare Act does not apply as described in subsection (b)(3)(A) of rule 5.481. ~~If it is known, or there is reason, to know that case involves an Indian child, the court shall proceed in accordance with rules 5.481 et seq.~~

**Commented [JM11]:** Again important to include because #1 reason for reversal from COA in published ICWA cases is not providing tribes with all the updated information or correcting misinformation.

(c) Health and education information (§16010) \* \* \*

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) \* \* \*

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A)–(B) \* \* \*

(C) Reasonable efforts have been made to prevent removal; ~~and~~

(D) The findings and orders required to be made on the record under section 319; and

(E) When it is known or there is reason to know the case involves an Indian child, the court must make the heightened findings under the Indian Child Welfare Act in order to remove the child from the custody of the parent, or Indian custodian that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected if maintained in the physical custody of his or her parent or parents or Indian custodian.

(c)–(e) \* \* \* **add Indian custodian to each section**

Rule 5.676. Requirements for detention

(a) \* \* \*

**(b) Additional requirements for detention of an Indian child**

If it is known, or there is reason to know the child is an Indian child, in addition to the requirement in section (a) the court ~~the child may not be ordered detained~~ order an Indian child to be detained unless the court ~~also~~ finds that detention is necessary to prevent imminent physical damage or harm to the child, and the court states the facts supporting this finding on the record.

~~(b)~~ \* \* \*

**(d) Additional evidence required at a detention hearing for an Indian child**

If it is known, or there is reason to know that the child is an Indian child, in addition to the requirements under section (c) the reports relied upon must also include:

- (1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child;
- (2) The steps taken to provide notice to the child's parents, custodians, and tribe about the hearing pursuant to this section;
- (3) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director;
- (4) The residence and the domicile of the Indian child;
- (5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native Village, the name of the tribe affiliated with that reservation or village;
- (6) The tribal affiliation of the child and of the parents or Indian custodians;
- (7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody;
- (8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and
- (9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives

(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)

The court must order the child released from custody unless the court makes the findings specified in section 319~~(b)~~, and where it is known, or there is reason to know the child is an Indian child, the additional finding specified in section 319(d).



(b) \* \* \*

(c) Findings of the court—reasonable or active efforts (§ 319; 42 U.S.C. § 672)

(1) \* \* \*

(2) Where it is known or there is reason to know that the child is an Indian child, whether the child is released or detained at the hearing, the court must determine whether active efforts have been made to prevent or eliminate the need for removal, and that those active efforts are documented in detail in the record, and must make one of the following findings:

(A) Active efforts have been made; or

(B) Active efforts have not been made; and

(C) The court orders the department to initiate or continue services in accordance with Welfare and Institutions Code section 358.

(23) The court must also determine whether services are available that would prevent the need for further detention.

(34) The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services. **If where it is known or there is reason to know the child is an Indian child, the court shall determine if the county agency made active efforts to provide remedial services and rehabilitation programs** that would prevent or eliminate the need to detain the child or that would permit the child to return home.

(45) If the court orders the child detained, the court must proceed under section 319(dg)–(eh).

(d) Orders of the court (§ 319; 42 U.S.C. § 672)

If the court orders the child detained, the court must order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court and must make the other findings and orders specified in section 319(eg) and (fh)(3).

(e) Detention alternatives (§ 319)

The court may order the child detained as specified in section 319(fh).

(f) Additional requirements regarding detention of an Indian child (§ 319)

(1) If it is known, or there is reason to know the child is an Indian child, the child must be detained in a home that complies with the placement preferences in section 361.31 unless the court finds by clear and convincing evidence good cause exists not to follow the placement preferences pursuant to rule 5.485.

(2) If it is known, or there is reason to know the child is an Indian child, the detention hearing may not be continued beyond 30 days unless the court finds all of the following:

(A) Restoring the child to the parent, parents, or Indian custodian would subject the child to imminent physical damage or harm;

(B) The court is unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(C) It is not possible to initiate an Indian child custody proceeding as defined in section 224.1.

(g) Hearing for return of custody of Indian child after emergency removal when emergency has ended

If it is known or there is reason to know the child is an Indian child, a party may request a hearing under rule 5.484(b) for return of the child prior to disposition if the party asserts that there is new

evidence that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

Rule 5.690. General conduct of disposition hearing

(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner must comply with the following when preparing the social study:

(A) \* \* \*

(B) If petitioner recommends removal of the child from the home, the social study must include:

(i) A discussion of the reasonable efforts made to prevent or eliminate removal, or if it is known or there is reason to know the child is an Indian child, the active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and a recommended plan for reuniting the child with the family, including a plan for visitation;

(ii)–(iii) \* \* \*

(C) The social study must include a discussion of the social worker's efforts to comply with § 309(e) and rule 5.637, including but not limited to:

(i)–(ii) \* \* \*

(iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; and

(iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child; and

(v) If it is known or there is reason to know the child is an Indian child, efforts to locate extended family members as defined in section 224.1, and evidence that all individuals contacted have been provided with information about the option of obtaining approval for placement through the tribe's license or approval procedure.

(D)–(F) \* \* \*

(2) \* \* \*

(b)–(c) \* \* \*

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

(a)–(d) \* \* \*

(e) Procedures—adoption

(1) \* \* \*

(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. Once a final order of adoption has issued, ~~t~~The order may not be set aside or modified by the court, except as provided in section 366.26(e)(3) and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

(f)-(h) \* \* \*

## Item SPR19-42 Response Form

**Title:** Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

### **Comments:**

1. Does the proposal appropriately address the stated purpose? **Yes.**
2. Are the questions about Indian status in the proposed revision to form ICWA-020 broad enough to ensure that Indian children are identified? **The committee might wish to consider adding “federal trust land, rancheria, allotment” to items 3d and 3e, which inquire about residence or domicile on a reservation or in Alaska Native Village. (See form ICWA-030, p. 7.)**
3. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 [Is “item 10” is intended?] of form JV-410 correctly reflect the distinction between “reason to believe” and “reason to know,” and the obligations triggered by each level of information? **Yes, but as noted below, on form JV-405, checkboxes are needed for the text in items 12c(2)(a) and 12c(2)(b) so that the court can indicate which statement applies.**
4. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? **Good question. Is it clear whether the tribe’s authorized representative has the legal authority to waive the tribe’s rights under ICWA? More generally speaking, are ICWA rights waiveable at all? These questions must be answered.**
5. Should item 1e on form JV-100 and item 1b on form JV-110 be modified either to remove the question altogether, or to ask about gender rather than sex and add an instruction that gender can include nonbinary? **It should ask about gender (because this is important information for the court) with a note that “nonbinary” can be entered.**
6. Would the proposal provide cost savings? **Unknown.**
7. What would the implementation requirements be for courts? **Informing bench officers, court staff, county agencies, probation departments, and attorneys of changes. Making changes as appropriate to information provided to the public on each court’s website.**
8. Would three months provide sufficient time for implementation? **Unknown. This proposal contains a large number of revisions.**

9. How well would this proposal work in courts of different sizes? **Unknown.**

### **Rule 5.480**

**Paragraph 1:** Insert semicolon after “preadoptive placement.”

### **Rule 5.481**

**Subd. (a)(1):** Delete comma before “and there is no new information.”

... unless the party is filing a subsequent petition; and there is no new information.

**Subd. (a)(2):** Insert comma before “proceeding to declare a child free of the custody and control...”

**Subd. (a)(4)(A):** Replace “sections 1901 and 1903(2)” with “section 1903” because there are no definitions in section 1901; the definitions are in § 1903(2), (6), and (9). Change “224.2” to “224.3.” Delete spaces in statutory citations.

... as defined in 25 United States Code sections ~~1901 and 1903(2)~~, to gather the information listed in Welfare and Institutions Code section 224.23(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5); ~~which is required to complete the Notice of Child Custody Proceeding for Indian Child (form ICWA-030);~~

**Subd. (a)(4)(C):** Change “any other person that” to “any other person **who**.” Delete space in statutory citation, “224.2(e)(3).”

**Subd. (b)(1):** Suggested change to match language in WIC § 224.2(d). Also, the court is not the only entity who might have “reason to know” triggering ICWA provisions (e.g., the social worker or probation officer can have reason to know as well.)

**The court has There is reason to know the child is an Indian child if:**

**Comment:** Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (F) –

**The court has There is reason to know the child is an Indian child if any of the circumstances listed in Welfare and Institutions Code section 224.2(d) exist:**

**Subd. (b)(3)(A):** Delete “Notwithstanding this determination,” as unnecessary.

**Subd. (c)(1):** Change “224.2” to “224.3” and make other suggested changes –

... “to the parent, ~~or~~ legal guardian, ~~or and~~ Indian custodian of an Indian child, and the Indian child’s tribe, in the manner specified in Welfare and Institutions Code section 224.23, Family Law Code section 180, and Probate Code section 1460.2

**Subds. (c)(2)-(3):** Change citations ==

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section ~~727.4(a)(2)~~ 224.3 in any case described by rule 5.480(2)(A)-(C).

