



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-165

For business meeting on: September 25, 2020

Title

Indian Child Welfare Act (ICWA): Tribal
Information Form

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 5.522;
approve forms ICWA-100 and ICWA-100-
INFO

Date of Report

September 3, 2020

Recommended by

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Contact

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Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Executive Summary

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

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2021:

1. Amend rule 5.522 of the California Rules of Court;
2. Approve *Tribal Information Form* (form ICWA-100); and
3. Approve *Instruction Sheet for Tribal Information Form* (form ICWA-100-INFO).

The text of the amended rule and the new forms are attached at pages 6–11.

Relevant Previous Council Action

The Judicial Council has acted on many occasions to implement the requirements of the Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.) and corresponding state law. Following the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) in 2006, which wove requirements of the Indian Child Welfare Act into the provisions of the California Family, Probate, and Welfare and Institutions Codes, the Judicial Council enacted comprehensive rules and forms implementing SB 678.¹ In 2018, the Legislature enacted Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), which amended many provisions of the Welfare and Institutions Code to conform California law to revised federal regulations.² In 2019, the Judicial Council made substantial revisions to rules and forms to implement AB 3176.

Analysis/Rationale

California is home to more people of Indian ancestry than any other state in the nation. Currently, 109 tribes are federally recognized in California, a number second only to the number of tribes in the state of Alaska. California’s Indian population includes a large number of people affiliated with out-of-state tribes or tribes whose territories and primary headquarters are based in neighboring states, such as the Washoe, Fort Mojave, Chemehuevi, Colorado River, and Quechan tribes.³

Tribes within California are often located in remote areas, often making travel to court locations burdensome. Tribal resources and staffing vary greatly, but many tribes have only one full-time staff person devoted to child welfare cases, and that individual may have active cases in multiple

¹ SB 678 is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB678. The Judicial Council Rules and Forms Proposal implementing SB 678 is available at <https://www.courts.ca.gov/documents/102607ItemA27.pdf>.

² AB 3176 is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176.

³ Judicial Council of Cal., Center for Families, Children & Cts., “Native American Statistical Abstract: Population Characteristics” *Research Update* (Mar. 2012), www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf; California Indian Tribal Homelands and Trust Land Map, https://www3.epa.gov/region9/air/maps/ca_tribe.html.

counties and states. Under the federal Indian Child Welfare Act and corresponding California statutes, an Indian child's tribe has a right to participate in cases governed by ICWA, and proper implementation of and compliance with ICWA involves tribal input on a number of key issues. However, as noted in the *ICWA Compliance Task Force: Report to the California Attorney General's Bureau of Children's Justice* (2017), many tribes find it difficult to exercise their right to fully participate in ICWA cases.⁴ Of particular concern are the rights of "lower-income tribes, as they often do not have resources to retain legal counsel, travel and be present at all hearings or even pay fees associated with telephonic appearances." If a tribe intervenes in a case, the tribe becomes a full party. Rule 5.534(e) recognizes various rights of a tribal representative, including the right to submit written reports and recommendations to the court even if the tribe does not intervene in the case; however, tribes located out of state or unrepresented by counsel may be unfamiliar with California court procedures, and an optional form may encourage them to exercise their right to submit information more often.

If the tribe's position on key ICWA issues is unknown as a case progresses, this lack of clarity can have negative consequences on the case. For instance, if the court is unaware of the tribe's position on permanency planning until after reunification services have been terminated, unnecessary conflicts and disruptions may occur during placement. California has a high number of appeals related to the Indian Child Welfare Act.⁵ Some of these appeals might be avoided if tribal input could be consistently obtained throughout the life of a case.

Policy implications

The purpose of this form is to more easily allow an Indian child's tribe to submit information to the court on key issues. The forum and the committee considered whether to require that this form be included with every hearing notice sent out to a tribe in a case governed by the Indian Child Welfare Act, but decided to defer such a requirement to a later time depending on the success and use of the form.

Comments

The proposal circulated for public comment from April 10 through June 9, 2020, as part of the spring 2020 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 included in the monthly newsletter distributed by the Tribal Court–State

⁴ Cal. ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), p. 41, www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf.

⁵ In 2016, California had 114 appeals related to ICWA. (Prof. Kathryn E. Fort, "2016 ICWA Appellate Cases by the Numbers" *Turtle Talk* [Indigenous Law and Policy Center blog], Michigan State University College of Law, Jan. 4, 2017, <https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/>).

Court Forum, and sent to the California Department of Social Services Office of Tribal Affairs listserve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

The proposal received 10 comments. Seven commenters agreed with the proposal and three did not indicate their position. The commenters included two statewide tribal organizations that submitted joint comments, the Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM), representatives of five superior courts, two child welfare departments, two county counsel's offices, and the Orange County Bar Association.

