



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-159

For business meeting on: October 1, 2021

Title

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

Rules, Forms, Standards, or Statutes Affected

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

Recommended by

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

Tribal Court–State Court Forum

Hon. Abby Abinanti, Cochair

Hon. Suzanne N. Kingsbury, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Date of Report

September 3, 2021

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Executive Summary

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum recommend amending four rules of court and revising two forms to clarify the procedures required in probate guardianship and specified conservatorship proceedings involving Indian children. The proposed amendments and revisions update the rules and forms to conform to the requirements of the 2016 federal Indian Child Welfare Act regulations and guidelines, California statutory changes, and recent amendments to the California Rules of Court governing all proceedings in which a court is asked to order the removal of an Indian child from the custody of the child's parent or Indian custodian and placement of the child in the custody of a nonparent or to the termination of parental rights. Additional proposed form revisions clarify the information to be provided to the court, promote conformity with existing law, and make technical changes.

Recommendation

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

1. Amend California Rules of Court, rules 7.51, 7.1003, and 7.1013 to clarify and confirm the rights of an Indian child’s tribe and Indian custodian, if any, to receive notices of hearings and other activity and obtain access to status reports in a covered proceeding;
2. Amend California Rules of Court, rule 7.1015 to conform to recent changes in the federal Indian Child Welfare Act regulations, California statutory law, and California Rules of Court, rules 5.480–5.488, including legal issues raised by practitioners, related to implementing the Indian Child Welfare Act;
3. Revise *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) to:
 - Conform to the amendments to rule 7.1015 by modifying item 1c and deleting item 8 to reflect that form ICWA-010(A) must henceforth be used to document the Indian child inquiry;
 - Combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3;
 - Add a new item 4 for the petitioner to explain why appointing a guardian would be in the child’s best interest;
 - Add new subitems to item 6 for the petitioner to inform the court whether the child’s parents or Indian custodian, if any, agree that the court needs to appoint a guardian for the child and that the proposed guardian is suitable;
 - Modify items 1h, 2, and 6 to add references to tribe and Indian custodian in cases involving Indian children; and
 - Make technical changes; and
4. Revise *Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) to reflect that form GC-210(CA) may no longer be used for the Indian child inquiry in probate guardianship proceedings, and to make technical changes.

The text of the rules and the forms, as recommended to be amended and revised, are attached at pages 8–22.

Relevant Previous Council Action

The Judicial Council has acted numerous times by adopting California Rules of Court and Judicial Council forms to implement and improve compliance with the Indian Child Welfare Act (25 U.S.C. §§ 1901–1963) (ICWA), including:

- In 1995, adopted former rule 1439 and amended former rules 1431, 1432, and 1463 to assure proper notice to parents, Indian custodians, and tribes;
- In 1998, amended former rule 1439 and revised forms JV-100 and JV-110 to better identify Indian children; and
- In 2000 and 2005, amended former rule 1439 and revised various juvenile and family law forms to clarify the time and manner of notice under ICWA.

Effective January 1, 2008, following SB 678’s incorporation of substantial provisions of ICWA into California statute, the Judicial Council adopted additional rules of court, including rules 5.480–5.487 and 7.1015, and a set of ICWA forms.¹

Effective January 1, 2020, following the 2016 federal adoption of formal ICWA regulations and issuance of implementation guidelines and the 2018 enactment of AB 3176 to bring California law into conformity, the Judicial Council amended the rules in title 5 applying ICWA to all case types and revised the ICWA forms to bring them up to date with state and federal law.²

Analysis/Rationale

ICWA establishes minimum federal standards that apply to all state court proceedings in which the court could order the involuntary placement of an Indian child in the custody of a nonparent or termination of parental rights to an Indian child. In California, the ICWA standards and procedural requirements are incorporated into the Family Code, the Probate Code, and, most extensively, the Welfare and Institutions Code.³

As noted above, the federal government adopted regulations implementing ICWA and updated its ICWA guidelines in 2016.⁴ In some respects, California law and practice were inconsistent

¹ Judicial Council of Cal., Advisory Com. Rep., *Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes* (Sept. 12, 2007) (adopted Oct. 26, 2007, effective Jan. 1, 2008) available at www.courts.ca.gov/documents/102607ItemA27.pdf. See generally Sen. Bill 678 (Stats. 2006, ch. 838).

² Judicial Council of Cal., Advisory Com. Rep., *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019) (adopted Sept. 24, 2019, effective Jan. 1, 2020), available at <https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000>.

³ See, e.g., Fam. Code, § 3041(e); Prob. Code, §§ 1459–1459.5, 1460.2; Welf. & Inst. Code, §§ 224–224.6.

⁴ Indian Child Welfare Act, [25 C.F.R. §§ 23.1–23.144](#); U.S. Department of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), available at www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

with these regulations and guidelines. Moreover, in 2017 the California ICWA Compliance Task Force delivered a report to the Attorney General identifying a number of legal issues with California's application of ICWA.⁵

Assembly Bill 3176, enacted in 2018, addressed many of the issues discussed above and directed the Judicial Council to adopt any rules or forms necessary to implement its provisions.⁶ Although AB 3176 did not amend the Probate Code provisions that expressly incorporate ICWA's requirements, its amendments to the Welfare and Institutions Code imposed inquiry and notice requirements on probate guardianship and certain conservatorship proceedings.⁷ These requirements are also mandated by ICWA, as implemented by the 2016 regulations.

To avoid unnecessary rules amendments and forms revisions, the 2020 council action included changes to ICWA rules and forms applicable to all case types governed by ICWA and the federal regulations and guidelines. Nevertheless, some gaps remained.

The rules of court implementing ICWA's requirements in probate guardianship proceedings were last amended in 2012; they do not reflect current state or federal law. Updating the rules and forms to conform to changes in the law is necessary to prevent confusion and provide accurate guidance to the judicial officers, court staff, attorneys, and litigants who use them. The amendments in this proposal would bring the inquiry and notice requirements in the probate rules into conformity with ICWA, the 2016 federal regulations, AB 3176, and the ICWA rules in title 5. The proposal would also specify processes for an Indian custodian child's tribe to gain access to specific reports and documents filed in proceedings subject to ICWA's requirements.

In addition, the 2016 regulations clarified the distinction between a "child-custody proceeding," including "foster care placement," and an "emergency proceeding," as well as the scope of an emergency proceeding.⁸ The proposed addition of subdivision (d) to rule 7.1015 applies relevant aspects of ICWA's emergency provisions to temporary guardianships and conservatorships. Specifically, it requires the probate court, before establishing or extending a temporary guardianship or conservatorship for a child the court knows or has reason to know is an Indian child, to find that appointment of the temporary guardian or conservator is necessary "to prevent imminent physical damage or harm to the child."⁹

⁵ California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), available at <https://caltribalfamilies.org/wp-content/uploads/2020/12/ICWAComplianceTaskForceFinalReport2017.pdf>.

⁶ Assem. Bill 3176 (Stats. 2018, ch. 833), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176.

⁷ See Welf. & Inst. Code, § 224.1(d)(1)(A) (defining "Indian child custody proceeding" to include a proceeding under the Probate Code that can lead to placement in the home of a guardian or conservator).

⁸ 25 C.F.R. § 23.2 (emergency proceeding "means and includes any court action that involves an ... emergency placement of an Indian child").

⁹ 25 C.F.R. § 23.113; see also 25 U.S.C. § 1922.

In the course of reviewing form GC-210(CA), the Probate and Mental Health Advisory Committee noted several items requiring revision to clarify the application of existing law to probate guardianship proceedings. First, the committee recommends combining existing items 3, information about the proposed guardian, and 6, suitability of the proposed guardian, into a single item 3 to facilitate the thorough and accurate provision of the information. Second, the committee recommends adding a new item 4 for the petitioner to use to explain why a guardianship, as opposed to continued parental custody, is needed.¹⁰ Third, the committee recommends expanding the scope of item 6 to give the court a clearer picture of the parent's position on the establishment of the guardianship and the appointment of the proposed guardian.¹¹

Finally, the committee and the forum examined the rules and forms in this proposal to identify and replace gender-specific terms with gender-neutral ones consistent with the spirit of the Gender Recognition Act (Sen. Bill 179; Stats. 2017, ch. 853).

Policy implications

The rules amendments and forms revisions in this proposal apply the requirements of ICWA, the 2016 federal regulations implementing ICWA, and SB 3176, which incorporated the federal laws into California statute, to probate guardianships and select conservatorships in which an Indian child is or may be the subject of the proceedings. To the extent that this proposal has policy implications, they stem from the policies underlying federal law and the California statutes incorporating it. The proposal should benefit the judicial branch, justice partners, attorneys, and litigants by clarifying the application of ICWA to probate guardianship and conservatorship proceedings, thereby reducing confusion and delay.

Comments

The proposal circulated for public comment from April 15 through May 27, 2021, as part of the spring 2021 invitation-to-comment cycle. It was sent to the standard mailing list for family, probate, and juvenile law proposals, which 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 family, probate, and juvenile 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 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.

¹⁰ Prob. Code, § 1514(b); see Fam. Code, §§ 3040–3041.

¹¹ The court needs this information because Family Code sections 3040 and 3041 set different standards for granting child custody to a nonparent depending on whether a parent objects. Compare Fam. Code § 3040(a)(3) (best interest) with Fam. Code § 3041(a) (parental custody detrimental).