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

### **Rule 5.482**

**Subd. (a):** Delete “(1)” (because (a)(2) and (3) are being deleted) and delete “, except as stated in sections (a)(2) and (3)” because those sections are being deleted).

~~(4)~~ If it is known or there is reason to know that a child is an Indian child, the court hearing that may result in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, ~~except as stated in sections (a)(2) and (3)~~.

**Subd. (d):** Reletter as “(c)” because previous (c) was deleted. Change “their” to “its” in second sentence.

~~(d)~~**(c)** Intervention

The Indian child’s tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings. The tribe may, but is not required to, file with the court the ... (form ICWA-040) to give notice of ~~their~~ its intent to intervene.

**Subd. (f):** Change “5.484” to “5.485” because that rule is being renumbered.

### **Rule 5.483**

**Subd. (d)(2):** Comment: Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (E) –

In assessing whether good cause to deny the transfer exists, the court must not consider **any of the factors listed in Welfare and Institutions Code section 305.5(e)(2).**

**Comment:** If paragraphs (A)-(E) remain in subd. (d)(2), wouldn't it make more sense to match the order of the factors as they are listed in WIC § 305.5(e)(2)? That is, change (A) to (B), (B) to (C), (C) to (D), (D) to (E), and (E) to (A).

**Subd. (d)(2)(A):** Suggest changing “foster care or termination-of-parental-rights proceeding” to “child custody proceeding” for two reasons:

[1] to match statutory text (see WIC § 305.5(e)(2)(B), and  
[2] to ensure that this rule also applies to preadoptive placements and adoptive placements (see WIC § 224.1(d)(1).)

Whether the **foster care or termination-of-parental-rights child custody** proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage;

**Subd. (d)(2)(D):** If the suggestion above regarding (d)(2) is not adopted, insert “Whether” to match statutory text. (See WIC § 305.5(e)(2)(E).)

**Whether F** the Indian child's cultural connections with the tribe or its reservation; or

**Advisory Committee Comment:** Due to the relettering of subds. (f) through (i), the first and third paragraphs need to be changed as follows:

Once a transfer to tribal court is finalized as provided in rule 5.483(**ih**), the appellate court lacks jurisdiction to order the case returned to state court (In re M.M. (2007) 154 Cal.App.4th 897).

Subsection (**hg**) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

#### **Rule 5.484**

**Subd. (b):** Insert name of form and change semicolon to period. Change “of” to “or.”

Whenever it is known or there is reason to know that the child is an Indian child and there has been an emergency removal of the child from parental custody, any party who asserts that there is new information indicating that the emergency situation has ended may request an ex parte hearing by filing a request **in on Request for Ex Parte Hearing to Return Physical Custody of an Indian Child** (form ICWA-070) to determine whether the emergency situation has ended<sub>;</sub>.

... the court shall order the child returned to the physical custody of the parent or parents **of or** Indian custodian.

#### **Rule 5.485**

**Subd. (b)(2)(D):** Insert “mental” and comma after “child” to match WIC § 361.31(j)(4).

The extraordinary physical, mental, or emotional needs of the Indian child, including specialized treatment services that may be unavailable in the community ...

**Subd. (b)(2)(E):** Suggested changes to match WIC § 361.31(j)(5) –

The unavailability of a suitable families placement within the placement preferences based on a documented after a determination by the court that a diligent effort to identify families meeting the preference criteria search was conducted. The standard for determining ...

**Subd. (b)(7):** Suggested change –

(67) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule 5.481(a)(4)(A) 25 United States Code section 1903(2), and participation in the cultural and ceremonial events of the child's tribe

**Subd. (c):** Suggested change –

In addition to any other required findings required to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights,

**Rule 5.486**

No comment.

**Rule 5.487**

**Subd. (a):** Suggested changes for consistency with CRC 5.480.

Any Indian child who is the subject of any action for foster-care placement, guardianship or conservatorship placement, custody placement under Family Code 3041; declaration freeing a child from the custody and control of one or both parents, or termination of parental rights, preadoptive placement, or adoptive placement; any parent or Indian custodian from whose custody such child was removed; and the Indian child's tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

**Subd. (b):** Suggested change –

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

**Subd. (c)(2):** Delete “s” from “sections.”



... where the court may consider all placement options as stated in Welfare and Institutions Code sections 361.31(b), (c), (d), and (h).

### **Rule 5.570**

**Subd. (h)(1)(B):** Change for consistency with proposed changes to subd. (e)(5) & (6).

If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided or, in the case of an Indian child, clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family within the meaning of sections 224.1(f) and 361.7 of the Welfare and Institutions Code and that these efforts have proved unsuccessful.

### **Rule 5.668**

**Subd. (c)(1)(D):** Change “possess” to “possesses” to correct grammar.

**Subd. (c)(3):** Delete first two commas and insert “the.”

If it is known<sub>;</sub> or there is reason<sub>;</sub> to know that the case involves an Indian child, the court shall proceed in accordance with rules 5.481 et seq.

Suggest adding **subd. (c)(4):**

If there is reason to believe that the case involves an Indian child, the court shall proceed in accordance with Welfare and Institutions Code section 224.2(e).

**Subd. (d): Query** – Should “Indian custodian” be added? (Note: WIC § 16010(f) uses “parent” only.)

The court must order each parent, and guardian, and Indian custodian present either to complete *Your Child's Health and Education* (form JV-225) or to provide the information necessary ...

### **Rule 5.674**

**Subds. (c)-(e): Query** – Should “Indian custodian” be added wherever “parent or guardian” appears? E.g., “If the court orders the child detained at the detention hearing and no parent, or guardian, or Indian custodian is present and no parent, or guardian, or Indian custodian has received actual notice of the detention hearing, ...” (See amendments to WIC § 319 made by AB 3176.)

### **Rule 5.676**

**Subd. (a)(2):** Add “or Indian custodian.”

Continuance in the home of the parent, ~~or~~ guardian, or Indian custodian is contrary to the child's welfare; and

**Subd. (b):** Delete first comma. Suggest breaking text into two sentences.

If it is known, ~~or~~ there is reason to know the child is an Indian child, the child may not be ordered detained unless the court also finds that detention is necessary to prevent imminent physical damage or harm to the child, ~~and~~ ~~†~~ The court must ~~states~~ the facts supporting this finding on the record.

**Subd. (c)(1):** Add “, guardian’s, or Indian custodian’s.”

A statement of the reasons the child was removed from the parent's, guardian’s, or Indian custodian’s custody;

**Subd. (c)(5):** Add “, guardian, or Indian custodian.” **Query:** Should “extended family member” (see WIC § 319(h)(1)(A)(i)) be added?

If continued detention is recommended, information about any parent, ~~or~~ guardian, or Indian custodian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member as defined under section 362.7 or, if the child is an Indian child, extended family member as defined under section 224.1 with whom the child may be detained.

**Subd. (d)(3):** Suggest inserting “the whereabouts of” –

If the whereabouts of the child’s parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, ...

### **Rule 5.678**

**Subd. (a):** Move second comma as indicated.

The court must order the child released from custody unless the court makes the findings specified in section 319(c), and, ~~where it is known,~~ ~~or~~ there is reason to know the child is an Indian child, the additional finding specified in section 319(d).

**Subd. (b): Query** – Should this be deleted (and the subsequent subdivisions be relettered)? There are no longer any factors to be considered in § 319(d).

**Subd. (c): Query** – Should a citation to 25 U.S.C. § 1912(d) be added to the subtitle?

(§ 319; 25 U.S.C. § 1912(d); 42 U.S.C. § 672)

**Subd. (c)(2):** Change for consistency with § 319(f)(2).

Where it is known or there is reason to know that the child is an Indian child, whether the child is released or detained at the hearing, the court must determine whether active efforts have been made to ~~prevent or eliminate the need for removal~~ provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family, and that those active efforts are documented in detail in the record, and must make one of the following findings:

**Subd. (c)(4):** Change for consistency with § 319(f)(2).

The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services, ~~or where it is known or there is reason to know the child is an Indian child, active efforts~~ that would prevent or eliminate the need to detain the child or that would permit the child to return home, ~~or where it is known or there is reason to know the child is an Indian child, no active efforts that would provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family.~~

**Subd. (c)(5):** Suggest changing “(h)” to “(j).” Subd. (i) pertains specifically to emergency removals under ICWA. Subd. (j) authorizes orders regarding temporary educational or developmental services decisionmaking.

If the court orders the child detained, the court must proceed under section 319 (g)-(hj).

**Subd. (f)(1) & (2):** Delete first comma. (See, e.g., WIC § 319(e)(2), (h)(1)(C); CRC 5.678(g).)

If it is known, or there is reason to know the child is an Indian child, ...

**Subd. (g):** Add citation to WIC § 319.4 to title.

Hearing for return of custody of Indian child after emergency removal when emergency has ended (§ 319.4)

### **Rule 5.690**

**Subd. (a):** Add citation to WIC § 309 to citations in title.

Social study (§§ 280, 309, 358, 358.1, 360, 361.5, 16002(b))

### **Rule 5.725**

No comment.