The comments included technical and stylistic corrections as well as more substantive comments, many of which were accepted as they strengthened and clarified the proposal. All of the comments and responses to them are set out in the attached comment chart. Revisions made in response include:

- Revising form ICWA-100-INFO to recognize the ability to fax file the form;
- Revising form ICWA-100-INFO to clarify what to expect on the day of the hearing, including requesting remote appearance;
- Revising form ICWA-100-INFO to add more guidance on how and when to file the form with the court;
- Revising form ICWA-100 to include information about the tribe's status within the proceedings;
- Revising form ICWA-100 to include more areas on which the tribe is encouraged to submit information to the court; and
- Revising forms ICWA-100 and ICWA-100-INFO to clarify how they would be used in case types other than juvenile.

Alternatives considered

The forum and the committee considered taking no action, but decided that providing a way for tribes to more easily communicate directly with the courts on issues of importance in cases governed by the Indian Child Welfare Act was important to improving tribal access to the courts, compliance with the Indian Child Welfare Act, reducing appeals that result from lack of tribal participation, and ultimately improving outcomes for Indian children and families.

Fiscal and Operational Impacts

Some of the superior court commenters noted that the creation of the new form would require some training for staff to make them aware of the process. Court case management systems would need to be updated to incorporate the new form. Another commenter noted that the court would have to create a new filing code and that there would be very minimal training requirements.

Attachments and Links

1. Cal. Rules of Court, rule 5.522, at page 6
2. Forms ICWA-100 and ICWA-100-INFO, at pages 7–11
3. Chart of comments, at pages 12–30.

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

Rule 5.522. Remote filing

(a)–(b) * * *

(c) Fax filing

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

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

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

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

(A)–(E) * * *

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

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

(H) An Indian tribe.

(3)–(6) * * *

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
CHILD'S NAME: HEARING DATE AND TIME: DEPARTMENT: (JUVENILE, FAMILY, OR PROBATE)	
TRIBAL INFORMATION FORM	CASE NUMBER:

To the representative of the Indian Child's Tribe: You may use this optional form to provide written information to the court. Please type or print clearly in ink. Check item 10 if you want to attach additional information on a separate sheet either because you need more space to respond to any section on this form or have other information that you wish to share with the court. You must submit this form ahead of the hearing so that all parties are aware of the information in this form. You can file this form in person, by mail or by fax. If you are filing in person, submit the original and eight copies of the form to the court clerk's office at least five calendar days before the hearing. If you are filing by mail, you must send the original and eight copies to the court clerk's office at least seven days before the hearing. You may also submit this form by fax. Phone the court to ask for the correct fax number. Be aware that other individuals involved in the case have access to this information. Be aware that any written information provided, including this form, may not be admitted as evidence if the court determines that it is not admissible by law.

1. Child's Information

- a. Child's full name: _____
- b. Child's date of birth: _____ c. Child's age: _____

2. Tribal Information

- a. Name of tribe: _____
- b. Name of person completing this form: _____
- c. Name(s) of persons authorized to represent the tribe in this case: _____

d. Tribal representative's contact information

Address: _____

Telephone: _____

Fax: _____

Email: _____

- e. Duplicate notices, reports, orders, and other documents concerning this case ☐ may ☐ may not be served by email at the above address.

3. Tribal Intervention (please check either a. or b.)

- a. ☐ The Indian child's tribe: ☐ is intervening or ☐ has intervened in the case.
- b. ☐ The tribe requests that this form be admitted by the court under California Rules of Court, rule 5.534(e)(2)(E).

4. Hearing Information

This *Tribal Information Form* is submitted for the (insert type of hearing):

scheduled for (insert date of hearing):

in department

If you indicate in items 4 through 7 that the tribe has not been consulted on any issue, please explain in the "Further Comments" section the particulars of communication or attempts at communication with the agency or petitioner throughout this time period.

5. Communication

- a. ☐ In the last six months, or since the last hearing, there ☐ has ☐ has not been ongoing consultation and communication between the agency or other petitioner and the tribe.
- b. ☐ Further comments: _____

CHILD'S NAME:	CASE NUMBER:
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6. Case Planning, Services, and Active Efforts

- a. ☐ In the last six months, or since the last hearing, the tribe ☐ has ☐ has not been consulted on the appropriate services to be provided to the parent(s), legal guardian(s), or Indian custodian(s), and the child.
- b. ☐ The tribe submits the following information and comments with regard to case planning and services for the child and parent(s), legal guardian(s), or Indian custodian(s), and efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
- c. ☐ The tribe recommends that the following programs and services be integrated into the parents' and child's case plan:
- d. ☐ The tribe has the following input on the child's well-being:
- e. ☐ The tribe has the following input on the child's educational status:
- f. ☐ The tribe has the following input on the child's social development:
- g. ☐ The tribe has the following input on the child's adjustment to the child's living arrangements:
- h. ☐ The tribe has the following input on upcoming tribal, cultural, or social events that the tribe recommends the child attend:
- i. ☐ The tribe has the following observations regarding visitation:
- j. ☐ The tribe has the following input on the needs of the parent(s) or child:
- k. ☐ The tribe has the following other recommendations:
- l. ☐ Further comments:

7. ☐ Placement (if the child is in out-of-home placement)

- a. ☐ The tribe ☐ has ☐ has not been consulted on the child's placement.
- b. ☐ The tribe ☐ does ☐ does not know where the child is currently placed.
- c. ☐ The tribe ☐ does ☐ does not agree with the child's current placement.
- d. ☐ The tribe requests that the child be placed with (insert name):
This placement is preferable because:
- e. ☐ Further comments:

CHILD'S NAME:	CASE NUMBER:
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8. ☐ **Permanency Planning (*if the child is in out-of-home placement*)**

- a. The tribe ☐ has ☐ has not been consulted regarding the appropriate permanent plan for the child should reunification with the parent(s), legal guardian(s), or Indian custodian(s) fail.
- b. The agency ☐ has ☐ has not discussed with the tribe tribal customary adoption as a permanency option should reunification with the parent(s), legal guardian(s), or Indian custodian(s) fail.
- c. ☐ Further comments:

9. Other information:

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

Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF TRIBAL REPRESENTATIVE WHO HAS COMPLETED THIS FORM)

INSTRUCTION SHEET FOR TRIBAL INFORMATION FORM

Background

1. **What is the Tribal Information Form?** The *Tribal Information Form* (form ICWA-100) is intended to provide an accessible way for an Indian child's tribe to provide information to the court about the case and the tribe's position on the case. The form should be completed by the duly authorized representative of the tribe able to represent the tribe's position in the court case.
2. **When does it need to be filled out and filed?** The *Tribal Information Form* is an optional form. You do not need to complete this form. If you choose to use this form, you must fill it out by typing or writing legibly in ink, and file it with the court in advance of the hearing. You can file it with the court in person at the clerk's office, along with eight copies, at least five calendar days before the hearing. You can file it by mail by sending the original and eight copies to the court for filing at least seven calendar days before the hearing. You can also file it by fax. If you want to file by fax, phone the court to get the correct fax number and fax it to the court at least five days before the hearing. Follow the instructions below. Do not wait until the day of the court hearing to file the form.

How to Fill Out Form ICWA-100

1. **Complete the caption.** These are the boxes at the top of the page.
 - **Court name, street address, and mailing address.** Write the name of the county where the court is located, and the street and mailing address of the court. If you do not know the name and address of the court, look on the notice of the court hearing you received in the mail or go to www.courts.ca.gov/find-my-court.htm to find the contact information for your court. For department name, write the location of the court and either "Family," "Juvenile," or "Probate" depending on which department is hearing the case. If you are not certain, phone the court.
 - **Child's Name.** Write the child's full name.
 - **Hearing Date and Time.** Write the hearing date and time. If you do not have this information, ask the social worker in a juvenile case or the court in a family or probate case.
 - **Case Number.** This number is on the notice of the court hearing you received in the mail. If you do not have the number, ask the child's social worker or attorney for the number in a juvenile case or call the court in a family or probate case. If the case involves brothers and sisters (siblings), there may be more than one case number. Be sure to use a separate form and the correct number for each child.
2. **Complete the information about the child and about the tribe and tribal representative.**
 - **Item 1.** Fill in the child's full name, date of birth, and age.
 - **Item 2.** Complete the information about the tribe.
3. **Complete items 3–9 about the case.** For each question, check the box to indicate whether there is new information since the last hearing. Briefly write new information in the appropriate section of the form.
 - **Item 3.** Indicate whether the tribe has intervened, is intervening now, or wishes the form to be admitted under California Rules of Court, rule 5.534(e)(2)(E), which authorizes the court to receive written information from a tribal representative when the tribe has not intervened.
 - **Item 4.** Provide information about the hearing for which the form is submitted.
 - **Item 5.** Provide information on the communication between the agency or petitioner and the tribe since the last hearing.
 - **Item 6.** Provide information about case planning, services, active efforts, and other issues.
 - **Item 7.** Provide information about the child's placement.
 - **Item 8.** Provide information about the appropriate concurrent and permanent plan for the child.
 - **Item 9.** Provide other information the tribe wants to convey to the court.
4. **Add any attachments.** Check the box in item 10 to add additional pages.
5. **Sign and date the form.** On the bottom of page 2, write the date, type or print your name, and sign your name.

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

1. **Make copies.** Tribal representatives should make eight or more copies of the completed form ICWA-100 and any attachments.
2. **If you choose to file the form in person.** At least **five** calendar days before the hearing date, bring the original form and the eight copies to the court clerk's office at the courthouse where the hearing will be held. Ask the clerk to file the form for you. Keep one copy of the date-stamped form for yourself. The clerk will provide a copy of the form to each party and will complete and file the proof of service form.
3. **If you choose to file the form by fax.** Contact the court to get the appropriate fax number, and fax the completed form to the court at least five days prior to the hearing.

