



Judicial Council of California

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January 19, 2024

Subject Text

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File #: 23-171, Version: 1

Title

Rules and Forms | Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Action Required)

Summary

Although California law protects the relationship between tribes and their children beyond the scope of the Indian Child Welfare Act (ICWA) and permits tribal participation in juvenile cases in various situations where ICWA does not apply, tribal leaders and other advocates report that courts often decline to permit tribes to participate in juvenile cases if ICWA does not apply. The Tribal Court-State Court Forum and the Family and Juvenile Law Advisory Committee recommend amending two rules of court and approving a form to clarify the process and set standards consistent with California statutes for the court's exercise of discretion to permit the participation of a tribe in juvenile cases involving a child affiliated with the tribe, even when there is no express statutory right to participate or intervene under ICWA and Welfare and Institutions Code section 224.4.

Recommendation

The Tribal Court-State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 5.482 and 5.530 to clarify the process for tribes seeking to participate in juvenile cases where ICWA does not apply; and
2. Approve *Request for Tribal Participation* (form ICWA-042) for a tribe seeking permission to participate in a juvenile case.