### **ICWA-005-INFO**

**Page 1, par. 1:** Delete first comma (see, e.g., par. 2).

Try to find contact information for the child's parents, or other legal guardian, ...

**Page 1, last two paragraphs** in section on ICWA-010(A): Suggested edits for clarity –

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. ~~You have reason to believe the child is an Indian child, if any of the people you ask these questions to answers yes to any of your questions.~~

Contacts ~~with the tribe or tribes should include contacting the~~ **each** tribe's designated agent for service of notice under the Indian Child Welfare Act, ~~as published in the Federal Register,~~ by telephone, facsimile, or email, ~~and sharing~~ **Then share** with ~~the each~~ **each** tribe ~~or tribes the~~ information ~~identified by~~ the tribe ~~as necessary needs to make a determination about~~ **determine** the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

**Page 1, subtitle** in section on ICWA-030: Suggested edits for clarity –

~~Some tips to help you figure out if~~ **Examples of facts that would give** you ~~have a~~ reason to know the child is an Indian child

**Page 1, numbered paragraphs** in section on ICWA-030: Suggested edits –

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~~ **predominantly** 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 the~~ **that a the** child is an Indian child. There ~~also~~ **also** may be other information that would ~~also~~ **also** give you reason to know ~~that~~ **that** the child is an Indian child

**Page 2, subtitle and paragraph** after numbered paragraphs: Suggested edits –

~~Tip on h~~ **How** to find the address for the child's tribe or tribes

... You can [link to find](#) the Federal Register list, and other resources related to ICWA, on the Bureau of Indian Affairs website at ...

**Page 2, boxed advisement at bottom of page:** Correct the statutory citation.

(Welf. & Inst. Code, § 224.23(e).)

**ICWA-010(A)**

**Item 2:**

I have not yet been able to complete [the](#) inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry; [and I](#) will do it [as soon as possible](#), and advise the court of my efforts [as soon as possible](#).

I have asked or  I am advised by \_\_\_\_\_ and, on information and belief, confirm that [they](#) [have this person has](#) completed [the](#) inquiry by asking the child, the child's parents, and other required and available [individuals persons](#) about the child's Indian status. The [individuals persons questioned](#) [include are](#):

**Person questioned:**

Name:  
Address:  
City, state, zip:  
Telephone:  
Date questioned:  
Relationship to child:

**Person questioned:**

Name:  
Address:  
City, state, zip:  
Telephone:  
Date questioned:  
Relationship to child:

**Item 5f:** Change “possess” to “possesses” (or “has”).

Either parent or the child possess[es](#) an Indian identification card ...

**ICWA-020**

**Item 5f:** Change “possess” to “possesses” (or “has”).

Either parent or the child possess[es](#) an Indian identification card ...

**Right footer:** Change § 224.3 to “§ 224.2.”

**ICWA-030**

**Page 2, item 4d:** Insert “additional” before “days.”

... the court will give up to 20 **additional** 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.

**Page 2, item 5b:** Insert a period after “unavailable.”

**Page 2, item 5d:** Suggested changes –

**Information about the child’s biological relatives information** is listed below. **(This information is required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.) (If Indicate if any of the information requested below is unknown or does not apply, specify “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.)**

**Page 2, item 5e:** Suggested changes –

~~If~~ The chart does not ~~represent~~ **provide** the gender ~~identities of the individuals~~ **identity of one or more persons** in the child's family tree; ~~please attach~~ **The correct information is provided on an appropriate equivalent attachment.**

**Page 2, blank for name of Biological Father:** Suggest deleting “maiden, married, and.”

Name (*include ~~maiden, married, and~~ former names or aliases*):

**Page 3, blanks for names of Maternal and Paternal Grandfathers:** Suggest deleting “maiden, married, and.”

**Page 4, blanks for names of Maternal and Paternal Great-grandfathers:** Suggest deleting “maiden, married, and.”

**Page 5, blanks for names of Maternal and Paternal Grandfathers:** Suggest deleting “maiden, married, and.”

**Page 5, item 5h:** Query – Shouldn’t the blanks in the left column read “**Mother’s** Biological Grandmother (Child’s Paternal Great-grandmother)” and “**Mother’s** Biological Grandfather (Child’s Paternal Great-grandfather)”? In other words, items 5g and 5h should exactly match each other, with “Maternal” on the left and “Paternal” on the right.

**Page 5, item 5i:** Initial cap on “other.”

Information on Indian Ancestry of **O**ther Lineal Ancestors

**Page 7, items 6a and 6b:** Delete “birth” as redundant.

Biological **birth** father is named on birth certificate.  
Biological **birth** father has acknowledged parentage.

**Page 7, boxed text above item 7 and items 7 & 8:** Insert “named” after “child” for consistency with rest of form.

... in tracing the ancestry of the child **named** in 1.  
Has the child **named** in 1 or any members ...  
Tribal affiliation and location of child **named** in 1  
Relationship to child **named** in 1

**Page 7, items 7a, 7b, 7c, 7d:** Suggest changing “Name/relationship to child” to “Name **and** relationship to child.”

**Page 7, item 7c:** Suggested changes –

Lived on federal trust land, **on** a reservation, **or** rancheria, **or** **an** allotment, **or in an Alaska Native village?**

**Page 9:** Typo -- Insert space between “receipt” and “requested.”

... registered or certified mail, return receipt **requested**, fully prepaid.

**Page 9,** in all three paragraphs: Suggested changes --

(**Except that t**The telephone numbers shown below were not placed on the envelopes

**Page 9,** all three paragraphs: Change “224.2” to “224.3” and insert space between “on” and “(date).”

... Welfare and Institutions Code section 224.**23**.)  
... at (place): **on** (date):

**Page 9, certificate for probate proceedings:** Insert space between “Notice” and “under” and between “the” and “United.”

... they must be disclosed in the *Notice* **u**nder Family Code ...  
... and deposited with **the** United States Postal Service ...

**Page 10,** note near bottom of page: Change “tribe chairman” to “tribal chairperson” (see current CRC 5.481(b)(4)).

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

### **ICWA-040**

**Page 3, items 2a and 2b:** Suggest switching par. (3) [CASA] with par. (7) [parent].

### ICWA-060

**Page 1, item 1:** Query -- Is “Child’s name” necessary? It’s already in the caption. This item could simply require “Child’s date of birth.”

**Page 2, item 5b(4):** Insert “a” before “loss” (see current CRC 5.483(h)).

... will result in **a** loss of appellate jurisdiction.

**Page 2, item 6:** Suggested changes –

Proof that **the** tribe has accepted transfer is attached, and jurisdiction is terminated.

### ICWA-070

**Item 1:** Query -- Is “Child’s name” necessary? It’s already in the caption. This item could simply require “Child’s date of birth.”

**Item 2a:** Insert “(*specify*):” after “other party.”

**Item 5:** Suggested changes –

There is new information showing a change in circumstances since that emergency removal, and **that** the child’s placement is no longer necessary ...

### ICWA-080

**Item 1:** Query -- Is “Child’s name” necessary? It’s already in the caption. This item could simply require “Child’s date of birth.”

**Item 2:** Use lower case for “finds and orders.”

... the court **F**inds and **O**rders:

**Item 2b:** Query – Need to specify date, time, location of hearing?

### ICWA-090

**Item 1:** Query -- Is “Child’s name” necessary? It’s already in the caption. This item could simply require “Child’s date of birth.”

**Item 2b:** Change “Parents’ attorney” to “Parent**s** attorney.” (See form ICWA-060.) Use upper case “O” for “other:”

**Item 3:** Use lower case for “finds and orders.”



... the court **F**inds and **O**rders:

### **JV-100**

**Page 1, items 1f, 1g, 1h:** Query – Should “biological” be changed to “genetic”? (See AB 2684 [amendments to Uniform Parentage Act].)

**Page 1, item 2a:** Suggested change –

I have asked whether the child is or may be a member of an Indian tribe or **is** eligible for membership and the biological child of a member; or on information and belief, **I** am aware that **the** inquiry has been completed, and **attach** the *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

Alternatively, split item 2a into items 2a and 2b, then reletter 2b to 2c:

a. I have asked whether the child is or may be a member of an Indian tribe or **is** eligible for membership and the biological child of a member; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

**b.** On information and belief, **I** am aware that **the** inquiry has been completed; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

**bc.** Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing **obligation duty** to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)); and submit it to the court as soon as possible.

Suggested alternative wording for 2c:

Inquiry about **whether** the child's possible status as an Indian child **is or may be a member of an Indian tribe or eligible for membership and the biological child of a member** has not yet been completed ...

### **JV-110**

**Page 2, item 2:** See suggested changes above for form JV-100, items 2a and 2b.

### **JV-320**

**Page 1, item 4b:** Change “224.2” to “224.3.”

**Page 1, right footer:** Add WIC § 361.31 (authority for item 17). Change Cal. Rules of Court, rules “5.485” to “5.486” to reflect the proposed renumbering of ICWA rules. Query – Add citation to 25 U.S.C. § 1912(f)?