INSTRUCTION SHEET FOR TRIBAL INFORMATION FORM

4. **If you choose to file the form by mail.** At least **seven** calendar days before the hearing date, mail the original form and all but one of the copies to the court clerk's office at the courthouse where the hearing will be held. Put sufficient postage on the envelope. Include a note indicating "For filing and service" and include the case number. The clerk will provide a copy of the form to each party and will complete and file the proof of service form.
5. **Confirm the hearing date, time, and place.** If you plan to attend the hearing, call the social worker if there is one, or contact the court to confirm the hearing date, time, and courtroom.
6. **If you wish to participate in the hearing remotely.** Contact the court at least five days in advance if you wish to appear remotely for the hearing.

What to Do on the Hearing Day

1. **Bring extra copies of the form.** If you decide to attend the hearing, it is suggested that you make additional copies of the form and any attachments to provide to anyone at the hearing who did not receive them.
2. **Comments in court.** If you attend the hearing in person, you should speak to the bailiff prior to the start of court to identify yourself, the tribe you represent, and the case you are there for, and indicate that you would like to address the court.
3. **Remote appearance.** You may also appear remotely by notifying the court at least five days in advance.
4. **Effects of Participation:** If you participate in the hearing, you may be subject to cross-examination. If you do not participate in the hearing, and are not available for cross-examination, any evidence contained in the form that is not otherwise admissible in court may be excluded.

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Indian Child Welfare Act (ICWA): Tribal Information Form (Amend Cal. Rules of Court, rule 5.522; approve forms ICWA-100 and ICWA-100-Info) All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	<p>California Tribal Families Coalition, By Delia M. Sharpe, Executive Director and</p> <p>California Indian Legal Services By Dorothy Alther, Executive Director</p>	A	<p>We are in support of the amendment to Rule 5.522 and the adoption of forms ICWA-100 and ICWA-100-Info with the following recommendations.</p> <p>ICWA-100-INFO Proposed amendments to Rule 5.522 allow fax filing, but the ICWA-100-INFO form only addresses mail and in-person options. We recommend this form be revised to include information regarding fax filing.</p> <p>We also recommend that the ICWA-100-INFO form be revised to include in the “What to Do on the Hearing Day” section that the tribal social worker may be subject to cross-examination.</p> <p>Form ICWA-100 The ICWA-100 form includes information regarding notice to the tribe. We recommend that #2(d) be revised to specific that “duplicate” notices, reports, orders, and other documents... may be served by email.</p> <p>New #4 regarding tribal intervention. The Indian child’s tribe: ____ is intervening or ____ has intervened.</p> <p>We also strongly recommend that the ICWA-100 include sections for the tribe to provide input regarding: (1) child’s wellbeing, (2) education, (3) social development, (4) adjustment to living</p>	<p>No response required.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>

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			arrangements; (5) Tribal/Cultural events attended or upcoming; (6) visitations observed; (7) needs of parents or child; and (8) recommendations.	
2.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Saul Bercovitch, Director of Governmental Affairs	A	FLEXCOM agrees with this proposal. FLEXCOM suggests that instead of language at the end of the form advising one can attach additional pages, that an advisement be placed next to item numbers with a check box. This would allow someone who is filling in the form to be aware at the time they are completing an item that an attachment can be used.	The form was revised to add language explaining this at the beginning of the form.
3.	Los Angeles Department of Child and Family Services, and County Counsel By O. Raquel Ramirez, Senior Deputy County Counsel	A	This is an excellent proposal. 1) This form could be faxed or e-mailed, to the Tribe(s) at the time of an Indian Child being taken into Temporary Custody or detained, before the Detention Hearing, to give the Tribe the opportunity to engage the Court as early as the Detention Hearing. Would this faxing the tribe the ICWA 100 be something done by the CSW or DI CSW? Many times, the parents are not certain as to which tribe they belong to and not until after the DCFS 030 packet is sent to many tribes, each checks their tribal member directory, which takes some time before it is determined if the child is an Indian Child and which tribe determines the child eligible for membership. Would each tribe(s) also receive the ICWA 100? In this instance, they would they also to complete the ICWA-100 form when the ICWA 030 is mailed/emailed?	No response required.

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Indian Child Welfare Act (ICWA): Tribal Information Form (Amend Cal. Rules of Court, rule 5.522; approve forms ICWA-100 and ICWA-100-Info) All comments are verbatim unless indicated by an asterisk (*).

			<p>2) If the Tribe is unable to be present or participate remotely (as proposed in “SR20-31 ICWA Remote Appearance by and Indian Child’s Tribe in ICWA Proceedings”) this is a good alternative. However, SR20-31, proposes that Tribes who want to appear at an Indian Child’s court hearing, and do not have fiscal resources for telecommunication devices or fees, fees would be waived.</p> <p>3) I suggest that on the ICWA-100 INFO form, that the Child’s middle name (if they have one) be included in the lines requesting Child’s Name. Possibly also adding Child’s Tribal (name if they have one).</p> <p>4) The ICWA-100 INFO form “What to Do on the Hearing Day” possibly add #3) add “Remote Appearance- If you choose to attend the hearing remotely, when you answer roll call, let the court know that you have comments you would like to make before the end of the hearing”</p> <p>5) See SR20-29 regarding training, implementation recommendations and record keeping of forms.</p>	<p>No response required.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
4.	Orange County Bar Association By Scott B. Garner, President	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input? Yes.</p>	No response required.
5.	Sacramento County Counsel’s Office By Christopher S. Costa, Deputy County Counsel	A	<p>Questions 1 and 2: Does the proposal appropriately address the stated purpose? Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?</p>	No response required.