The proposal received six comments, including comments on behalf of three superior courts, the Orange County Bar Association, and two tribal organizations. One commenter indicated they did not agree with the proposal. Two commenters agreed with the proposal, and three commenters did not indicate whether they agreed.

The superior court comments related primarily to the potential fiscal and operational impacts of the proposed changes and included some minor corrections to the proposal, which have been incorporated. Substantive changes primarily for clarity and consistency with state and federal requirements were suggested by the two tribal commenters, and the majority of those have been incorporated into the proposal as revised.

One commenter suggested that a temporary guardian should not be appointed for an Indian child even if the court had evidence that a temporary guardianship was necessary to “prevent imminent physical damage or harm to the child.” The commenter suggested that if there is evidence to support this finding, then the only appropriate course of action under California law is to require that a dependency petition be filed with the juvenile court. The committee and forum considered this comment, reviewed the relevant state and federal laws, and concluded that neither federal nor state law requires that an emergency proceeding under ICWA be heard exclusively by the juvenile court. Federal and state law require only that any court ordering the emergency removal or placement of an Indian child comply with the requirements of 25 C.F.R. § 23.113 and implementing state law. For example, section 1513(b) of the Probate Code addresses the situation in which a guardianship petition is filed for a child who may be abused or neglected and in need of immediate protection by authorizing the probate court to refer the child to the child welfare agency for a determination of whether to initiate a dependency proceeding. Because a child welfare investigation can be lengthy and emergency measures may be needed to protect the child, section 1513(b) also authorizes the court to appoint a temporary guardian for the child pending completion of the investigation rather than dismissing the petition. ICWA does not preclude the probate court from taking these steps to protect an Indian child. It does, however, require the court to comply with its emergency requirements by finding that a temporary guardianship is necessary to protect the child from imminent physical damage or harm.¹² The proposal was revised to clarify the application of those requirements to a temporary guardianship when the court knows or has reason to know the subject of the case is an Indian child.

Alternatives considered

The committee and forum considered whether to defer action on this proposal until passage of cleanup legislation to update the Probate Code to reflect the requirements in the federal regulations and AB 3176. The committee and forum concluded that the current proposal is

¹² Many petitions for temporary probate guardianships are filed in circumstances that began as informal, voluntary placements of children with nonparents. Emergencies requiring caregivers to obtain legal custody over the children arise more frequently in these situations. For example, an informal caregiver may need to authorize medical treatment for a child in the absence of a parent. If the initial removal of the child or placement with the caregiver was improper under ICWA, the parents or Indian custodian could challenge the placement on that basis without precluding the probate court from taking action necessary to protect the child from harm. See 25 C.F.R. § 23.114.

necessary at this time because the ICWA requirements in federal and state law already apply to probate guardianship proceedings, and the existing rules and forms are inconsistent with those requirements.

Fiscal and Operational Impacts

The superior courts that submitted comments indicated that there would be costs associated with training probate investigators and staff, updating docket codes, and other court procedures. Clerks might require additional time to document the additional orders required. The court may need to take additional time to complete the inquiry requirements and potentially hold emergency hearings. The committee and forum note that these costs are created by the changes to the legal requirements under federal and state law, and that the proposed revisions to the rules simply ensure that they are consistent with federal and state requirements.

Attachments and Links

1. Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015, at pages 8–16
2. Forms GC-210(CA) and ICWA-005-INFO, at pages 17–22
3. Chart of comments, at pages 23–39

Attachment A: Indian Child and Family Preservation Program Comment

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

Rule 7.51. Service of notice of hearing

(a)–(e) * * *

(f) Notice when Indian Child Welfare Act may apply

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

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

(a)–(b) * * *

(c) Access to status report

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

Rule 7.1013. Change of ward’s residence

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

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

(1)–(2) * * *

(3) The ward's parents and any former Indian custodian;

(4) * * *

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

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

(7) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

(b) * * *

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

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

(1) * * *

(2) The ward's parents and any former Indian custodian;

(3) * * *

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

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

(6) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

(d)-(g) * * *

Rule 7.1015. ~~Indian Child Welfare Act in g~~Guardianship and certain conservatorship proceedings involving Indian children (Prob. Code, §§ 1449,

1459, 1459.5, 1460.2, 1511(b), (i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963; 25 C.F.R. §§ 23.1–23.144)

(a) Definitions

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

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

(2) “Petitioner” ~~means and~~ refers to:

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

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

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

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

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

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

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

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.4878 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of

1 the person of ~~an Indian child~~ and to ~~an Indian child's~~ the appointed temporary
2 or general guardian or conservator of the person.

- 3
4 (4) If the court appoints a ~~temporary or general~~ guardian or conservator of the
5 person of ~~the~~ a child ~~involved~~ in a proceeding listed in (1), the duties and
6 responsibilities of a petitioner under the Act and this rule ~~are transferred to~~
7 ~~and~~ become the duties and responsibilities of the appointed guardian or
8 conservator. The petitioner must cooperate with and provide any information
9 the petitioner ~~has~~ knows or possesses concerning the child to the appointed
10 guardian or conservator.

11
12 **(e)—Notice**

13
14 ~~If, at any time after the filing of a petition for appointment of a guardian or~~
15 ~~conservator for a minor child, the court or petitioner knows or has reason to know,~~
16 ~~within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and~~
17 ~~Institutions Code section 224.3(b), that an Indian child is involved, the petitioner~~
18 ~~and the court must notify the child's parents or legal guardian and Indian custodian,~~
19 ~~and the Indian child's tribe, of the pending proceeding and the right of the tribe to~~
20 ~~intervene, as follows:~~

- 21
22 (1)—~~Notice to the Indian child's parents, Indian custodian, and Indian tribe of the~~
23 ~~commencement of a guardianship or conservatorship must be given by~~
24 ~~serving copies of the completed *Notice of Child Custody Proceeding for*~~
25 ~~*Indian Child* (form ICWA-030), the petition for appointment of a guardian or~~
26 ~~conservator, and all attachments, by certified or registered mail, fully prepaid~~
27 ~~with return receipt requested.~~
28
29 (2)—~~The petitioner and his or her attorney, if any, must complete the *Notice* and~~
30 ~~the petitioner must date and sign the declaration. If there is more than one~~
31 ~~petitioner, the statements about the child's ancestors and background~~
32 ~~provided in the *Notice of Child Custody Proceeding for Indian Child* (form~~
33 ~~ICWA-030) must be based on all information known to each petitioner, and~~
34 ~~all petitioners must sign the declaration.~~
35
36 (3)—~~When the petitioner is represented by an attorney in the proceeding, the~~
37 ~~attorney must serve copies of the *Notice of Child Custody Proceeding for*~~
38 ~~*Indian Child* (form ICWA-030) in the manner described in (1) and sign the~~
39 ~~declaration of mailing on the *Notice*.~~
40
41 (4)—~~When the guardianship or conservatorship petitioner or petitioners are not~~
42 ~~represented by an attorney in the proceeding, the clerk of the court must serve~~

1 the *Notice* in the manner described in (1) and sign the certificate of mailing
2 on the *Notice*.

3
4 ~~(5) The original of all *Notices of Child Custody Proceeding for Indian Child*~~
5 ~~(form ICWA 030) served under the act, and all return receipts and responses~~
6 ~~received, must be filed with the court before the hearing.~~

7
8 ~~(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless~~
9 ~~the tribe has designated another agent for service.~~

10
11 ~~(7) Notice must be served on all tribes of which the child may be a member or~~
12 ~~eligible for membership. If there are more tribes or bands to be served than~~
13 ~~can be listed on the last page of the *Notice*, the additional tribes or bands may~~
14 ~~be listed on an *Attachment to Notice of Child Custody Proceeding for Indian*~~
15 ~~*Child* (form ICWA 030(A)).~~

16
17 ~~(8) Notice under the act must be served whenever there is any reason to know~~
18 ~~that the child is or may be an Indian child and for every hearing after the first~~
19 ~~hearing unless and until it is determined that the act does not apply to the~~
20 ~~proceeding.~~

21
22 ~~(9) If, after a reasonable time following the service of notice under the act but~~
23 ~~in no event less than 60 days no determinative response to the *Notice of*~~
24 ~~*Child Custody Proceeding for Indian Child* (form ICWA 030) is received,~~
25 ~~the court may determine that the act does not apply to the proceeding unless~~
26 ~~further evidence of its applicability is later received.~~

27
28 ~~(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of*~~
29 ~~*Child Custody Proceeding for Indian Child* (form ICWA 030) is no longer~~
30 ~~required and subsequent notices to the tribe may be sent to all parties in the~~
31 ~~form and in the manner required under the Probate Code and these rules. All~~
32 ~~other provisions of the act, this rule, and rules 5.480 through 5.487 continue~~
33 ~~to apply.~~

34
35 ~~(11) Notice under the act must be served in addition to all notices otherwise~~
36 ~~required for the particular proceeding under the provisions of the Probate~~
37 ~~Code.~~

38
39 **(d)(c) Duty of Inquiry**

40
41 (1) The court, a the court investigator or county officer appointed to conduct an
42 investigation under Probate Code section 1513 or 1826, and each petitioner;
43 have an affirmative and continuing duty to inquire whether the each child

involved in who is the subject of a matters proceeding identified in (b)(1) is or may be an Indian child.