**Page 2, item 8b(3):** Suggested change to match language in 25 U.S.C. § 1912(f) --

... is likely to **cause result in** serious emotional or physical damage to the child.

**Page 2, line below item 9e:** Change to reflect proposed change in form.

*(If item 9 is checked, go to item **1718**.)*

**Page 2, line below item 10e:** Change to reflect proposed change in form.

*(If item 10 is checked, go to item **1718**.)*

**Page 3, line below item 14a:** Change to reflect proposed change in form.

*(... If item 14a is checked, provide for visitation ..., and go to item **1718**.)*

**Page 3, line below item 15d:** Change to reflect proposed change in form.

*(If this item is checked, go to item **1718**.)*

**Page 4, line below item 16a:** Change to reflect proposed change in form.

*(If item 16a is checked, provide for visitation ..., and go to item **1718**.)*

**Page 4, item 17a:** Suggested change –

The permanent plan is **something other than not** adoption, and ...

**Page 4, item 17a(1):** Delete space between “§ 224.1” and “(c).” Suggested changes (because WIC § 224.1(c) merely refers to 25 U.S.C. § 1903(2) and because that statute defines “extended family member,” not “extended family”) –

The child is placed with **a member** of the child’s extended family **member** as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 5, item 18:** Insert check box and line -- “The child’s placement is necessary.” (See item 17 on current form JV-320.) Alternatively, change to “The child’s placement is necessary and appropriate.”

**Page 5, between items 18 and 19:** Insert check box and line -- “The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan.” (See item 19 on current form JV-320.)

**Page 5, item 20:** Suggested change –

The child is, or there is reason to know the child is, an Indian **child, and** notice has been provided as required by section 224.3 of Welfare and Institutions Code, and proof of such notice has been filed with the court.

**Page 5, item 22:** Change “items 22 and 23 ... and items 24 and 25.” As currently numbered in the proposal, it should read “items 23 and 24 ... and items 25 and 26,” but further renumbering may be needed because of the omission of “child’s placement is necessary” finding and the “reasonable efforts” finding (currently items 17 and 19).

**Page 5, item 25:** Insert period in “Dept.:

#### **JV-405**

**Page 1, item 2:** Change “Dispositional” to “Detention.”

**Page 1, item 2h(4), Page 2, items 6, 8, and 9, Page 3, item 14, Page 4, items 15 and 17:** Change “biological” to “genetic.”

**Page 2, item 6d:** Change semicolon after “legal guardian” to a comma.

**Page 3, item 12a, second bullet point:** Suggested change (see, e.g., fourth bullet point) –

Whether the residence or domicile of the child, either of the child's parents, or **the child’s** Indian custodian is on a reservation or in an Alaska Native Village ...

**Page 3, item 12a, third bullet point:** Insert comma after “if yes” for consistency.

**Page 3, item 12c(2):** Insert checkboxes for (a) and (b). (See form JV-410, item 10b.)

**Page 4, item 19:** Insert period in “Dept.:

#### **JV-410**

**Page 1, item 2:** Change “Dispositional” to “Detention.”

**Page 1, item 2h(4), Page 3, items 12 and 13, Page 4, item 14b, Page 5, items 17, 19, and 20:** Change “biological” to “genetic.”

**Page 2, item 9a, second bullet point:** Suggested change (see, e.g., fourth bullet point) –

Whether the residence or domicile of the child, either of the child's parents, or **the child’s** Indian custodian is on a reservation or in an Alaska Native Village ...

**Page 2, item 9a, third bullet point:** Insert comma after “if yes” for consistency.

**Page 3, item 11a(3):** Change “25 U.S.C. § 19~~14~~22.”

**Page 3, item 12d:** Change semicolon after “legal guardian” to a comma.

**Page 4, item 15c(3):** Change to reflect WIC § 319(c)(2).

there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

**Page 4, item 15g(6):** Suggested change –

The home of an the Indian child's extended family member as defined in Welf. & Inst. Code § 224.1 25 U.S.C. § 1903(2), and there is reason to know the child is an Indian child.

**Page 4, item 15g(6) and (7):** Are these choices necessary here in light of the separate item (see item 16d on page 5) for an Indian child who is being detained?

**Page 4, item 15h:** Change “item 13” to “item 17.”

**Page 5, item 16a:** Delete space between “319” to “(b).” Suggested changes –

The petitioner has presented evidence that includes all of the requirements of listed in Welf. & Inst. Code, § section 319(b).

**Page 5, item 16d:** Suggested changes –

With In a foster home licensed, approved, or specified by the child's tribe;  
With In an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

**Page 5, item 17:** Suggested change:

The county agency will provide the services below will be provided pending further proceedings:

**Page 6, item 24:** Insert period in “Dept.:

#### **JV-412**

**Page 1, item 2h(4), Page 2, item 13, Page 3, items 15, 16, and 17, Page 4, items 24 and 25:** Change “biological” to “genetic.”

**Page 4, item 29:** Insert period in “Dept.:

#### **JV-415**

**Page 1, item 2h(4), Page 3, items 9 and 10, Page 4, item 15:** Change “biological” to “genetic.”

**Page 2, item 3:** Insert “witness” after “qualified expert.”

**Page 2, item 8:** Suggest changing “information indicating the child is an Indian child” to “information **that provides reason to know** the child is an Indian child” to match the language in WIC § 224.2(c).

**Page 2, item 8a:** Suggest changing “social worker/probation officer” to “social worker **or** probation officer.”

**Page 2, item 8d(2)(a):** Suggested change –

... and work with all of the tribes **where of which** the child may be a member or eligible for membership to verify the child's status;

**Page 3, item 10:** Insert “a” before “court trial.” Change “biological” to “genetic.”

**Page 3, item 11:** Insert comma after “the time of the initial removal.”

**Page 3, item 13:** Change “was ...” to “**were** provided to the child as follows.”

**Page 3, item 13c:** Insert “not” before “present at the hearing.” For “(form JV-185)” change italics to Roman.

**Page 4, items 18 and 18c:** Insert period in “Dept.:

#### **JV-418**

**Title:** Typo – Correct “ATTACHE**M**ENT” to “ATTACHMENT.”

**Item 3b:** Suggested changes –

The child is an Indian child, **and** active efforts as detailed in the record [] were [] were not **made to** provided **to remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if these active** efforts **were made, they** have proved unsuccessful.

**Items 5 and 6:** Change “biological” to “genetic.”

#### **JV-421**

**Page 1, items 2c, 3c, and 6, Page 2, items 9a and 9b, Page 3, item 17, Page 4, item 20g, and Page 5, items 23 and 26:** Change “biological” to “genetic.”

**Page 1, item 5a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 5e?

**Page 1, item 5b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 1, item 5d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 1, item 5e:** Suggested change to provide for situations in which efforts were *not* made –

These efforts **made as indicated above** have proved unsuccessful.

**Page 1, right footer:** Add citations to 25 U.S.C. § 1912; WIC §§ 224.1, 361.31, 361.7?

**Page 2, item 12:** Query – Why does this item begin with “There has been a change in the child’s placement”? Don’t the ICWA placement preferences apply for an Indian child whether the order is for an initial placement or a subsequent placement? If so, consider this change –

**There has been a change in the child's placement, and** ~~†~~ **The child is an Indian child or there is reason to know that the child is an Indian child  and there has been a change in the child's placement.** Currently (*choose one*):

**Page 2, item 12a:** Suggested change –

The child is placed with a member of the child's extended family as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 2, item 12c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or** **in** a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 2, item 12d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or in** a foster home licensed, approved, or specified by the Indian child's tribe, **or in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 3, items 15a and 16b:** Change “item 17” to “item 18” due to renumbering of items in form JV-415.

**Page 4, item 22:** Query – Isn't this item simply a wordier version of item 4 on page 1? Should item 4 incorporate any additional verbiage from item 22 that is required by law?

**Page 5, item 27a:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is not necessary. The parents hold educational **or developmental-services decisionmaking** rights and responsibilities in regard to the child's education **and developmental services**, including those described in rule 5.650(e) and (f) of the California Rules of Court. ...

**Page 5, item 27b:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational **or developmental-services decisionmaking** rights and responsibilities of the educational representative ...

**Page 6, item 34:** Suggested changes –

The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group **described in Welf. & Inst. Code, § 361.5(a)(1)(C)**:

**Page 7, item 36d:** Insert “a” before “notice of intent.”

... a party must seek an extraordinary writ by filing **a** notice of intent to file a writ petition and a request for the record, ...

### **JV-430**

**Page 1, item 1h(4) and Page 2, items 7 and 8, Page 3, item 12c:** Change “biological” to “genetic.”

**Page 3, item 11a:** Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 11e?

**Page 3, item 11b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 3, item 11d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 3, item 11e:** Suggested change to provide for situations in which active efforts were *not* made –

These efforts **made as indicated above** have proved unsuccessful.

**Page 3, item 15a:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is not necessary. The parents hold educational **or developmental-services decisionmaking** rights and responsibilities in regard to the child's education **and developmental services**, including those described in rule 5.650(e) and (f) of the California Rules of Court. ...