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		<p>-Overall, yes, the proposal and form appropriately address the stated purpose and promote tribal input. However, the following areas should be included or clarified, as applicable, to provide juvenile court participants additional practical guidance.</p> <p>(1) Relationship Between ICWA-100 and Rule 5.534(e)(2)(E). Rule 5.534(e)(2)(E) indicates that, for non-intervening tribes, the court may permit a tribal representative to submit written reports and recommendations to the court. The proposed ICWA-100 and Instruction Sheet do not address whether the tribe has communicated with the court or whether the tribal representative has been permitted by the court to submit written reports. To ensure that the information provided by the tribal representative can be appropriately considered by the court, the Instruction Sheet under the “What to Do on the Hearing Day” section, should encourage tribal representatives to attend the hearing – whether by phone or in-person - to be available for the court to answer questions and to ensure that the proposed ICWA-100 has been appropriately considered.</p> <p>Further, to provide practitioners guidance on the admissibility of the proposed ICWA-100 – since the information provided will likely be related to substantive findings for certain hearings – the introductory paragraph at the top of page 1 of the proposed ICWA-100 (preferably after the second sentence) should include information similar to the following: “Any written information provided, including this form, may</p>	<p>The ICWA-100 form was revised to include a section indicating whether the tribe had intervened or intended to intervene.</p> <p>The ICWA-100 and ICWA-100-INFO form were amended in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
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			<p>not be admitted as evidence unless the parties agree to do so or the court determines the written information is otherwise admissible under the law.”</p> <p>(2) Explanations in Items 4-7 of the Proposed ICWA-100. To assist the court and the parties to fully understand the tribe’s position regarding items 4-7, the introduction sentence in Paragraph 3 of the Information Sheet should encourage tribal representatives to explain, in the “Further Comments” sections of Items 4-7, in detail, how the agency has or has not consulted with the tribe.</p>	<p>The form was revised in response to this comment.</p>
6.	San Diego Child Welfare Services By Karla Morales, Policy Analyst	A	No further comments.	No response required.
7.	Superior Court of California, County of Orange Family Law Division By Vivian Tran, Administrative Analyst	NI	<p>Tribal Information Form (Form ICWA 100)</p> <p>Will this form also be used for filings in Family Law or Probate? If yes, then it may be confusing if the department that the hearing is being heard in is not listed on the form. Recommend adding Department to the hearing date and time information in the case caption box.</p> <p>Proposed Case Caption:</p> <div data-bbox="829 1109 1234 1239"><p>CHILD'S NAME:</p><p>HEARING DATE AND TIME:</p></div> <p>Recommended Case Caption:</p>	<p>The form was revised in response to this comment.</p>