(2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child ~~involved in who is~~ the subject of the proceeding, if the child is old enough, ~~and the parents, any other legal Indian custodian or previously appointed guardian of the person, and any Indian custodian,~~ available extended family members, as defined in 25 U.S.C. § 1903(2), or other persons having an interest in the child whether the child is or may be an Indian child, ~~and must complete items 1e and 8 of the Guardianship Petition—Child Information Attachment (form GC-210(CA)) Indian Child Inquiry Attachment (form ICWA-010(A)), and attach it that form to his or her~~ the petition.

(3) ~~At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a Parental Notification of Indian Status (form ICWA-020) and deliver the completed form to the petitioner. At the beginning of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, 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 that the child is an Indian child; and

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

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

(5) If the court or county investigator, ~~the~~ petitioner, ~~appointed guardian or conservator,~~ or the attorney for a ~~the~~ petitioner or appointed guardian or conservator, knows or has reason to know or believe that an Indian child is

involved in the subject of the proceeding, but has not conclusively determined that the child is an Indian child, he or she that person must, as soon as practicable, make conduct further inquiry as soon as practicable by:

- (A) Interviewing the parents, Indian custodian, and “extended family members” to gather the information listed in ~~Probate Code section 1460.2(b)(5)~~ that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) Welfare and Institutions Code section 224.3(a)(5);
- (B) ~~Contacting the U.S. Department of the Interior,~~ federal Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; ~~and~~
- (C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child’s tribal membership status or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C); and
- (D) Filing with the court documentation of that further inquiry, including, at a minimum:
 - (i) The names of all persons contacted and interviewed or attempted to be interviewed under subparagraph (A), the dates of those contacts and interviews, and any information gathered from them; and
 - (ii) The dates and methods of contact with the agencies listed in subparagraph (B) and the tribes and persons in subparagraph (C) and any information gathered as a result of those contacts.
- (6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have sufficient evidence to determine that the child is an Indian child, and the further inquiry conducted in (5) has not been conducted, the court ~~may direct any~~ must order one or more of the persons named in (5) to conduct the inquiry and submit the documentation described in that paragraph.
- (7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is

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

- ~~(A) The child or 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 or to any person listed in (5);~~
- ~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is 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.~~

(d) Temporary guardianships and conservatorships of an Indian child

In addition to the applicable requirements in Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062, the following requirements apply to temporary guardianship and conservatorship proceedings if the court knows or has reason to know that the proposed ward is an Indian child:

- (1) Before appointing a temporary guardian or conservator of the person for an Indian child over the objection of a parent, tribe, or Indian custodian, the court must:
 - (A) Advise the parent or Indian custodian that if they cannot afford counsel, the court will appoint counsel for them under section 1912(b) of the Indian Child Welfare Act; and
 - (B) Find, in addition to facts in the petition establishing good cause for the appointment and any other showing the court may require under Probate Code section 2250(b), that the appointment is necessary to prevent imminent physical damage or harm to the child.
- (2) At a hearing under Probate Code section 2250(f) or on a petition, including an ex parte petition, to terminate a temporary guardianship or conservatorship of an Indian child, the court must determine whether the temporary guardianship or conservatorship is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the

1 temporary guardianship or conservatorship is no longer necessary, the court
2 must terminate the temporary guardianship or conservatorship and, if a parent
3 or Indian custodian is available, order the child returned to the physical
4 custody of the parent or Indian custodian.

5
6 (3) Before extending a temporary guardianship or conservatorship of an Indian
7 child, under Probate Code section 2257(b), more than 30 days from the date
8 of its establishment, the court must, in addition to finding good cause for the
9 extension, determine that:

10
11 (A) Terminating the temporary guardianship or conservatorship would
12 subject the child to imminent physical damage or harm;

13
14 (B) The court has been unable to transfer the proceeding to the jurisdiction
15 of the appropriate Indian tribe; and

16
17 (C) It has not been possible to hold a hearing on the petition to appoint a
18 guardian that complies with the substantive requirements of the Act for
19 a foster care placement proceeding.

20
21 **(e)(e) Notice**

22
23 If, at any time after the filing of a petition for appointment of a guardian or
24 conservator for a minor child, the court or petitioner knows or has reason to know,
25 within the meaning of ~~Probate Code sections 1449 and 1459.5 and Welfare and~~
26 ~~Institutions Code section 224.3(b), 224.2(d) and rule 5.481(b),~~ that an Indian child
27 is ~~involved~~ the subject of the proceeding, the petitioner and the court must ~~notify~~
28 give notice of the proceeding and the right of the child's tribe to intervene in the
29 manner prescribed by Welfare and Institutions Code section 224.3(a) and rule
30 5.481(c) to the child's parents, the child's Indian custodian or legal previously
31 appointed guardian of the person, and Indian custodian, if any, and the Indian
32 child's tribe, of the pending proceeding and the right of the tribe to intervene, as
33 follows: or, if the child's tribe has not been determined, all tribes of which the child
34 may be a member or eligible for membership.

GC-210(CA)**Child Information Attachment to
Probate Guardianship Petition**

Case Number: _____

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

This child's name: _____

Fill out a separate copy of this form for **each child** for whom **your petition asks** the court to appoint a guardian.**This form is attached to the Petition, ☐ form GC-210, item 2, or ☐ form GC-210(P), item 8.**The petition asks **the court to appoint** a guardian of this child's (*specify*): ☐ person ☐ estate ☐ person and estate.**1 Tell the court about this child**a. Child's full legal name: _____ Date of birth: _____
First Middle Last mm/dd/yyyy

b. Child's current address: _____

c. Indian child inquiry (*Complete only if your petition asks the court to appoint a guardian of this child's person or person and estate. If your petition asks the court to appoint a guardian of this child's estate only, skip this item and go to item 1d.*)☐ I have asked whether the child is or may be a member of one or more Indian tribes recognized by the federal government, or eligible for membership in such a tribe and the biological child of a tribal member, and whether the child or parents live or are domiciled on a reservation or rancheria or an Alaskan Native village. Form ICWA-010(A), *Indian Child Inquiry Attachment*, is attached to this form.☐ I have not asked about the child's Indian heritage because the parents are unavailable or deceased.*(For more information about your duties under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) and California law, including making the inquiry and completing form ICWA-010(A) if the child is or may be an Indian child, see Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child (form ICWA-005-INFO).)*d. Is this child married? ☐ Yes ☐ No ☐ Never married If you checked "No," was this child married in the past but the marriage was dissolved or ended in divorce? ☐ Yes ☐ No
*(The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)*e. Is this child receiving public benefits? ☐ Yes ☐ No ☐ I don't know (*If you checked "Yes," fill in below.*)

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

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

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

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

Case Number: _____

This child's name: _____

1 Tell the court about this child (continued)

- h. ☐ (Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child custody, or other similar court case.) Describe the court case below:

Type of Case	Court District or County and State or Tribe	Case Number (if known)

- i. ☐ (Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of State Hospitals.) Write the name of the institution here:

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

Relationship	Name	Home Address (Street, City, State, Zip)
Mother	_____	_____
Father	_____	_____
Grandmother (Mother's mother)	_____	_____
Grandfather (Mother's father)	_____	_____
Grandmother (Father's mother)	_____	_____
Grandfather (Father's father)	_____	_____
Sibling	_____	_____
Sibling	_____	_____
Sibling	_____	_____
Sibling	_____	_____
Sibling	_____	_____
Sibling	_____	_____
Sibling	_____	_____

- ☐ (Check here if this child has additional relatives, including parents, grandparents, siblings, or half-siblings, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Item 2: Other Relatives" at the top of the paper and attach it to this form.)

Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

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

Relationship	Name	Home Address (Street, City, State, Zip)
Spouse (Guardianship of the estate only)	_____	_____
Person nominated as guardian of this child (if someone other than a proposed guardian named in ③)	_____	_____
Indian custodian (if any)	_____	_____
Child's tribe (if any and if known)	_____	_____
<input type="checkbox"/> (Check here if there is more than one tribe that the child may be eligible for membership in, and list the names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of the child, and "Attachment 2: Child's tribes" at the top of the paper and attach it to this form.)		

3 Information about the proposed guardian:

a. Name (name all proposed guardians if more than one): _____

b. Relationship(s) to the child named in ① (check all that apply):

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

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

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

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

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

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

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

☐ (Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4: Guardianship—Best Interest of Child" at the top of the paper and attach it to this form.)



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

- 5 Explain why appointing the person named in 3 to be this child's guardian would be in the child's best interest:

☐ (Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)

- 6 a. Does one or do both of this child's parents agree:

- (1) That the court needs to appoint a guardian for the child?

Parent (name): _____ ☐ Yes ☐ No ☐ I don't know

Parent (name): _____ ☐ Yes ☐ No ☐ I don't know

- (2) That the person named in 3 should be the child's guardian?

Parent (name): _____ ☐ Yes ☐ No ☐ I don't know

Parent (name): _____ ☐ Yes ☐ No ☐ I don't know

- b. If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree:

- (1) That the court needs to appoint a guardian for the child?

Custodian (name): _____ ☐ Yes ☐ No ☐ I don't know

- (2) That the person named in 3 should be the child's guardian?

Custodian (name): _____ ☐ Yes ☐ No ☐ I don't know

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

Your relationship to this child:

☐ Relative (specify relationship): _____

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

- 8 Except as otherwise stated in this form, the statements made in the petition to which this form is attached fully apply to this child.