**Page 3, item 15b:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is necessary and those rights are limited as stated in ***Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*** ***Order Designating Educational Rights Holder*** (form JV-535) filed in this matter. The educational **or developmental-services decisionmaking** rights and responsibilities of the educational representative ...

**Page 5, items 26 and 26c:** Insert period in “Dept.!”

**JV-432**

**Page 1, item 5a:** Suggested change –



The child is placed with a member of the child's extended family as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 1, item 5c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or in** a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 1, item 5d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or in** a foster home licensed, approved, or specified by the Indian child's tribe, **or in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 2, item 7a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 7e?

**Page 2, item 7b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 2, item 7d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 2, item 7e:** Suggested change to provide for situations in which active efforts were *not* made –

These **se** efforts **made as indicated above** have proved unsuccessful.

**Page 2, items 8a, 8b, and 9, Page 3, item 12:** Change “biological” to “genetic.”

**Page 2, item 8:** Suggested changes –

For child under the age of three years of age at time of initial removal or a member of a sibling group (Welf. & Inst. Code, § 361.5(a)(1)(C))

### JV-433

**Page 1, item 5a:** Suggested change –

The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2); or

**Page 1, item 5c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 1, item 5d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 2, item 7a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 7e?

**Page 2, item 7b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

**Page 2, item 7d:** Suggested change (see WIC § 224.1(f)) –

These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 2, item 7e:** Suggested change to provide for situations in which efforts were *not* made –  
These efforts **made as indicated above** have proved unsuccessful.

**Page 2, items 8c, 9c, Page 3, items 10a, 10b, 10c, 13:** Change “biological” to “genetic.”

**Page 2, item 9:** Suggested changes –

Reunification services terminated: Child under **age of three years of age** at time of **initial** removal or member of sibling group **(Welf. & Inst. Code, § 361.5(a)(1)(C))**

**Page 2, item 9b:** Suggested change –

The child and the child's siblings listed below form a sibling group in which **at least** one child in the sibling group was under the age of three years ...

**Page 3, item 10a(2):** Suggested changes –

The person has not **had** contacted **ed or visited** **with** the child for six months.

**Page 4, item 14d:** Insert “a” before “notice of intent.”

... a party must seek an extraordinary writ by filing **a** notice of intent to file a writ ...

**Page 4, item 15b:** Change “remain” to “remains.”

#### **JV-435**

**Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 12c:** Change “biological” to “genetic.”

**Page 3, item 11a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 11e?

**Page 3, item 11b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 3, item 11d:** Suggested change (see WIC § 224.1(f)) –

These efforts and the case plan [] have [] have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 3, item 11e:** Suggested change to provide for situations in which efforts were *not* made –

These efforts made as indicated above have proved unsuccessful.

**Page 3, item 15a:** Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. ...

**Page 3, item 15b:** Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational or developmental-services decisionmaking rights and responsibilities of the educational representative ...

**Page 5, items 26 and 26c:** Insert period in “Dept.!”

#### JV-437

**Page 1, item 4a:** Change “JV-430” to “JV-435.”

**Page 1, item 5a:** Suggested change –

The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2); or

**Page 1, item 5c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 1, item 5d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster

home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 1, item 6b:** Change “JV-430, item 25” to “JV-435, item 26.”

**Page 1, item 7a:** Insert “a” before “substantial probability.” Change “biological” to “genetic.”

**Page 2, items 7b, 8, 11:** Change “biological” to “genetic.”

**Page 2, item 7a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 7e?

**Page 2, item 7b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 2, item 7d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 2, item 7e:** Suggested change to provide for situations in which active efforts were *not* made –

These efforts **made as indicated above** have proved unsuccessful.

**Page 2, items 8c, 9c, Page 3, items 10a, 10b, 10c, 13:** Change “biological” to “genetic.”

### **JV-438**

**Page 1, item 3a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 3e?

**Page 1, item 3b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 1, item 3d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 1, item 3e:** Suggested change to provide for situations in which active efforts were *not* made –

These efforts **made as indicated above** have proved unsuccessful.

**Page 1, item 4c, Page 2, item 12:** Change “biological” to “genetic.”

**Page 1, item 8a:** Suggested change –

The child is placed with a member of the child's extended family as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 2, item 8c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or** **in** a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 2, item 8d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or** **in** a foster home licensed, approved, or specified by the Indian child's tribe, **or** **in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 4, item 15d:** Insert “a” before “notice of intent.”

... a party must seek an extraordinary writ by filing **a** notice of intent to file a writ ...

**Page 4, item 15g:** Insert “is” before “(specify date).”

**JV-440**

**Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 13c:** Change “biological” to “genetic.”

**Page 3, item 12a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 12e?

**Page 3, item 12b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 3, item 12d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 3, item 12e:** Suggested change to provide for situations in which active efforts were *not* made –

These **efforts** **made as indicated above** have proved unsuccessful.

**Page 3, item 16a:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is not necessary. The parents hold educational **or developmental-services decisionmaking** rights and responsibilities in regard to the child's education **and developmental services,** including those described in rule 5.650(e) and (f) of the California Rules of Court. ...

**Page 3, item 16b:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational*

*Rights Holder* (form JV-535) filed in this matter. The educational or developmental-services decisionmaking rights and responsibilities of the educational representative ...

**Page 5, items 27 and 27c:** Insert period in “Dept.:

**JV-442**

**Page 1, item 3a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 3e?

**Page 1, item 3b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

**Page 1, item 3d:** Suggested change (see WIC § 224.1(f)) –

These efforts and the case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, and extended family members, Indian custodians, and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 1, item 3e:** Suggested change to provide for situations in which active efforts were *not* made –

These se efforts made as indicated above have proved unsuccessful.

**Page 1, item 4c, Page 2, item 12:** Change “biological” to “genetic.”

**Page 1, item 8a:** Suggested change –

The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2); or

**Page 1, item 8c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, ...



**Page 2, item 8d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ **in** a foster home licensed, approved, or specified by the Indian child's tribe, ~~or~~ **in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 4, item 15d:** Insert “a” before “notice of intent.”

... a party must seek an extraordinary writ by filing **a** notice of intent to file a writ ...

**Page 4, item 15g:** Insert “is” before “(*specify date*).”

#### **JV-443**

**Page 1, item 5a:** Suggested change –

The child is placed with a member of the child's extended family as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 1, item 5c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ **in** a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 1, item 5d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ **in** a foster home licensed, approved, or specified by the Indian child's tribe, ~~or~~ **in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 1, item 7a, Page 2, items 7b and 8, Page 3, item 11:** Change “biological” to “genetic.”

**Page 2, item 7b:** Change “§ 366.22” to “§ 366.25.”

... the 24-month permanency hearing under Welf. & Inst. Code, § 366.2**25** ...

**Page 2, item 9:** Insert “is” before “(*specify date*).”

#### **JV-455**

**Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 13c:** Change “biological” to “genetic.”

**Page 3, item 12a:** Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 12e?

**Page 3, item 12b:** Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 3, item 12d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan [] have [] have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 3, item 12e:** Suggested change to provide for situations in which efforts were *not* made –

These efforts **made as indicated above** have proved unsuccessful.

**Page 3, item 16a:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is not necessary. The parents hold educational **or developmental-services decisionmaking** rights and responsibilities in regard to the child's education **and developmental services,** including those described in rule 5.650(e) and (f) of the California Rules of Court. ...

**Page 3, item 16b:** Suggested changes –

A limitation on the right of the parents to make educational **or developmental-services** decisions for the child is necessary and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational **or developmental-services decisionmaking** rights and responsibilities of the educational representative ...

**Page 5, items 27 and 27b:** Insert period in “Dept.,”

**JV-456 (not included in proposal SPR 19-42)**

**Page 1, items 2a and 3:** Change “biological” to “genetic.”

**JV-457**

**Page 1, item 4a:** Suggested changes --

Affirmative, active, thorough, and timely efforts  have  have not been made to **provide remedial services and rehabilitative programs designed to** prevent the breakup of the Indian family, and **if** these efforts **were made, they** have proved unsuccessful;

Query – Should “and these efforts have proved unsuccessful” be deleted because this finding is available in item 4e?

**Page 1, item 4b:** Suggested change (see WIC § 224.1(f)) –

These efforts  did  did not include assisting the parent(s) or Indian custodian through the steps of the case plan and **with** accessing or developing the resources necessary to satisfy the case plan;

**Page 1, item 4d:** Suggested change (see WIC § 224.1(f)) –

These efforts and **the** case plan  have  have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, **and** extended family **members, Indian custodians,** and **the** tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

**Page 1, item 4e:** Suggested change to provide for situations in which active efforts were *not* made –

These **se** efforts **made as indicated above** have proved unsuccessful.

**Page 1, items 5c:** Delete space between “child” and colon. Change “biological” to “genetic.”

**Page 1, item 6a:** Suggested change –

The child is placed with a member of the child's extended family as defined by **Welf. & Inst. Code § 224.1(e) 25 U.S.C. § 1903(2)**; or

**Page 1, item 6c:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or** **in** a foster home licensed, approved, or specified by the Indian child's tribe, ...