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			<div data-bbox="835 300 1346 430"> <div>CHILD'S NAME:</div> <div>HEARING DATE</div> <div>TIME AND DEPT.:</div> </div> <p>Item #3: Hearing information - This <i>Tribal Information Form</i> is submitted for the hearing scheduled for <i>(insert date of hearing)</i>: Also recommend adding (insert date of hearing, time and dept.)</p> <p>Instruction Sheet for Tribal Information Form (Form ICWA 100 – INFO) <u>Subsection 2 - How to Fill Out Form ICWA-100 – Item #1 – 1st bullet – last sentence – “For branch name, write “Juvenile”. Will this form also be used for Indian Tribes to file in Family Law and Probate cases? There needs to be some clarification as to this issue. Recommend modification here if this form is to be used for other case types.</u> <u>Subsection 3 – What to Do with the Form After You Have Filled It Out</u> There are only two choices to file this form, in person and by mail, in this subsection. There should be a choice to <u>fax</u> this form to the court as this proposal also includes amending rule 5.552 to include a fax filing option for an Indian Tribe. Recommend adding a fax filing option to this subsection. <u>Subsection 3 – What to Do with the Form After You Have Filled it Out - Item #3 – Sentence – “Put two stamps on the envelope.”</u></p>	<p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment. It now says “Put sufficient postage on the envelope.”</p>
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		<p>This sentence may be misleading. It is too vague as to the value of the stamps needed to send an original form and 7 copies. Are we certain this will provide enough postage every time? What if there are even more documents or several attachments to this form being sent by the Indian Child's Tribe or the Tribe's Representative in one envelope? What if the envelope comes back to the Tribe with postage due and it did not reach the court to be filed prior to the hearing and the Tribe states to the court that they were in compliance with what the INFO sheet directed them to do by putting "two stamps" on it?</p> <p>Recommend sentence to be modified to "Place two FOREVER stamps on the envelope." (if it must be kept on the form) or replace the sentence with "Place appropriate postage on the envelope" or delete this sentence from the sheet.</p> <p><u>Subsection 4 – What to Do on the Hearing Day – Item #2 – Comments in Court. – Sentences – "If you choose to attend the hearing..." and "You may raise your hand to let the judge know you would like to speak..."</u></p> <p>This may imply to the reader, that the Tribe's representative must appear at the hearing <u>only in person</u> as there is no other option listed in this subsection. I just commented on the legislation change of rules 5.9, 5.482 and 5.531, "Remote Appearances by an Indian Child's Tribe at an ICWA proceeding – (SPR20-31), in which a Tribe may now appear telephonically or in some other computerized remote way at an ICWA</p>	<p>The form has been revised to provide greater clarity and explanations under this subsection in response to this and other comments. It now addresses the option of appearing remotely.</p>
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			proceeding. The remote appearance change will be effective on the same date as these changes. Recommend adding this remote appearance information/option to this form.	
8.	Superior Court of California, County of Orange Juvenile Law Division By Linda Contreras, Administrative Analyst I	NI	<p><i>Tribal Information Form (Form ICWA 100)</i> Will this form also be used for filings in Family Law or Probate? If yes, then it may be confusing if the department that the hearing is being heard in is not listed on the form. Recommend adding Department to the hearing date and time information in the case caption box.</p> <p>Item #3: Hearing information: Recommend adding time and department. (insert date of hearing, <u>time and dept.</u>)</p> <p><i>Instruction Sheet for Tribal Information Form (Form ICWA 100 – INFO)</i> <u>Subsection 2 - How to Fill Out Form ICWA-100 – Item #1 – 1st bullet – last sentence – “For branch name, write “Juvenile”.</u> Will this form also be used for Indian Tribes to file in Family Law and Probate cases? There needs to be some clarification as to this issue. Recommend modification here if this form is to be used for other case types. <u>Subsection 3 – What to Do with the Form After You Have Filled It Out</u> There are only two choices to file this form, in person and by mail, in this subsection. There should be a choice to <u>fax</u> this form to the court as this proposal also includes amending rule 5.552 to include a fax filing option for an Indian</p>	<p>The form has been amended in response to this and other comments.</p> <p>The form has been amended in response to this and other comments</p> <p>The form has been amended in response to this and other comments.</p> <p>The form has been amended in response to this and other comments.</p>