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out **whether** the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

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

1. Try to find contact information for the child's parents, the child's Indian custodian (if the child is living with an Indian person other than a parent) **or other legal guardian**, the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents, **the child's Indian custodian or any other legal guardians**, available **extended** family members, and any other persons known to have an interest in the child and ask them (and the child, if old enough) these questions:
 - a. Is the child a member of a tribe **or eligible for tribal membership**, and if they think **the child** might be, then which tribe or tribes?
 - b. Are **the parents or other members of the extended family** members of a tribe, and if they think they might be, which **tribe or tribes**?
 - c. Does the child, or **do the child's parents or Indian custodian, if any**, 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?
 - f. **Do they have any other information indicating the child is an Indian child?**
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment*, and **attached it to the petition**. This **requirement** does not apply to a petition for appointment of a guardian of the estate only.

After **you take** the steps described above, 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 talk to answers **"Yes"** to any of your questions. Tribes that learn **about** the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction.

Your contacts with the tribe or tribes should include:

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

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

Following your inquiry about the child's Indian status and contacts with the child's tribe or tribes, **if you know or have reason to know the child is an Indian child**, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for 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, a member of the child's extended family or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live **on a reservation or rancheria or in an Alaskan Native village**;

(continued on next page)

Page 1 of 2

You have reason to know (*continued*):

3. If the child is or has been a ward of the tribal court; or
4. If the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There **may also** be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

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

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tips on how to find the address for the child's tribe or tribes

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

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the *Notice* to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 20240, and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the *Notice* and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birthdate, and birthplace; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

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

If you have an attorney, **the attorney** will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the *Notice*, but you must deliver copies of the *Notice* and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then complete 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, **completed and signed copies of the following forms:**
 - a. Your petition;
 - b. Form ICWA-010(A), *Indian Child Inquiry Attachment*; and
 - c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
 - a. The original signed *Notice* (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A));
 - b. All return receipts given to you by the post office and returned from the mailing; and
 - c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Tribal Families Coalition by Mica Llerandi, Senior Attorney, Legal and Program Services	N/I	<p>The proposed amendments implement Assembly Bill 3176 (2018, Waldron), a bill sponsored by CTFC codifying the 2016 federal ICWA regulations into California law. We appreciate the attention to the issue and the opportunity to provide comments on the important changes to increase ICWA compliance in probate guardianship and conservatorship cases.</p> <p>Request for Specific Comments <i>Does the proposal adequately address the stated purpose?</i> Yes, the proposal clearly and adequately addresses the stated purpose.</p> <p>Regarding Proposed Edits to Rules of Court</p> <p>- Rule 7.51 Rule 7.51 concerns service of the notice of hearing. The amended references rule 7.1015, which is also subject to amendment. Under the current version of rule 7.1015(c) addresses notice, but with the amendment this subsection is moved to 7.1015(e). Rule 7.15 should reflect the proposed change for rule 7.1015 to subsection (e).</p> <p>- Rule 7.1003 CTFC supports the changes proposed in rule 7.1003, specifically subsection (c)(2) and (c)(3).</p> <p>Regarding subsection (c)(2), the changes to the rule authorize a tribe's access to the guardianship status reports and for the reports to</p>	<p>No response required</p> <p>No response required.</p> <p>The proposal was revised in response to this comment.</p> <p>No response required.</p>

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>be provided through the Clerk of the court. Often, in probate cases, the petitioners are unrepresented and do not know requirements or responsibilities for sending documents to tribes. As a result, tribes have difficulty accessing the guardianship reports causing delays in the proceeding. Requiring the Clerk of the court to send the investigator's report to the tribe will ensure that the tribe is receiving court documents in a timely manner.</p> <p>CTFC supports subsection (c)(3) because it affirms the right of a tribe to receive the guardianship report, even if the tribe has not intervened in the proceeding. Often, as a lack of resources, tribes are not able to intervene in guardianship cases, and as a result will opt to monitor the guardianship case. However, monitoring cases becomes difficult when a tribe does not receive updates or Requiring that tribes always receive a report allows the tribe to evaluate a prospective guardian and the placement to ensure that guardian will support the Indian child's connection with the tribe. Without reports, a tribe's analysis on the appropriateness of a proposed guardian is limited to the information provided in the guardianship petition.</p> <p>- Rule 7.1015 CTFC recommends including a definition of "Indian child" in the rule. With the rule adding subsection (a)(2) defining "emergency proceeding" for cases involving an "Indian</p>	<p>The proposal does not address service of the investigator's report. Rule 7.1003 governs access to the confidential guardianship status report. The guardian files this report with the court once a year after appointment. The court does not send the report to anyone. Under section 1513.2(c) of the Probate Code, this report is confidential and may be made available only to persons who have been served in the proceedings or their attorney. The amendment to the rule clarifies that an Indian child's tribe is entitled to obtain access to this report.</p> <p>"Indian child" is defined by statute. Generally, the Judicial Council avoids repeating statutory language into the rules of court unless it is required for clarity.</p>

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>child,” as a distinct legal term, it is important to define “Indian child” will be important.</p> <p>CTFC recommends updating the title language of rule 7.1015 to “Guardianship and Certain Conservatorship proceedings involving Indian Children.” This update would ensure that practitioners and judges see the applicability of the rule to the triggering event of a proceeding involving an Indian child.</p> <p>Regarding Proposed Edits to Judicial Council Form GC-210(CA) CTFC recommends two edits to GC-210(CA). In section 1(c), the petitioner must assert whether the parents were asked about the child’s Indian heritage. The petition should offer an additional option, specifically, “I have not asked about the child’s Indian heritage because the parents are unavailable or deceased.” This additional checkbox would help the judicial officer reviewing the petition to determine if further inquiry is necessary. Section 2, on page 3, of the petition inquires about the child’s tribe. Unlike the ICWA-030, the GC-210(CA) allows for the options of only one tribe that the child is affiliated with to be listed. The petition must offer an opportunity for the petitioner to detail whether the child may be connected to more than one tribe. A suggested addition would be to include language under the line for “Child’s Tribe” to state, “Check here if there is more than one tribe that the child may be eligible for membership with and list the names and</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>

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			addresses on a separate sheet of paper. Write “Form GC-210(CA),” the name of this child and “Attachment 2: Child’s tribes.” This addition will ensure that the judicial officer is ensuring that the ICWA inquiry is conducted and that the child’s tribe(s) are properly noticed.	
2.	Indian Child and Family Preservation Program by Joanne Willis Newton, Attorney	NI	<p>*¹As a general comment, the citation to authorities incorporated in the rules should include references to the applicable provisions of 25 CFR Part 23.</p> <p>Rule 7.51(f) should be revised as follows: <u>If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or conservatorship proceeding, notice consistent with section 224.3(a) of the Welfare and Institutions Code and corresponding federal regulations to the minor’s parents or legal guardian, Indian custodian, if any, and the child’s tribe must be given as prescribed in rule 7.1015(d).</u></p> <p>Recognizing that if there is an Indian custodian involved they have nearly identical rights as the parent, Rule 7.1013(a)(7) should be revised as follows: <u>(7) If the ward is an Indian child, the child’s former Indian custodian(s) if any, and, if the child’s tribe has intervened, the child’s tribe.</u></p>	<p>The advisory bodies considered this comment but did not agree that citation to the regulations was necessary, as the existing statutory references are sufficient to establish the authority for the rule provisions.</p> <p>The proposal was revised in response to this comment to remove the reference to the child’s tribe from rule 7.51(f) and replace it with a general cross reference to rule 7.1015(e), which prescribes the persons, including the child’s tribe, who must be given notice and the manner of that notice. A reference to section 224.3 of the Welfare and Institutions Code was added to rule 7.1015(e) to clarify the source of the requirements.</p> <p>The proposal was revised in response to this comment to add a reference to Indian custodian in rule 7.1013(a)(3) along with parents of the ward.</p> <p>The proposal was revised in response to this comment to add a reference to Indian custodian in rule 7.1013(c)(2) along with parents of the ward.</p>

¹ This comment was submitted in track changes and the substance has been converted to fit into the comment chart. The entire comment is attached.

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>Rule 7.1013(c)(6) should be revised as follows: (6) If the ward is an Indian child, <u>the child's former Indian custodian(s), if any, and, if the child's tribe has intervened, the child's tribe.</u></p> <p>Rule 7.1015(a) Definitions: Definition of "emergency proceeding" should be removed. The authority for a child welfare agency to execute a temporary emergency removal of an Indian child is supported by provisions in the WIC, and circumscribed by the necessity to hold the detention hearing on an expedited basis. There is no equivalent authority for a private person to execute a temporary removal of an Indian child to effect a temporary guardianship. If the petitioner believes the standard for emergency removal exists (imminent physical damage or harm), the appropriate step is to initiate a referral to a child welfare agency or file a JV-210 with the agency to request filing of a 300 petition.</p> <p>Rule 7.1015(c)(2) should be revised as follows: (2) Before filing his or her a petition <u>for appointment of a guardian or conservator of the person</u>, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents, any other legal <u>previously appointed guardian of the person</u>, and any Indian custodian, <u>and consistent with section 224.2(b) of the Welfare and Institutions Code and corresponding federal regulations, extended family members, and others having an</u></p>	<p>The proposal was revised in response to this comment as discussed below.</p> <p>The advisory bodies have removed the definition of "emergency proceeding" from the rule to avoid confusion. The advisory bodies have nevertheless determined that neither federal nor state law preclude the probate court from appointing a temporary guardian or conservator for an Indian child in most circumstances if the court complies with the requirements for "emergency proceedings," as discussed in more detail in response to the comment on rule 7.1015(d).</p> <p>The proposal was revised in response to this comment to include references to extended family members and others having an interest in the child.</p>