**Page 1, item 6d:** Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, **or in** a foster home licensed, approved, or specified by the Indian child's tribe, **or in** an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed ...

**Page 3, item 13d:** Insert “a” before “notice of intent.”

... a party must seek an extraordinary writ by filing **a** notice of intent to file a writ ...

**Page 3, item 13g:** Insert “is” before “(specify date).”

**Page 3, item 15:** Change “biological” to “genetic.”

### **JV-600**

**Page 1, item 1g, 1h, 1i:** Change “biological” to “genetic.”

**Page 2, item 4a:** Suggested changes –

I have asked whether the child is or may be a member of an Indian tribe or **is** eligible for membership and the biological child of a member, **I** am aware that **the** inquiry has been completed, **and attach** the *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

Alternatively, split item 4a into items 4a and 4b, then reletter 4b to 4c:

a. I have asked whether the child is or may be a member of an Indian tribe or **is** eligible for membership and the biological child of a member; **the** *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

**b.** On information and belief, **I** am aware that **the** inquiry has been completed; **the** *Indian Child Inquiry Attachment* (form ICWA-010(A)) **is attached**.

**bc.** Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing **obligation duty** to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)); **and** submit it to the court as soon as possible.

Suggested alternative wording for 4c:

Inquiry about **whether** the child's possible status as an Indian child **is or may be a member of an Indian tribe or eligible for membership and the biological child of a member** has not yet been completed ...

**Name:** Mike Roddy **Title:** Executive Officer

**Organization:** Superior Court of California, County of San Diego

Commenting on behalf of an organization

**Address:** Central Courthouse, 1100 Union Street

**City, State, Zip:** San Diego, California 92101

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Judicial Council of California  
Attn: Invitations to Comment  
455 Golden Gate Avenue  
San Francisco, CA 94102

**DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 10, 2019.**

## Appendix B Summary of comment chart by topic

### **Proposed Amendment to rule 5.480 Application**

This is a minor technical amendment intended to reflect the four distinct proceedings set out in the federal and state laws to which the ICWA requirements apply. As currently drafted, the rule does not include “preadoptive placements” that are specifically discussed in ICWA.

#### **Comments declined to follow:**

- Remove the word conservatorship from this rule and throughout the rules because conservatorships apply to adults: Decline to follow because conservatorships also apply to formerly married persons under the age of 18 and are therefore governed by ICWA per the probate code;
- Add subsection stating that information of native American ancestry does not in and of itself provide reason to know, there must be information related to membership in a federally recognized tribe: Decline to follow because it is not appropriate to single one factor and create an evidentiary standard for it in the rules. Currently the rules conform to the factors discussed in the regulations and statute;
- Include language requiring ICWA notice for every hearing: Decline to follow because not consistent with the regulations or statute that require ICWA notice only for specified hearings, but do clarify that tribes, parents, Indian custodian entitled to notice of all other hearings in same manner as other parties;
- Change the word seeking to requesting: Decline as unnecessary;
- Revise the language in (a) concerning the nature of the duty of inquiry: Decline as unnecessary; and
- Revise the language of (2)(C) to require that the court order all relatives present in court to complete the ICWA-020 *Parental Notification of Indian Status* form: Decline to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know or have reason to know the child is an Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance.

### **Proposed Amendment to rule 5.481 Inquiry and Notice**

The proposed amendments implement changes to ICWA inquiry and notice requirements made by the federal ICWA regulations and AB 3176 amendments to Welfare and Institutions Code section 224.2. The proposed amendments:

- Add in paragraph (1) extended family members and others who have an interest in the child, including a party reporting child abuse or neglect, to those who must be asked whether the child may be an Indian child<sup>1</sup>;

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<sup>1</sup> Welf. & Inst. Code, § 224.2(b), as amended by AB 3176.

- Add to paragraph (2) a question about whether the residence or domicile of the child, parents, or Indian custodian is on a reservation or Alaska Native Village;<sup>2</sup>
- Clarify that at the first appearance all participants to a case must be asked whether they know or have reason to know the child is an Indian child, and the court must instruct them to inform the court if they subsequently receive information that provides reason to know;
- Set out the obligation to conduct further inquiry when there is “reason to believe” the child is an Indian child;<sup>3</sup>
- Amend what gives the court “reason to know” the child is an Indian child;<sup>4</sup>
- Set out the evidence that must be provided concerning efforts to work with the child’s tribe(s) to determine the child’s status when the petitioner had reason to know the child is an Indian child;
- Authorize the court to find that the child is not an Indian child if—based on the evidence of the efforts to work with the child’s tribe(s)—the court is able to conclude that there is no “reason to know” the child is an Indian child;<sup>5</sup> and
- Clarify that notice by registered or certified mail (return receipt requested) is only required for specified hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child when it is known or there is reason to know the child is an Indian child.<sup>6</sup>

**Revisions based on comments:**

- Add to the end of rule 5.481(a)(2) language clarifying that inquiry must take place at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement rather than just at the initial hearing in the case, as recommended by the California Tribal Families Coalition consistent with the ongoing duty of inquiry as set out in the federal ICWA regulations and WIC 224.1(d);
- Update and correct the statutory references in 5.481(a)(4)(A) as recommended by the Superior Court of San Diego;
- Revise 5.481(a)(4)(C) to add the requirement to share information with tribes as part of further inquiry and due diligence, provide new information to the tribes as it is obtained, and to provide the court with evidence of these efforts on an ongoing basis. These

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<sup>2</sup> *Id.*

<sup>3</sup> Note that AB 3176 creates two different levels of knowledge about Indian status, with different obligations attaching to each of them. Section 224.2(e) of the Welf. & Inst. Code states that if there is “reason to believe” that an Indian child is involved, there is a duty of “further inquiry.” The specific steps of further inquiry include interviewing parents and extended family members and contacting the Bureau of Indians Affairs and potential tribes or others to gather information. Further inquiry must include sharing with tribes information identified by the tribe as necessary for the tribe to make a membership or eligibility determination. The level of information that provides “reason to believe” is not defined in the statute. “Reason to know” is defined at § 224.2(d) and essentially tracks the language in 25 C.F.R. § 23.107(c). Only when there is “reason to know” as set out in § 224.2(d) is formal ICWA notice required under § 224.2(f).

<sup>4</sup> Welf. & Inst. Code, § 224.2(d), as amended by AB 3176.

<sup>5</sup> Welf. & Inst. Code, § 224.2(i)(2).

<sup>6</sup> Section 224.3(a) states that formal ICWA notice need be only for these specified hearings, rather than for every hearing, when it is known or there is reason to know the child is an Indian child.

changes reflect the ongoing nature of the duty of inquiry and the requirements of WIC 224.2(e)(3) and (j) to share information with tribes;

- Revise rule 5.481(b)(3) to provide additional alternative findings options to the court upon review of the evidence of further diligence and further inquiry. As revised it separates out a finding that the court “knows” the child is an Indian child from a finding that the court “has reason to know” the child is an Indian child;
- Add to rule 5.481(b) a subdivision (4) to clarify that a tribe’s determination on membership is conclusive, and to clarify that lack of enrollment does not mean the child is not a member or eligible for membership unless the tribe confirms that enrollment is required for membership;
- Revise rule 5.481(c)(1) regarding notice to add the word “initial” with respect to the hearings for which formal ICWA notice must be provided and add language at the end consistent with WIC 224.2(g) clarifying that a tribe, Indian custodian and parents are entitled to the same notice as all other parties for hearings that do not require ICWA notice by registered mail, return receipt requested and for continued hearings. The word initial and the reference to continued hearings is added in response to the recommendation from the Sacramento County Counsel’s Office that once ICWA notice of a hearing has been provided, if that hearing is continued, notice of the continued hearing date does not need to be by registered mail return receipt requested should not be required. As discussed in the comment chart this situation is similar to the law concerning a parent’s right to notice of a continued hearing under Welf. & Inst. Code §366.26 and the specific noticing requirements set out in section 366.23 concerning this hearing, the more stringent noticing requirements apply only to the initial hearing. If the stringent noticing requirements were complied with for the initial hearing and the party is present in court when the hearing is continued that satisfies the parties right to notice of the continued hearing. (*In re Malcolm D.*, (1996) 42 Cal. App.4<sup>th</sup> 904 at p.913) If the party does not participate in the original hearing they are entitled to receive notice of the continued date that is reasonably calculated under all the circumstances to apprise them of the hearing and afford them an opportunity to present any objections (*Id.* At pp. 258-259). Such notice does not need to be by certified mail, return receipt requested; and
- Add an advisory committee comment referencing the provisions of the federal regulations that specify how to contact tribes and WIC 224.2(e) that sets out the minimum requirements of tribal contacts as part of the obligations of further inquiry and due diligence. One comment recommended adding detailed language from the federal regulations into the rule itself. Staff propose this advisory comment in lieu of repeating the lengthy language from the regulations and statute in the rule.