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		<p>Tribe. Recommend adding a fax filing option to this subsection.</p> <p><u>Subsection 3 – What to Do with the Form After You Have Filled it Out - Item #3 – Sentence – “Put two stamps on the envelope.”</u></p> <p>This sentence may be misleading. It is too vague as to the value of the stamps needed to send an original form and 7 copies. Are we certain this will provide enough postage every time? What if there are even more documents or several attachments to this form being sent by the Indian Child’s Tribe or the Tribe’s Representative in one envelope? What if the envelope comes back to the Tribe with postage due and it did not reach the court to be filed prior to the hearing and the Tribe states to the court that they were in compliance with what the INFO sheet directed them to do by putting “two stamps” on it?</p> <p>Recommend sentence to be modified to one of 3 options below:</p> <p>“Place two FOREVER stamps on the envelope,”</p> <p>Replace the sentence with “Place appropriate postage on the envelope”</p> <p>Delete this sentence from the sheet.</p> <p><u>Subsection 4 – What to Do on the Hearing Day – Item #2 – Comments in Court. – Sentences – “If you choose to attend the hearing...” and “You may raise your hand to let the judge know you would like to speak...”.</u></p> <p>This may imply to the reader, that the Tribe’s representative must appear at the hearing <u>only in person</u> as there is no other option listed in this</p>	<p>The form has been revised in response to this and other comments.</p> <p>The form has been revised in response to this and other comments.</p>
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		<p>subsection. Orange County Superior Court also commented on the legislation change of rules 5.9, 5.482 and 5.531, “Remote Appearances by an Indian Child’s Tribe at an ICWA proceeding – (SPR20-31), in which a Tribe may now appear telephonically or in some other computerized remote way at an ICWA proceeding. The remote appearance change will be effective on the same date as these changes. Recommend adding this remote appearance information/option to this form.</p> <p>Comments on the proposal as a whole: The proposal as a whole can be very effective and provide the courts with valuable information on the Indian Tribe’s input or views on the ICWA cases. These new forms can help alleviate unnecessary conflicts, disruptions, hearings or issues that can lead to the orders being set aside/vacated or the cases being appealed.</p> <p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>In some ways the proposal is a bit confusing. One reason that it can be confusing as to whether this form can be used in multiple case types that ICWA requirements apply. The proposal stated in the <i>Alternatives Considered</i> section, “Tribes may be involved in cases in different counties arising in probate, family or juvenile court. A consistent, simple form for statewide use will facilitate tribal participation in <u>all these cases.</u>”</p>	<p>No response required.</p> <p>The proposal was modified in response to comments above to address the use of the form ICWA-100 in case types other than juvenile.</p>
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		<p>These forms look as if they are intended for use in <u>Juvenile cases only</u> as it mimics a Juvenile form and it directs the Indian Tribe, in the ICWA – 100 - INFO, to write Juvenile as the branch division only. Is this the intention to have this form only filed in Juvenile cases? If yes, then it is unclear in the proposal and will a new form also be created for Family Law and Probate cases where ICWA requirements can apply? This form or another form geared to Family Law and Probate courts may also provide crucial information to these courts before an Indian parent(s)' parental rights are terminated or the Indian child is adopted or is placed in custody of a Legal Guardian away from the Indian parent(s).</p> <p>Additionally, the proposal states that rule 5.552 is being amended to allow an Indian Tribe to <u>fax</u> this form to the court for filing. I do not see a fax filing option listed on the ICWA 100 – INFO sheet.</p> <p><i>Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?</i></p> <p>The proposed form is not complicated, and the language is clear/concise. It also allows for additional input/comments from the Indian Tribe/representative either in the items itself or by way of attachments. The ICWA 100 – INFO sheet also assists in stating the purpose of filing the form and the ease of filling it out.</p>	<p>The ICWA-100-INFO form has been revised to include the fax filing option.</p> <p>No response required.</p>
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		<p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>It may provide a cost savings to the court. It will definitely benefit the court to have the Indian Tribe's input into these cases at an earlier stage, if possible. It could save the court money, in the long run, by avoiding unnecessary hearings, re-hearings or ex-parte hearings.</p> <p><i>What would the implementation requirements be for courts, for example: training staff (positions and hours), revising procedures and process (describe), changing docket codes in case management system, or modifying case management systems:</i></p> <p>For Juvenile a procedure would need to be created to mirror the process for the Caregiver Information form that is currently used. Courtroom Staff would need to be made aware of the form and trained on the process. The Odyssey case management system would need to be updated to capture the filing of the form. It would depend on if this form may also be used in Family Law (FL) adoption cases. If it can, then there would be minimal training needed for judicial officers, courtroom and case processing staff, and legal research staff. There will need to be an addition to the Odyssey case management system and new macros in Odyssey Clerk Edition. The Indian Child Welfare Act (ICWA) Requirements Procedure would need to be updated as well. There will also be a need to train FL adoptions staff on the process of serving, all parties to the case, with</p>	<p>No response required.</p> <p>No response required.</p>
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			<p>the copies of this form given by the Indian Tribe.</p> <p><i>Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:</i> Yes, 3 months is sufficient time.</p> <p><i>How well would this proposal work in courts of different size:</i> It can work well in courts of different sizes since it is an optional form.</p>	<p>No response required.</p> <p>No response required.</p>
9.	<p>Superior Court of California, County of Riverside</p> <p>By Susan Ryan, Chief Deputy of Legal Services</p>	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the form should provide an efficient and cost-effective means for the child's tribe to provide certain information to the court.</p> <p>Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input?</p> <p>Yes, it is recommended that the form be submitted to the court at least three court days prior to the scheduled hearing to allow the court ample time to process the form and have it available for the judicial officer.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>There would be no cost savings.</p> <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), change docket codes in case</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>management systems, or modify case management systems.</p> <p>The court would have to create new filing codes for the ICWA-100 form. Very minimal training of staff would be required.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>The proposal should work well for courts of any size.</p>	No response required.
10.	<p>Superior Court of California, County of San Diego</p> <p>By Mike Roddy, Executive Officer</p>	NI	<p>GENERAL COMMENTS:</p> <p>ICWA-100-INFO</p> <p>- Background, item 1: Delete unnecessary commas and redundant “easily.”</p> <p>“The Tribal Information Form, (form ICWA-100), is intended to provide an easily accessible way for an Indian child's tribe”</p> <p>Background, item 2: Query -- Add instructions for fax filing?</p> <p>How to Fill Out, item 1, par. 1: transpose period & close quote.</p> <p>For branch name, write "Juvenile".</p> <p>Query – Should this be revised to include Family and Probate cases? For example: “... write “Juvenile,” “Family,” or “Probate,” as appropriate.”</p> <p>Comment – In some counties (like San Diego), “branch” refers to the geographical location of the courthouse (e.g., “North County”), and</p>	<p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>