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Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p><u>interest in the child</u>, whether the child is or may be an Indian child, and must complete items 1e and 8 of the Guardianship Petition—Child Information Attachment (form GC-210(CA)) Indian Child Inquiry Attachment (form ICWA-010(A)), and attach it <u>that form</u> to his or her <u>the</u> petition.</p> <p>Rule 7.1015(c)(3)(C) should be revised to add reference to Indian custodian.</p> <p>Consistent with section 224.2(e) of the Welfare and Institutions Code, rule 7.1015(c)(5) and (6) should be revised as follows:</p> <p>(5) If the court or county investigator, <u>the</u> petitioner, appointed guardian or conservator, or the attorney for a <u>the</u> petitioner or appointed guardian or conservator, knows or has reason to know <u>or believe</u> that an Indian child is involved in the proceeding, <u>but does not have confirmation from a party or a tribe that the child is an Indian child</u> he or she <u>that person</u> must make further inquiry as soon as practicable by:</p> <p>(6) If the court knows or has reason to know <u>or believe</u> that an Indian child is involved in the proceeding, <u>but does not have confirmation from a party or a tribe that the child is an Indian child</u> the court may direct any <u>must direct one or more</u> of the persons named in (5) to conduct the inquiry described in that paragraph.</p>	<p>Rule 7.1015(c)(3)(C) included a reference to Indian custodian as circulated for public 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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Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>Rule 7.1015(d) - See comment above removing "emergency proceeding" definition. It is important the family court and probate court not be used for emergency removals for the reasons stated above and because ICWA does not apply to such proceedings (25 CFR 23.103(a)(2)).</p> <p>Proposed subdivision (d) should be replaced with the following:</p> <p><u>(1) Emergency proceedings for the removal of Indian children are only authorized under Welfare and Institutions Code section 319. A petition for appointment of a temporary guardian or conservator of the person of an Indian child is not an emergency removal within the meaning of 25 U.S.C. section 1922 and cannot be used to circumvent the requirements of the Act.</u></p> <p><u>(2) When a petitioner has a good faith belief that removal of an Indian child from a parent, guardian or Indian custodian is necessary to prevent imminent physical damage or harm to the child, the petitioner may apply to a social worker to commence dependency proceedings in the juvenile court pursuant to and in accordance with Welfare and Institutions Code section 329, using the <i>Application to Commence Proceedings by Affidavit and Decision by Social Worker (JV-215)</i></u></p>	<p>After careful consideration of this comment, the advisory bodies have determined that probate guardianships fall within ICWA's definition of a "child-custody proceeding" that can culminate in a "foster-care placement" in the home of a guardian or conservator (see 25 C.F.R. § 23.2); that neither federal nor state law require an "emergency proceeding" be conducted by a specific state court as long as the legal requirements are complied with; and that the application of ICWA's emergency placement protections to Indian children subject to temporary guardianship proceedings implements the Act rather than circumventing it. The commenter cites 25 C.F.R. § 23.103(a)(2) for the proposition that an emergency proceeding under the Indian Child Welfare Act cannot take place in family or probate court, but that regulation states only that "ICWA includes requirements that apply whenever an Indian child is the subject of:... (2) An emergency proceeding." 25 C.F.R. § 23.103(a)(3) does appear to exclude family law custody proceedings from ICWA's application when they result in the award of custody of an Indian child to one parent, but probate guardianships award legal and physical custody to a nonparent. With respect to California law, Welfare and Institutions Code section 224.1(d)(1) clearly contemplates that an Indian Child Welfare Act proceeding can take place within the probate court. Subsection 224.1(l) defines "'emergency proceeding' <i>for the purposes of juvenile dependency proceedings</i> [as] the initial petition hearing held pursuant to Section 319" (emphasis</p>

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All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Form GC-210(CA)</p> <p>The following question should be added to item 1:</p> <p>Does the child live on an Indian reservation? Yes ____ No ____ If you checked “Yes”, what reservation? _____</p> <p>Item 1(h) should be revised to add “or Tribe” behind Court District or County and State in middle column.</p> <p>The addition of “Indian custodian” and “Tribe” are very important in item 2.</p> <p>Add a question to item five: "If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree that the court needs to appoint a guardian for the child?"</p> <p>ICWA-005-INFO</p> <p>Revise the “Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment” as follows:</p>	<p>added). It does not restrict the application of the emergency proceeding requirements in other proceedings. Section 1513(b) provides for the emergency protection of all children, including Indian children, by the probate court when they may come under the jurisdiction of the juvenile dependency court by authorizing the court to refer the child to the child welfare agency and take whatever steps are necessary to protect the child, including appointing a temporary guardian.</p> <p>The form was revised in response to this comment.</p> <p>The form was revised in response to this comment.</p> <p>No response required.</p> <p>Proposed subitem c. was added to item 6 in response to this comment.</p> <p>The form was revised in response to this comment.</p>

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Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><i>Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment</i></p> <ol style="list-style-type: none"> 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) or other legal guardian, the child's grandparents and great-grandparents, and other available family members. 2. Contact the child's parents, any other legal guardian, and the child's Indian custodian or any other legal guardians, and other available extended family members, and any other persons known to have an interest in the child and ask them (and the child, if he or she is old enough) these questions: <ol style="list-style-type: none"> a. Is the child a member of a tribe or eligible for tribal membership, and if they think he or she might be, then which tribe or tribes? b. Are the parents or other members of the extended family they members of a tribe, and if they think they might be, which tribe or tribes? c. Does the child, or do the child's parents or Indian custodian, if any, 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? f. Do they have any other information indicating the child is an Indian child? 3. If you are in touch with any of the child's relatives, ask them the same questions. <p>The court clerk's office cannot file your petition unless you have filed out form ICWA-010(A), Indian Child Inquiry Attachment, and attached it to the petition. This requirement does not apply to a petition for appointment of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 801 or 802.2.</p> <p>The duty of inquiry applies for 600 cases as well. (WIC 224.2(a)).</p> <p>Revise the “Some tips to help you figure out if you have reason to know the child is an Indian child” as follows:</p> <p><i>Some tips to help you figure out if you have a reason to know the child is an Indian child.</i></p> <p>You have reason to know:</p> <ol style="list-style-type: none"> 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 or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting 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 on a reservation or in an Alaskan Native village; 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 Services or has been a ward of the tribal court; 3.4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe. 	The form was revised in response to this comment.
3.	Orange County Bar Association by Larisa M. Dinsmoor, President	A	Specific Comment: Does the proposal appropriately address the stated purpose? Yes.	No response required.
4.	Superior Court of California, County of Los Angeles by Bryan Borys	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No</p>	<p>No response required.</p> <p>No response required.</p>

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Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<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> <p>Training will be required for Probate investigators and staff regarding inquiry, advisements, notice, and access to reports to the authorized tribe. Additionally, training may be required for Probate attorneys and examiners regarding notice requirements for identifying any service defects in the probate notes or reports that are prepared. The court will be required to provide notice to service providers providing information, and update instructions regarding guardian's responsibilities to give notice to the tribe at self-help clinics.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes</p>	<p>No response required. The changes and any associated training are required by the changes to federal and state law rather than this proposal. In addition, training on ICWA-related requirements is available through the Judicial Council's Tribal/State Programs Unit.</p> <p>No response required.</p>
5.	Superior Court of California, County of Orange Family Law and Juvenile Division by Vivian Tran, Administrative Analyst	NI	<p>Comments</p> <ul style="list-style-type: none">▪ Rule 7.51. Service of notice of hearing▪ There may be a typo on page 6, as the rule indicates to reference rule 7.1015(d) for noticing the child's tribe, however the correct subsection is (e).▪ No impact to Juvenile.▪ Rule 7.1003. Confidential guardianship	<p>The proposal has been revised to correct this error.</p>

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Commenter	Position	Comment	Committee Response
		<ul style="list-style-type: none">status report form<ul style="list-style-type: none">No impact to Juvenile.Rule 7.1013. Change of ward's residence<ul style="list-style-type: none">No impact to Juvenile.Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)<ul style="list-style-type: none">There is a sentence on page 8 (numbers 9 and 10 in the margin) that reads "when it is known or there is reason to know that the minor is or may be an Indian child". Unsure of where this sentence will land in the actual code.No impact to Juvenile.Guardianship Petition – <i>Child Information Attachment</i> (GC-210(CA))<ul style="list-style-type: none">The form directs the applicant to complete Indian Child Inquiry Attachment (ICWA-010(A)) and indicates the form is attached to the this form (GC-210(CA)).No impact to Juvenile.<i>Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child</i> (ICWA-005-INFO)<ul style="list-style-type: none">Contacted Judicial Council as the form is currently unavailable on their website.Form now includes instructions for the Petitioner to fill out the Indian Child Inquiry	<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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	Commenter	Position	Comment	Committee Response
			<p><u>Attachment (ICWA-010(A))</u> and attach it to the petition (does not apply to a petition submitted for guardianship of the estate only or a 602 or 601 petition).</p> <ul style="list-style-type: none">▪ No direct impact to Juvenile.▪ Form may need to be updated in the clerk's office/courtrooms if it is a form that is available to the public/attorneys, although changes to the form have no impact as to Juvenile. <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none">▪ <i>Does the proposal appropriately address the stated purpose?</i>▪ Yes, everything that the proposal is suggesting is addressed. <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none">▪ <i>Would the proposal provide cost savings? If so, please quantify.</i>▪ I am unsure if the proposal would provide cost savings.▪ <i>What would the implementation requirements be for courts – for example, training staff (please identify position and expected hours of training), revising</i>	<p>No response required.</p> <p>No response required.</p>