**Comments that were not followed:**

- Capitalize the word “tribe” throughout the rules: Decline to follow because just like state or city, rules of grammar dictate that the word tribe be capitalized when it is part of a proper name (ie. State of California, Cherokee Tribe of Oklahoma), but not when being used in a general manner;
- Add subsection stating that information of native American ancestry does not in and of itself provide reason to know, there must be information related to membership in a federally recognized tribe: Decline to follow because it is not appropriate to single out



one factor and create an evidentiary standard for it in the rules. Currently the rules conform to the factors discussed in the regulations and statute;

- Include language requiring ICWA notice for every hearing: Decline to follow because not consistent with the regulations or statute that require ICWA notice only for specified hearings, but do clarify that tribes, parents, Indian custodian entitled to notice of all other hearings in same manner as other parties;
- Revise the language of (2)(C) to require that the court order all relatives present in court to complete the ICWA-020 *Parental Notification of Indian Status* form: Decline to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know of have reason to know the child is an Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance;
- Add to 5.481(a)(4)(C) a requirement that if notice has previously been sent and new information is obtained, that new information must be provided on an ICWA-030 form and all tribes re-noticed: do not require re-noticing on the ICWA-030 form, but do include a requirement that all new information be expeditiously provided to the tribes; and
- Revise the language of 5.481(b)(3)(A): decline because section is already clear enough and proposed language is very lengthy.

### **Proposed Amendment to rule 5.482 Proceedings after Notice**

To implement the amendments to provisions governing ICWA notice in AB 3176 at section 7 (Welf. & Inst. Code, § 224.3):

- Clarify that formal ICWA notice, including the requirement to wait 10 days until after receipt of such notice, is only required for hearings, other than “emergency proceedings” that could result in an order for the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement of the child;<sup>7</sup>
- Remove reference to the detention hearing in a dependency case, as this is now dealt with under rule 5.668; and
- Remove subdivision (c) authorizing a finding that the child is not an Indian child if proper notice has been given and no determinative response is received within 60 days, as the code provision that authorized this finding has been repealed by AB 3176.

### **Revisions based on comments:**

- Revise rule 5.482(a) governing the proceedings after ICWA notice has been provided by reinstating the exceptions contained in 5.482(a)(2) and (3), to the general rule that no hearing can take place until 10 days after notice has been received. These had been removed on the assumption that they were no longer necessary due to the unique requirements for detention hearings now set out in WIC 309. Several comments pointed out that these exceptions may still be relevant;

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<sup>7</sup> See amended § 224.3(a) and (d).

- Revise rule 5.482(b) regarding proof of ICWA notice to clarify that the exceptions contained in subsection (a)(2) and (3) also apply to the requirement to file proof of notice in advance of the hearing;
- Revise rule 5.482(c) to reflect the authority to find ICWA does not apply found in WIC 224.2(i)(2) rather than deleting the subsection. The proposal had deleting subsection (c) because it implemented the 60-day provision in former WIC 224.2(e)(3) which has now been deleted. However, as a commenter pointed out, WIC 224.2(i)(2) provides a new basis for the court to make a finding that ICWA does not apply and that authority should be reflected in the rule; and
- Revise rule 5.482(d) to clarify that a tribe and Indian custodian’s right to intervene is not discretionary.

**Comments that were not followed:**

- Revise subsection (f) to add specific examples of active efforts set out in the federal regulations: decline to follow because this subsection relates to placement, not active efforts.

**Proposed Amendment to rule 5.483 Dismissal and transfer of case**

The proposed amendments, which are required by the federal regulations and complementary changes in AB 3176 found in the amended section 305.5 of the Welfare and Institutions Code:

- Clarify that where a tribe has exclusive jurisdiction, the state court proceedings must be dismissed, rather than being transferred to the tribal court, subject only to the terms of any agreement that may have been reached between the state and the tribe under section 1919 of ICWA;
- Clarify the court’s duty to notify the tribe and tribal court of its intention to dismiss a case due to the tribe’s exclusive jurisdiction; and
- Amend what constitutes good cause to deny a request to transfer a case to tribal court when there is concurrent jurisdiction.

**Revisions based on comments:**

- Revise subdivision 5.483(a)(1) to clarify that the requirements regarding cases that may be under exclusive jurisdiction of a tribal court are of an ongoing nature and must be followed when information is received “at any stage of the proceeding” suggesting the child may be under the exclusive jurisdiction of a tribe;
- Revise subdivision 5.483(a)(3) to add clarifying language with respect to the exception to the dismissal requirement for emergency situations. The added language is consistent with WIC 305.5(c);
- Revise subdivision 5.483(d) to add the requirement that the court ensure that the tribal court is promptly notified when a petition is received requesting a transfer to that tribal court, and authorizing the state court to request a timely response from the tribal court about whether it would accept or decline the transfer;
- Revise rule 5.483(d)(2)’s list of factors that can and cannot be considered as part of the assessment of whether there is good cause not to transfer a case to tribal court to more closely follow the precise language of the regulations and statute.

**Comments there were not followed:**

- Revise 5.483(a) to clarify whether ward refers to any tribal court custody order or only custody orders related to protective reasons: Decline to follow because it is not appropriate to establish a legal standard by rule of court that is not set out in the statute; and
- Revise (d)(1)(B) to add reference to the tribe not having a tribal court as a reason to decline to transfer: Decline to follow because this language was removed by 25 CFR 23.117 and WIC 305.5(e). Current rule language tracks federal regulation and California statute.

**Proposed Adoption of rule 5.484 Emergency proceedings involving an Indian child**

The new federal regulations, as set forth in 25 Code of Federal Regulations part 23.113 and implemented in AB 3176,<sup>8</sup> necessitate adoption of a new rule that will replace rule 5.484 and require that current rules 5.484 through 5.487 be renumbered. The proposed new rule addresses the specific requirements related to emergency proceedings and emergency removals of an Indian child set out in the new federal regulations at 25 Code of Federal Regulations part 23.113 and implemented in AB 3176 through various amendments to the Welfare and Institutions Code. Because the requirements of 25 Code of Federal Regulations part 23.113 apply generally to all cases governed by ICWA, the proposal is to add this to the ICWA rules, in addition to making specific changes (see below) to the juvenile rules governing detentions.

The proposed rule 5.484 addresses the requirements of the federal regulations and AB 3176, including:

- Clarifying the standards and required court findings for detention of a child when it is known or there is reason to know the child is an Indian child;
- Clarifying the specific evidence that must be presented to the court to support a removal or detention when it is known or there is reason to know the child is an Indian child;
- Establishing a process for requesting a hearing to seek return of the child when there is new information indicating that the emergency situation that justified initial removal has ended; and
- Addressing the limitations on how long an emergency proceeding can last.

**Revisions based on comments:**

- The name of the form to request the ex parte hearing was added to subdivision 5.484(b)(1);
- One commenter requested further clarity on the procedures governing the ex parte application created by this rule and specifically whether notice must be given. Subdivision 5.484(b)(3) was added in response to this comment referring to the

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<sup>8</sup> See amended Welf. & Inst. Code, § 224.1(l) defining “emergency proceeding” to include an initial hearing under § 319 as well as amended § 306(c), including temporary custody by an agency as an “emergency removal,” and the requirements contained in amended § 319(b)–(e).

procedures set out in the division 3 civil rules governing ex parte procedures. Per rule 3.10 those standards including notice provisions apply to juvenile cases.

**Comments that were not:**

- Revise and restructure this rule to more closely follow the language contained in the statute (see comments of Children’s Law Center in appendix): decline to follow this recommendation because it unnecessarily duplicates statutory language regarding social worker duties in the rule of court. The proposed rule of court reflects the requirements of WIC 319 regarding the court duties and requirements. Further, this rule (and other ICWA rules) apply to family and probate proceedings governed by ICWA and therefore do not reference all of the requirements of the WIC.

**Proposed Amendment and renumbering of former rule 5.484 to rule 5.485 Placement of an Indian child**

In addition to renumbering, the following changes must be made for conformity with the updated federal guidelines:

- Amendments to how the court must analyze whether there has been compliance with the placement preferences and whether there is good cause, as defined in 25 Code of Federal Regulations parts 23.130–23.132, to deviate from those preferences; and
- Amendments to the requirements and analysis of “active efforts” to reflect the definition of active efforts contained in 25 Code of Federal Regulations part 23.2 and the requirements of documenting active efforts set out in 25 Code of Federal Regulations part 23.120.

**Revisions based on comments:**

- Revise rule 5.485(b) to add the language specifying that all placements must be in the least restricting setting that most approximates a family situation and in which the child’s special needs if any may be met, and the “clear and convincing” standard of evidence for a finding that there is good cause to deviate from the placement preferences; and
- Add to rule 5.485(b)(4) language that a finding that there is good cause to deviate from the placement preferences does not affect the requirement for a diligence search for a subsequent placement within the placement preferences.