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		<p>“division” is used for the different types of cases (“Juvenile Division”). In San Diego, the Juvenile Division has courts in North County, Central (Meadow Lark), and East County, so a form stating “Juvenile” will not tell the court which branch is hearing the case.</p> <p>Also, if we want the tribe to specify whether the case is in Juvenile, Family, or Probate, it might be difficult for some tribes to determine which “branch” the case is in. Should the instructions provide guidance on how to find this information or tell tribes they can leave this blank if they are not certain?</p> <p>How to Fill Out, item 1, par. 3: Suggestion – If you do not have this information, ask the social worker, if you do not have this information.</p> <p>What to Do With the Form, item 1: Comment -- Is there a reason for specifying that copies be made by tribal representatives? If completing and submitting the form is meant to be done solely by tribal representatives, perhaps that should be made clear earlier in the instructions. For example, in item 1 under “Background,” add, “The form should be completed and filed by the tribal representative.” On the other hand, if the form can be used by any responsible adult in the tribe, why should the instructions specify that the tribal representative make the copies?</p> <p>Suggested change –</p> <p>“Make copies. Tribal representatives should make eight or more copies of the completed form ICWA-100 and any attachments.”</p>	<p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
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			<p>Also, should it be clarified why more than eight copies might be needed?</p> <p>What to Do With the Form, item 2: Suggestion -</p> <p>-</p> <p>“At least five calendar days before the hearing date, bring the original form and the recommended eight copies to the court clerk's office at the courthouse where the hearing will be held. Ask the clerk to file the form for you. Keep one copy of the date-stamped form for yourself. The clerk is responsible for providing will provide a copy of the form to all parties each party and will completing and filing the proof of service form.”</p> <p>- What to Do With the Form, item 3: Suggestion --</p> <p>“At least seven calendar days before the hearing date, mail the original form and all but one of the seven copies to the court clerk's office at the courthouse where the hearing will be held. Keep the eighth copy for yourself. Put two stamps on the envelope. Include Enclose a note indicating "For filing and service" and including the case number. The clerk is responsible for providing will provide a copy of the form to all parties each party and will completing and filing the proof of service form.”</p> <p>What to Do With the Form, add an item between 3 and 4: “If you choose to file the form by fax.” Add instructions for fax filing. Renumber item 4.</p> <p>ICWA-100</p>	<p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
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		<p>Second box in caption: Query – Should “CHILD’S NAME” be changed to “CHILD’S OR NONMINOR’S NAME”? That is, will this form be used for nonminor dependents as well? If so, all other references to “child” on the form should add “or nonminor” (e.g., item 1). Instruction box: Add instructions for fax filing. Item 2b: Change “Name” to “Name(s).” Also, a suggestion to avoid repetition – “Name(s) of tribe's representatives persons authorized to represent the tribe in this case: Item 2c: Suggestion for clarity – “Tribal representative’s contact information” Item 5: Insert comma after “Services.” Item 5a: Suggestion for clarity – Item 5a: Suggestion for clarity – “In the last six months, or since the last hearing, the tribe ... been consulted on the appropriate services to be provided to the parents(s), legal guardian(s), or Indian custodian(s), and the child or nonminor.” Item 5b: Suggestion for clarity – “The tribe submits the following information and comments with regard to case planning, and services and active efforts for the parents(s), legal guardian(s), or Indian custodian(s), and the child or nonminor, and active efforts designed to prevent the breakup of the Indian family.” Item 5c: Insert an apostrophe after “parents” and add “or nonminor’s” after “child’s” (or change “parents and child’s” to “family’s”). Item 6: Change “where” to “if.” Item 6b: Suggest changing “... is ... is not ... aware of ...” to</p>	<p>The committee did not revise the form.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
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		<p>“... does ... does not ... know...”</p> <p>Item 6c: Suggest changing “... is ... is not ... in agreement ...” to</p> <p>“... does ... does not ... agree ...”</p> <p>Item 6d: Move “This” to beginning of second line so that entire sentence is together.</p> <p>Item 7: Change “where” to “if.”</p> <p>Item 7a: Suggestion –</p> <p>“... been consulted regarding the appropriate permanent plan for the child or nonminor should reunification with the parents(s), legal guardian(s), or Indian custodian(s) fail.”</p> <p>Item 7b: Suggestion –</p> <p>“... discussed with the tribe tribal customary adoption as a permanency option should reunification with the parents(s), legal guardian(s), or Indian custodian(s) fail.”</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>Yes. Please see General Comments for specific comments.</p> <p>Does the proposed form address all the issues that should be covered in a way that will facilitate tribal input? Yes. Items 8 and 9 provide space for any additional input the tribe may wish to provide.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>Probably not for the courts (except to the extent it can reduce the number of appeals and writs filed), but possibly for the tribes.</p>	<p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p>
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		<p>What would the implementation requirements be for courts? Training – introducing court clerks and clerical staff to new forms and how they should be processed. Drafting written court procedures to clerks to follow when processing new forms. Drafting new docket codes to be used when the court acknowledges receipt of the form.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final version of the form is provided to courts at least 30 days prior to the effective date. This will give courts sufficient time to update their procedures and provide training to staff.</p> <p>How well would this proposal work in courts of different sizes? Probably quite well, though it will increase the clerks' workload to some degree.</p>	<p>No response required.</p> <p>The form was revised to explain that an additional sheet could be attached if the tribe wished to provide further input on any subject.</p> <p>No response required.</p> <p>No response required.</p>
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