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Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

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		<p><i>processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <ul style="list-style-type: none">▪ Implementation would affect Probate only and <i>may</i> include:▪ Training:▪ The clerk will now make the status report accessible to the child's tribe if they have intervened in the proceedings or if a court order was granted requesting access to the status report.▪ The petitioner must now complete the Indian Child Inquiry Attachment (ICWA-010(A)) and attach to the petition. Unsure which area/department needs to be aware (Case Processing or Courtroom), but they may need to be aware of this change.▪ Clerks and Case Processing may need to be aware of the updated changes on the Child Information Attachment (GC-210(CA)) form.▪ Procedures:▪ The rule adds an emergency proceeding section, so there may be a procedure update (unsure if it would be an existing procedure or if a new procedure would need to be created).▪ The petitioner must now complete the Indian Child Inquiry Attachment (ICWA-010(A)) and attach to the petition. The procedures may need to be updated to reflect this change.▪ If at any point in the proceeding a guardian	<p>No response required.</p> <p>No response required. Note, however, that completion and documentation of the ICWA inquiry is required by existing law. This proposal simply changes the form that must be used to document the ICWA inquiry.</p> <p>No response required.</p> <p>The proposal has been revised to clarify that the findings required in the rule are required in the context of judicial determinations already required under the Probate Code.</p> <p>See response above.</p> <p>See response above.</p>

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Commenter	Position	Comment	Committee Response
		<p>or conservator may be appointed that is not the biological parent of the proposed ward/conservatee, the Court must inquire of each participant if they know or has reason to know that the child is an Indian child, instruct the parties to notify the Court if they receive information that provides reason to know that the child is an Indian child, and order the parent, existing guardian, or Indian custodian to complete the Parental Notification of Indian Status (ICWA-020). A procedure may need to be updated to reflect this information.</p> <ul style="list-style-type: none">▪ Docket Codes:▪ A docket code may need to be created for the following items:<ul style="list-style-type: none">▪ Emergency hearing (for tracking/stats?)▪ ICWA-010 form▪ ICWA-020 form▪ Hearings:▪ A new hearing may need to be created for emergency hearings▪ Forms update:▪ Child Information Attachment (GC-210(CA)) has been updated and copies of the new form may need to be available at the clerk's office.▪ Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child (ICWA-005-INFO) has been updated and copies of the new form may need to be available at the clerk's office.	<p>No response required.</p> <p>The advisory bodies believe that, in most cases, the determinations required by ICWA can be made at the hearings held under Probate Code sections 2250(b), 2250(f), and 2257. To the extent that a separate hearing is necessary to comply with ICWA and the federal regulations at 25 C.F.R. § 23.113(b)(2), the requirement is not waivable, as ICWA sets minimum standards to which state court proceedings are required to conform.</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">▪ Case Management system changes:▪ Unsure if the case management system would be impacted.▪ <i>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i>▪ Unsure if 3 months would be enough time for these changes to be implemented due to the potential procedure changes, docket code and hearing type updates, and potential training.	<p>No response required.</p> <p>No response required.</p>
6.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	N	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide costs savings? If so, please quantify. No.</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), changing docket codes in case management systems, or modifying case management systems.</p> <p>Business Office – Minimal impact. Staff will need to be informed of the form revisions. In addition, the court's Guardianship of the Person Packet will have to be updated with the newest version of Judicial Council Form #GC-210(CA).</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Courtroom Clerks – Courtroom clerks will be required to memorialize the orders that are being proposed for California Rules of Court, rule 7.1015(c)(3) & (4). This could add 1-2 hours/week to the processing time, when completing minutes.</p> <p>Probate Examiners – Examining staff will require training in regards to looking for ICWA notice on temporary petitions. They will also need to be notified of the form changes and the need for ICWA-010(A). Additional changes may need to be made to probate note templates to encompass the required orders that need to be made in compliance with California Rules of Court, rule 7.1015(c)(3) & (4). There would need to be additional training to prepare for the changes in California Rules of Court, rule 7.1013, which would entail training the examiners to require notice to the Indian child's tribe when a change of residence is requested. Time estimate for training = 1 hour.</p> <p>Court Investigators – Investigators will need to be informed of the new requirements. No training would be needed.</p> <p>Judicial Officers - California Rules of Court, rule 7.1015(c)(3) & (4) will require judicial officers to make an inquiry at each appointment hearing (temporary and general) and make</p>	<p>The requirements that the court ask each participant about the child's Indian status and that the responses be made on the record were established by federal regulation, at 25 C.F.R. § 23.107, included in Welfare and Institutions Code section 224.2(a), (c), and applied to probate guardianships by Welfare and Institutions Code section 224.1(d)(1)(A) and rules 5.480–5.481 of the California Rules of Court.</p> <p>Note that these changes are required as a result of changes to federal and state law. Training and technical assistance on ICWA-related matters is available upon request from the Judicial Council's Tribal/State Programs Unit.</p> <p>No response required.</p> <p>The requirements that the court ask each participant about the child's Indian status and that the responses be made on the record were established by federal regulation, at 25 C.F.R.</p>

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	Commenter	Position	Comment	Committee Response
			<p>additional orders, as necessary. This may take an excessive amount of time and appears duplicative since many of the inquiries are already made in the forms and the Probate Examiner can note the deficiency of not filing a ICWA-010(A).</p> <p>Other comments: If the court will be required to send ICWA notice for temporary petitions, pursuant to California Rules of Court, rule 7.1015(b)(2), this will 1) be labor intensive and 2) may not be feasible as the matters are usually set 5-10 days out. This would rarely give the tribe or parties time to respond.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, provided the final versions of the forms are provided at least 30 calendar days before the effective date to ensure that there is sufficient time to update procedures, order printed stock, and notify staff.</p>	<p>§ 23.107, included in Welfare and Institutions Code section 224.2(a), (c), and applied to probate guardianships by Welfare and Institutions Code section 224.1(d)(1)(A) and rules 5.480–5.481 of the California Rules of Court.</p> <p>The ICWA notice requirements were established by federal regulation, at 25 C.F.R. §§ 23.111, and are not waivable by state law. To the extent that appointment of a temporary guardian or conservator is necessary to prevent imminent physical damage or harm to the child, both 25 C.F.R. § 23.113 and California Rules of Court, rules 7.1012 and 7.1062 appear to authorize an exception to federal and state notice requirements in exigent circumstances.</p> <p>No response required.</p>

Attachment A

Comments of Indian Child and Family Preservation Program (ICFPP)
by Joanne Willis Newton, Attorney

LAW OFFICES OF JOANNE WILLIS NEWTON
A PROFESSIONAL CORPORATION

May 27, 2021

Ann Gilmour and Corby Sturges
Judicial Council of California
455 Golden Gate Ave.
San Francisco, CA

Sent via email to: corby.sturges@jud.ca.gov and ann.gilmour@jud.ca.gov

RE: SPR21-12, Juvenile Law - Short-Term Therapeutic Treatment Programs

Dear Mr. Sturges and Ms. Gilmour:

I am writing on behalf of my client, the Indian Child and Family Preservation Program (ICFPP), at the instruction of ICFPP's Executive Director, Liz Elgin DeRouen. ICFPP is a Tribal consortium that provides child welfare services to the following federally recognized Tribes:

1. Cloverdale Rancheria Band of Pomo Indians;
2. Coyote Valley Rancheria Band of Pomo Indians;
3. Dry Creek Rancheria Band of Pomo Indians;
4. Kashia Band of Pomo Indians of Stewarts Point Rancheria;
5. Lytton Rancheria Band of Pomo Indians; and
6. Manchester-Point Arena Band of Pomo Indians.

Specifically, this letter concerns JCC's consultation on SPR21-12. ICFPP appreciates JCC's efforts to solicit input from California Tribes and takes this opportunity to submit the comments imbedded in the attached Word document and requested edits indicated in red and blue font.

Should you have any questions concerning the comments, please feel free to contact me.

Respectfully,



Joanne Willis Newton

cc: Elizabeth Elgin DeRouen, ICFPP Executive Director
ICFPP Board of Directors;

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

Commented [JWN1]: As a general comment, the citation to authorities incorporated in the rules should include references to the applicable provisions of 25 CFR Part 23.

Rule 7.51. Service of notice of hearing

(a)–(e) * * *

(f) Notice when Indian Child Welfare Act may apply

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or conservatorship proceeding, notice to the the minor’s parents or legal guardian, Indian custodian, if any, and the child’s tribe must be given as prescribed in rule 7.1015(d).

Commented [JWN2]: Consistent with WIC 224.3(a) and corresponding federal regulations

Rule 7.1013. Change of ward’s residence

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

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

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

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

(7) If the ward is an Indian child, the child's former Indian custodian(s) if any, and, if the child's tribe has intervened, the child's tribe.

Commented [JWN3]: Recognizing that if there is an Indian custodian involved they have nearly identical rights as the parent.