**Proposed Amendment and renumbering of former rule 5.485 to rule 5.486 Termination of parental rights**

In addition to renumbering, the proposed amendment to former rule 5.485 addresses comments from the California Department of Social Services and other practitioners suggesting that the existing rule was not consistent with ICWA and state law. The proposed amendments include:

- The requirement that evidence must show not only that active efforts were made but also that those active efforts were unsuccessful before parental rights can be terminated, consistent with the requirements of ICWA and state law; and

- Recognition of additional circumstances set out in state law that may constitute a compelling reason to determine that termination of parental rights is not in an Indian child's best interest.

**Comments that were not followed:**

- Add "removal" to the title and add various evidentiary standards to subsection (a) concerning placement of an Indian child – Decline to follow because this rule does not apply to removals and standards for placement are dealt with in rule 5.485 (formerly 5.484)

**Proposed Renumbering of former rule 5.486 to rule 5.487 and former rule 5.487 to rule 5.488**

The proposal would only renumber these rules and not make any substantive amendments.

**Revisions to rule 5.487 based on comments:**

- Revise subdivision (a) of the rule to include all of the categories of case type that may constitute an "Indian child custody proceeding" under California law.

**Proposed Amendment to rule 5.570 Request to change court order (petition for modification)**

After the most recent amendment to rule 5.570 in spring 2009, a commenter noted that the rule, as amended, was not consistent with the requirements of ICWA and California law, by failing to draw a distinction between the requirements for reasonable efforts generally and active efforts when the case involves an Indian child. The commenter was correct. However, the change was not made at the time because it was a substantive change that required the rule to circulate for comment.

**Revisions based on comments:**

- Revise subdivision (h)(1)(B) regarding a request to terminate reunification services to specify that where the case involves an Indian child the court must find by clear and convincing evidence that active efforts have been provided and have proved unsuccessful before reunification services may be terminated.

**Proposed Amendment to rule 5.668 Commencement of [initial] hearing – explanation of proceedings**

The federal regulations and AB 3176 at amended section 224.2 of the Welfare and Institutions Code require certain specific steps to be taken to determine a child's Indian status at the commencement of each "proceeding." Rule 5.668 governs the commencement of the initial hearing, and the explanation of the proceedings. It includes requirements concerning inquiry about parentage. The proposal would add to the rule the specific requirements on ICWA inquiry language that sets forth what is required at an initial hearing on a juvenile petition.

**Revisions due to comments:**

- Revise proposed subsection (c) concerning ICWA inquiry by adding the language “At the first appearance in court of each party” at the beginning of subsection (c)(1);
- Further revise subsection (c) to clarify the distinct requirements when there is “reason to believe” the case involves an Indian child as opposed to “reason to know” by creating a new 5.668(c)(3) and additional language to 5.668(c)(4).

**Proposed Amendment to rule 5.674 Conduct of hearing; admission, no contest, submission**

This rule governs the conduct of the detention hearing and includes the findings and orders that must be made on the record. Welfare and Institutions Code section 309(a)(3), as amended by AB 3176, requires a modified detention finding on the record when the child is, or there is reason to know the child is, an Indian child. To implement this amendment to section 309(a)(3), it is proposed the rule be amended to require the court to find that detention is necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected without detention. This reflects the new requirements enacted by the new federal ICWA regulations and AB 3176.

**Revisions based on comments:**

- Revise subsections (c), (d) and (e) to add Indian custodian and Indian child’s tribe to the parties who may assert the rights specified.

**Proposed Amendment to rule 5.676 Requirements for detention**

Rule 5.676 governs the requirements for the court to order a child detained. The proposed amendment adds to the requirements for detention when it is known, or there is reason to know, the child is an Indian child. These requirements are set out in Welfare and Institutions Code sections 309 and 319, as amended by AB 3176.

**Revisions based on comments:**

- Add Indian custodian to subsection 5.676(a)(2);
- Revise subsection 5.676(b) to add the requirement that the court must state on the record the facts supporting a finding that detention of an Indian child is necessary to prevent imminent physical damage or harm to the child.

**Comments not followed:**

- Revise (d)(8) by adding that the child is believed to be a ward of a tribal court in addition to resides or domiciled on a reservation where the tribe exercises exclusive jurisdiction: Decline to follow because it does not align with the language of WIC 319(b)(8) or the regulations.

**Proposed Amendment to rule 5.678 Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives**

Rule 5.678 governs the findings that must be made to support a detention order, the factors the court must consider, whether the agency has made appropriate efforts, and any alternatives to detention that should be considered. To comply with the requirements of AB 3176, the following amendments are proposed:

- Include the additional findings now required by Welfare and Institutions Code section 319(c)(2) and (d) to support detention if the child is, or there is reason to know that the child is, an Indian child;
- Include the requirements for active efforts findings to support detention when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code sections 306(e)(4), 319(f)(2), and 361.7;
- Include reference to the placement preferences that must be followed when an Indian child is removed, even on an emergency basis, consistent with amended section 319(h)(C) of the Welfare and Institutions Code;
- Include reference to the time limitations that apply to a removal when it is known or there is reason to know the child is an Indian child, consistent with Welfare and Institutions Code section 319; and
- Include a provision for a hearing to return custody of the child if the emergency that supported initial removal has ended, as required by Welfare and Institutions Code section 319.4.

**Revisions based on comments:**

- Revise subsection 5.678(c)(2) and (4) to augment the language of active efforts "...to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family..." and to require under 5.678(c)(2) an assessment of whether those efforts have been successful;
- Revise subsection 5.678(c)(5) reference the additional requirements when the case involves and Indian child; and
- Revise subsection 5.678(f) to reference the clear and convincing standard of evidence required to deviate from the placement preferences and to reference the requirements of rule 5.485.

**Comments not followed:**

- Delete subsection (f) concerning time limitation because a detention hearing can never be continued for more than 30 days and an Indian child custody proceeding is started by the filing of a petition which can always be done within 30 days: decline to follow because WIC 319(e)(2) specifies what is required to continue a detention hearing beyond 30 days. The rule is consistent with the statutory language. Not clear that filing a petition is sufficient to "initiate an Indian child custody proceeding..." WIC 224.1(l) defines an emergency proceeding as the initial petition hearing held pursuant to section 319. Under the [Guidelines issued by the BIA](#) the initiation of a child custody proceeding requires a proceeding "...to which the full set of ICWA protections would apply." (see page 25) In

California this is generally not until the dispositional hearing at which a QEW would testify.

### **Proposed Amendment to rule 5.690 General Conduct of a Dispositional Hearing**

This rule governs the general conduct of a disposition hearing. The proposed amendments respond to changes in Welfare and Institutions Code section 309 and 352 resulting from AB 3176: specifically, the provision mandating evidence that efforts have been made to locate extended family as that term is specifically defined for an Indian child under Welfare and Institutions Code section 224.1; and to locate placements through the tribe as discussed in amended section 309(e)(1) and (e)(1)(B) of the Welfare and Institutions Code; and adding a subdivision (d) in response to 352(b) confirming that a dispositional hearing cannot be continued if it would result in the dispositional hearing being completed longer than 60 days, or 30 days in the case of an Indian child, after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring a continuance. If the court knows or has reason to know that the child is an Indian child, the absence of the opinion of a qualified expert witness shall not, in and of itself, support a finding that exceptional circumstances exist.

### **Revisions based on comments:**

- Add subdivision (d) concerning limitations on continuances consistent with Welfare and Institutions Code section 352(b) in response to comments received from the California Tribal Families Coalition, who advocated on behalf of tribal communities for AB 3176.

### **Forms revisions based on comments:**

- Expand the language used to ask about and reference residence and domicile from in ICWA-005-INFO 2.c and ICWA-020 3 d. and e., to include “a reservation, Rancheria, Alaska Native Village or other tribal trust land.” instead of just saying “Indian country”;
- Revise item 5.d.(3) of the ICWA-060 which sets out the required findings and orders when the court finds that there is good cause to deny a request for transfer to tribal court to clarify that there must have been an evidentiary hearing on the issue;
- Revise the inquiry language at item 2 of the JV-100 and JV-110 and item 4 of the JV-600 to allow separate options for when the individual signing the petition has completed the ICWA inquiry themselves, and when someone else has completed the ICWA inquiry. In some counties the social worker will complete the inquiry and provide that information to county counsel, but county counsel is the one who completes and signs the petition;
- Revise item 17 of the JV-320 concerning where the placement fits within the ICWA placement preferences by replacing “exhaustive search...” with “diligent search...”. The language used in the federal regulations and guidelines requires a diligent search for a placement within the placement preferences, not an exhaustive search. This same change has been made in all the forms that contain these placement preference findings; and
- Revise JV-320 item 17.s.(6) by adding the clear and convincing evidence standard that is required for the court to find good cause to deviate from the placement preferences.



**Suggested forms revisions not accepted:**

- Add language to the JV-405 and JV-410 forms from the federal guidelines on treating the child as an Indian child when status is uncertain: decline to follow because the language is too lengthy to include in the forms. Consider incorporating into information sheets and trainings instead.

**Suggested revision to Rule 5.531 Appearance by telephone that was not part of original proposal:**

- Add a subdivision (d) mandating that the court allow alternative methods of participation in ICWA cases if the court has the capacity: Decline to follow because although consistent with the federal regulations, it is not consistent with the WIC code.