(b) * * *

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

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

(1)–(3) * * *

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

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

(6) If the ward is an Indian child, the child's former Indian custodian(s), if any, and, if the child's tribe has intervened, the child's tribe.

(d)–(g) * * *

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

(a) Definitions

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

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

Commented [JWN4]: Definition of "emergency proceeding" should be removed. The authority for a child welfare agency to execute a temporary emergency removal of an Indian child is supported by provisions in the WIC, and circumscribed by the necessity to hold the detention hearing on an expedited basis. There is no equivalent authority for a private person to execute a temporary removal of an Indian child to effect a temporary guardianship. If the petitioner believes the standard for emergency removal exists (imminent physical damage or harm), the appropriate step is to initiate a referral to a child welfare agency or file a JV-210 with the agency to request filing of a 300 petition.

(2) ~~“Emergency proceeding” refers to:~~

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

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

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

(32) ~~“Petitioner” means and~~ refers to:

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

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

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

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

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

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

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

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

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

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

(c) **Inquiry**

- (1) The court, ~~a~~ the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner, have an affirmative and continuing duty to inquire whether the each child involved in ~~the a~~ matters identified in (b)(1) is or may be an Indian child.
- (2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents, any ~~other legal~~ previously appointed guardian of the person, ~~and~~ any Indian custodian, extended family members, and others having an interest in the child, whether the child is or may be an Indian child, ~~and must complete items 1e and 8 of the Guardianship Petition—Child Information Attachment (form GC-210(CA)) Indian Child Inquiry Attachment (form ICWA-010(A)), and attach it that form to his or her the petition.~~
- (3) ~~At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a Parental Notification of Indian Status (form ICWA-020) and deliver the completed form to the petitioner. At the initiation of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, 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 that the child is an Indian child; and

Commented [JWN5]: Consistent with WIC 224.2(b) and corresponding federal regulations

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

- 4 (4) If the parent, Indian custodian, or guardian ~~does not personally appear at a~~
5 ~~hearing in~~ is not available at the initiation of a proceeding identified in (b)(1),
6 the court ~~may~~ must order the petitioner to use reasonable diligence to find
7 and ~~ask~~ inform the parent, Indian custodian, or legal guardian that the court
8 has ordered that person to complete and deliver to petitioner a *Parental*
9 *Notification of Indian Status* (form ICWA-020).
10
11 (5) If the court or county investigator, ~~the~~ petitioner, ~~appointed guardian or~~
12 ~~conservator~~, or the attorney for a ~~the~~ petitioner or ~~appointed guardian or~~
13 ~~conservator~~, knows or has reason to know or believe that an Indian child is
14 involved in the proceeding, but does not have confirmation from a party or a tribe that the
child is an Indian child, ~~he or she~~ that person must make further inquiry
15 as soon as practicable by:

Commented [JWN6]: Consistent with WIC 224.2(e)

- 16
17 (A) Interviewing the parents, Indian custodian, and “extended family
18 members” as defined in 25 United States Code section 1903(2), to
19 gather the information listed in ~~Probate Code section 1460.2(b)(5) that~~
20 ~~is required to complete the Notice of Child Custody Proceeding for~~
21 *Indian Child* (form ICWA-030) Welfare and Institutions Code section
22 224.3(a)(5);
23
24 (B) Contacting the ~~U.S. Department of the Interior, federal~~ Bureau of
25 Indian Affairs and the California Department of Social Services for
26 assistance in identifying the names and contact information of the tribes
27 of which the child may be a member or eligible for membership; and
28
29 (C) Contacting the tribes and any other persons who reasonably can be
30 expected to have information regarding the child’s tribal membership
31 status or eligibility for membership. These contacts must at a minimum
32 use the methods and share the information listed in Welfare and
33 Institutions Code section 224.2(e)(2)(C).
34

- 35 (6) If the court knows or has reason to know or believe that an Indian child is
36 involved in the proceeding, but does not have confirmation from a party or a tribe that the
child is an Indian child, ~~the court may direct any~~ must direct one or more
37 of the persons named in (5) to conduct the inquiry described in that
38 paragraph.
39
40 (7) The circumstances that may provide reason to believe the child may be an
41 Indian child are those set forth in Welfare and Institutions Code section
42 224.2(e)(1). The circumstances that may provide reason to know the child is

Commented [JWN7]: Consistent with WIC 224.2(e)

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

- (A) The child or 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 or to any person listed in (5);
- (B) The residence or domicile of the child, the child's parents, or an Indian custodian is 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.

(d) Emergency proceedings

(1) Emergency proceedings for the removal of Indian children are only authorized under Welfare and Institutions Code section 319. A petition for appointment of a temporary guardian or conservator of the person of an Indian child is not an emergency removal within the meaning of 25 U.S.C. section 1922 and cannot be used to circumvent the requirements of the Act.

(2) When a petitioner has a good faith belief that removal of an Indian child from a parent, guardian or Indian custodian is necessary to prevent imminent physical damage or harm to the child, the petitioner may apply to a social worker to commence dependency proceedings in the juvenile court pursuant to and in accordance with Welfare and Institutions Code section 329, using the *Application to Commence Proceedings by Affidavit and Decision by Social Worker (JV-215)*.

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

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

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

Commented [JWN8]: See comment above removing "emergency proceeding" definition. It is important the family court and probate court not be used for emergency removals for the reasons stated above and because ICWA does not apply to such proceedings (25 CFR 23.103 (a)(2)).

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

(ee) Notice

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

1 and the Indian child's tribe, of the pending proceeding and the right of the tribe to
2 intervene, as provided in rule 5.481(c), follows:
3

- 4 (1) ~~Notice to the Indian child's parents, Indian custodian, and Indian tribe of the~~
5 ~~commencement of a guardianship or conservatorship must be given by~~
6 ~~serving copies of the completed *Notice of Child Custody Proceeding for*~~
7 ~~*Indian Child* (form ICWA-030), the petition for appointment of a guardian or~~
8 ~~conservator, and all attachments, by certified or registered mail, fully prepaid~~
9 ~~with return receipt requested.~~
- 10
11 (2) ~~The petitioner and his or her attorney, if any, must complete the *Notice* and~~
12 ~~the petitioner must date and sign the declaration. If there is more than one~~
13 ~~petitioner, the statements about the child's ancestors and background~~
14 ~~provided in the *Notice of Child Custody Proceeding for Indian Child* (form~~
15 ~~ICWA-030) must be based on all information known to each petitioner, and~~
16 ~~all petitioners must sign the declaration.~~
- 17
18 (3) ~~When the petitioner is represented by an attorney in the proceeding, the~~
19 ~~attorney must serve copies of the *Notice of Child Custody Proceeding for*~~
20 ~~*Indian Child* (form ICWA-030) in the manner described in (1) and sign the~~
21 ~~declaration of mailing on the *Notice*.~~
- 22
23 (4) ~~When the guardianship or conservatorship petitioner or petitioners are not~~
24 ~~represented by an attorney in the proceeding, the clerk of the court must serve~~
25 ~~the *Notice* in the manner described in (1) and sign the certificate of mailing~~
26 ~~on the *Notice*.~~
- 27
28 (5) ~~The original of all *Notices of Child Custody Proceeding for Indian Child*~~
29 ~~(form ICWA-030) served under the act, and all return receipts and responses~~
30 ~~received, must be filed with the court before the hearing.~~
- 31
32 (6) ~~Notice to an Indian child's tribe must be sent to the tribal chairperson unless~~
33 ~~the tribe has designated another agent for service.~~
- 34
35 (7) ~~Notice must be served on all tribes of which the child may be a member or~~
36 ~~eligible for membership. If there are more tribes or bands to be served than~~
37 ~~can be listed on the last page of the *Notice*, the additional tribes or bands may~~
38 ~~be listed on an *Attachment to Notice of Child Custody Proceeding for Indian*~~
39 ~~*Child* (form ICWA-030(A)).~~
- 40
41 (8) ~~Notice under the act must be served whenever there is any reason to know~~
42 ~~that the child is or may be an Indian child and for every hearing after the first~~

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

- 3
- 4 (9) If, after a reasonable time following the service of notice under the act—but
5 in no event less than 60 days—no determinative response to the *Notice of*
6 *Child Custody Proceeding for Indian Child* (form ICWA-030) is received,
7 the court may determine that the act does not apply to the proceeding unless
8 further evidence of its applicability is later received.
- 9
- 10 (10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of*
11 *Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer
12 required, and subsequent notices to the tribe may be sent to all parties in the
13 form and in the manner required under the Probate Code and these rules. All
14 other provisions of the act, this rule, and rules 5.480 through 5.487 continue
15 to apply.
- 16
- 17 (11) Notice under the act must be served in addition to all notices otherwise
18 required for the particular proceeding under the provisions of the Probate
19 Code.
- 20

21 **(d)—Duty of inquiry**

22

- 23 (1) The court, a court investigator or county officer appointed to conduct an
24 investigation under Probate Code section 1513 or 1826, a petitioner, and any
25 appointed temporary or general guardian or conservator of the person of a
26 minor child each have an affirmative and continuing duty to inquire whether
27 the child involved in the matters identified in (b)(1) is or may be an Indian
28 child.
- 29
- 30 (2) Before filing his or her petition, the petitioner must ask the child involved in
31 the proceeding, if the child is old enough, and the parents, any other legal
32 guardian, and any Indian custodian, whether the child is or may be an Indian
33 child, and must complete items 1c and 8 of the *Guardianship Petition—Child*
34 *Information Attachment* (form GC-210(CA)) and attach it to his or her
35 petition.
- 36
- 37 (3) At the first personal appearance by a parent or previously appointed legal
38 guardian at a hearing in a guardianship or conservatorship, the court must if
39 requested by petitioner, or may on its own motion, order the parent or legal
40 guardian to complete a *Parental Notification of Indian Status* (form ICWA-
41 020) and deliver the completed form to the petitioner.
- 42

- 1 (4) If the parent, Indian custodian, or guardian does not personally appear at a
2 hearing in a proceeding identified in (b)(1), the court may order the petitioner
3 to use reasonable diligence to find and ask the parent, Indian custodian, or
4 legal guardian to complete and deliver to petitioner a *Parental Notification of*
5 *Indian Status* (form ICWA-020).
6
- 7 (5) If the court or county investigator, petitioner, appointed guardian or
8 conservator, or the attorney for a petitioner or appointed guardian or
9 conservator, knows or has reason to know that an Indian child is involved in
10 the proceeding, he or she must make further inquiry as soon as practicable
11 by:
12
- 13 (A) Interviewing the parents, Indian custodian, and "extended family
14 members" as defined in 25 United States Code section 1903(2), to
15 gather the information listed in Probate Code section 1460.2(b)(5) that
16 is required to complete the *Notice of Child Custody Proceeding for*
17 *Indian Child* (form ICWA-030);
18
- 19 (B) Contacting the U.S. Department of the Interior, Bureau of Indian
20 Affairs and the California Department of Social Services for assistance
21 in identifying the names and contact information of the tribes of which
22 the child may be a member or eligible for membership; and
23
- 24 (C) Contacting the tribes and any other person who reasonably can be
25 expected to have information regarding the child's tribal membership
26 status or eligibility for membership.
27
- 28 (6) If the court knows or has reason to know that an Indian child is involved in
29 the proceeding, the court may direct any of the persons named in (5) to
30 conduct the inquiry described in that paragraph.
31
- 32 (7) The circumstances that may provide reason to know the child is an Indian
33 child include the following:
34
- 35 (A) The child or person having an interest in the child, including an Indian
36 tribe, an Indian organization, an officer of the court, a public or private
37 agency, or a member of the child's extended family, informs or
38 otherwise provides information suggesting that the child is an Indian
39 child to the court or to any person listed in (5);
40
- 41 (B) The residence or domicile of the child, the child's parents, or an Indian
42 custodian is in a predominantly Indian community; or
43

1 ~~(C) — The child or the child's family has received services or benefits from a~~
2 ~~tribe or services that are available to Indians from tribes or the federal~~
3 ~~government, such as the U.S. Department of Health and Human~~
4 ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~
5 ~~Needy Families benefits.~~

GC-210(CA)**Child Information Attachment to
Probate Guardianship Petition**Case Number: Guardianship of (all children's names): This child's name: Fill out a separate copy of this form for **each child** for whom **your petition asks** the court to appoint a guardian.**This form is attached to the Petition,** ☐ **form GC-210, item 2,** or ☐ **form GC-210(P), item 8.**The petition asks the court to appoint a guardian of this child's (specify): ☐ person ☐ estate ☐ person and estate.**1 Tell the court about this child****Commented [JWN9]:** Add new question: Does the child live on an Indian reservation? Yes ___ No ___ If you checked "Yes" what reservation?"a. Child's full legal name:

FirstMiddleLast

 Date of birth:

mm/dd/yyyy

b. Child's current address:

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

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

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

d. Is this child married? ☐ Yes ☐ No ☐ Never married If you checked "No," was this child married in the past but the marriage was dissolved or ended in divorce? ☐ Yes ☐ No
The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)e. Is this child receiving public benefits? ☐ Yes ☐ No ☐ I don't know (If you checked "Yes," fill in below.)

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

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

**Child Information Attachment to
Probate Guardianship Petition**

GC-210(CA), Page 1 of 4



DRAFT

Guardianship of (all children's names): _____ Case Number: _____

This child's name: _____

1 Tell the court about this child (continued)

- h. ☐ (Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child custody, or other similar court case.) Describe the court case below:

Type of Case	Court District or County and State or Tribe	Case Number (if known)

Commented [JWN10]: Include Tribal Court here

- i. ☐ (Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of State Hospitals.) Write the name of the institution here:

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

Relationship	Name	Home Address (Street, City, State, Zip)
Father	_____	_____
Mother	_____	_____
Grandfather (Father's father)	_____	_____
Grandmother (Father's mother)	_____	_____
Grandfather (Mother's father)	_____	_____
Grandmother (Mother's mother)	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____

- ☐ (Check here if this child has additional brothers or sisters, including half-brothers and half-sisters, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child,

and “Item 2: Other Siblings” at the top of the paper and attach it to this form.)

Guardianship of (all children's names): _____ Case Number: _____

This child's name: _____

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

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

Commented [JWN11]: The addition of "Indian custodian" and "Child's tribe" here are really important.

3 Information about the proposed guardian:

- a. Name (name all proposed guardians if more than one): _____
- b. Relationship(s) to the child named in 1 (check all that apply):
- ☐ Relative (specify relationship(s) to the child of each proposed relative guardian): _____
- ☐ Not a relative (explain interest in or connection to this child): _____
- c. Did the child's parent(s) nominate the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
(If you checked "Yes," attach the written nomination as Attachment 3c.)
- d. Does this child currently live with the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
If "Yes," how long has the child lived with the proposed guardian(s)? (years, months): _____
- e. If the court approves the guardianship, will this child live with the proposed guardian(s)? ☐ Yes ☐ No
- f. Does/do the proposed guardian(s) currently plan to adopt this child? ☐ Yes ☐ No ☐ I don't know

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

☐ (Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4: Guardianship—Best Interest of Child" at the top of the paper and attach it to this form.)

Guardianship of (all children's names): _____ Case Number: _____

This child's name: _____

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

☐ (Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)

6 a. Does one or do both of this child's parents agree that the court needs to appoint a guardian for the child?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

☐

b. Does one or do both of this child's parents agree that the person named in 3 should be the child's guardian?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

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

Your relationship to this child:

☐ Relative (specify relationship): _____

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

8 Except as otherwise stated in this form, the statements made in the petition to which this form is attached fully apply to this child.

Commented [JWN12]: Add question: "If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree that the court needs to appoint a guardian for the child?"

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

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

1. Try to find contact information for the child's parents ~~or other legal guardian~~, the child's Indian custodian (if the child is living with an Indian person other than a parent) or other legal guardian, the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents, ~~any other legal guardian, and~~ the child's Indian custodian or any other legal guardians, ~~and other available extended family members, and any other persons known to have an interest in the child~~ and ask them (and the child, if he or she is old enough) these questions:
 - a. Is the child a member of a tribe or eligible for tribal membership, and if they think he or she might be, then which tribe or tribes?
 - b. Are the parents or other members of the extended family ~~they~~ members of a tribe, and if they think they might be, which tribe or tribes?
 - c. Does the child, or do the child's parents or Indian custodian, if any, 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?
 - e.f. Do they have any other information indicating the child is an Indian child?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment*, and attached it to the petition. This requirement does not apply to a petition for appointment ~~of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602.~~

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

Your contacts with the tribe or tribes should include:

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

Commented [JWN13]: Duty of inquiry exists for 600 cases as well. See WIC 224.2(a).

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

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

(continued on next page)

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Form Approved for Optional Use
Judicial Council of California

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND

www.courts.ca.gov

ICWA-005-INFO [Rev. January 1, 2022]

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

DRAFT

ICWA-005-INFO

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 ~~or any other person having an interest in the child~~ says the child is an Indian child or provides information to anyone involved in the case suggesting 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 on a reservation or in an Alaskan Native village~~; 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 or has been a ward of the tribal court.~~
- 3-4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.

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.

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Who do you need to notify?

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

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tips on how to find the address for the child's tribe or tribes

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

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 20240, and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birth date, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

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

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

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
 - a. Your petition;
 - b. Form ICWA-010(A), *Indian Child Inquiry Attachment*; and
 - c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
 - a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A));
 - b. All return receipts given to you by the post office and returned from the mailing; and
 - c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

ICWA-005-INFO
[Rev. January 1, 2022]

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND

Page 2 of 2

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

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INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment*, and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

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

1. Try to find contact information for the child's parents ~~or other legal guardian~~, the child's Indian custodian (if the child is living with an Indian person other than a parent) ~~or other legal guardian~~, the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents, ~~any other legal guardian, and~~ the child's Indian custodian ~~or any other legal guardians, and other~~ available ~~extended~~ family members, ~~and any other persons known to have an interest in the child~~ and ask them (and the child, if he or she is old enough) these questions:
 - a. Is the child a member of a tribe ~~or eligible for tribal membership~~, and if they think he or she might be, then which tribe or tribes?
 - b. Are ~~the parents or other members of the extended family~~ ~~they~~ members of a tribe, and if they think they might be, which tribe or tribes?
 - c. Does the child, or do the child's parents ~~or Indian custodian, if any~~, 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?
 - e.f. Do they have any other information indicating the child is an Indian child?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment*, ~~and attached it to the petition~~. This requirement does not apply to a petition for appointment ~~of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602~~.

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ICWA-005-INFO

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 or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting 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 on a reservation or in an Alaskan Native village; 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 or has been a ward of the tribal court.
 - 3.4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.
- 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.

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