



Judicial Council of California

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Subject Details (With Text)

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Title

Rules and Forms | Indian Child Welfare Act (ICWA): Implementation of Assembly Bill 3176 for Indian Children (Action Required)

Summary

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

Recommendation

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

1. Adopt rule 5.484 to create a rule related specifically to emergency proceedings in ICWA cases consistent with federal regulations and revised state law;
2. Amend rule 5.480 to reflect the four distinct proceedings set out in the federal regulations and AB 3176;
3. Amend rule 5.481 to implement changed inquiry and notice requirements;
4. Amend rule 5.482 to reflect the changes in ICWA noticing requirements;
5. Amend rule 5.483 to conform the jurisdictional and transfer provisions to the new language of Welfare and Institutions Code section 305.5;
6. Amend rules 5.484 and 5.485 to revise the analysis of placement preferences and active efforts to reflect the language of the new federal regulations and renumber as rules 5.485 and 5.486, respectively;

7. Amend rules 5.485 and 5.486 to reflect requirements regarding active efforts and compelling reasons not to terminate parental rights and renumber as rules 5.486 and 5.487, as rules respectively;
8. Amend rule 5.550 to reflect the limitations on continuances and time requirements found in AB 3176;
9. Amend rule 5.570 to reflect the distinction between reasonable and active efforts;
10. Amend rule 5.668 to reflect the initial ICWA inquiry that must be made by the court;
11. Amend rule 5.674 to include the findings that revised Welfare and Institutions Code section 309(a)(3) requires the court make on the record at a detention hearing;
12. Amend rule 5.676 to reflect the detention requirements for an Indian child;
13. Amend rule 5.678 to reflect the specific requirements when the court knows or has reason to know the child is an Indian child, consistent with the requirements of AB 3176;
14. Amend rule 5.690 to reference the placement preference requirements and time requirements to get to disposition when the child is an Indian child;
15. Amend rule 5.725 to conform to the Court of Appeal decision in *In re J.Y.* (2018) 30 Cal.App.5th 712;
16. Renumber rule 5.487 as rule 5.488;
17. Revise form ICWA-005-INFO to reflect the revised requirements of AB 3176;
18. Revise form ICWA-020 to have the questions asked of parents more closely follow the inquiry required in the federal regulations and AB 3176;
19. Revise form ICWA-030 to add a section for information on direct lineal ancestors in response to the Court of Appeal decision in *In re E.H.* (2018) 26 Cal.App.5th 1058;
20. Revise form ICWA-040 to simplify the purpose of the form to designate a tribal representative;
21. Revise form ICWA-060 to conform the language to the requirements of AB 3176 concerning what is good cause not to transfer a case to tribal court;
22. Adopt forms ICWA-070, ICWA-080, and ICWA-090 to create a process to seek return of an Indian child removed on an emergency basis as mandated by AB 3176;
23. Revise forms JV-100, JV-110, and JV-600 to clarify the way ICWA inquiry is made and attested to;
24. Revise form JV-320 findings required by AB 3176 when a child is an Indian child;
25. Revise form JV-405 to include required inquiry and findings about Indian status;
26. Revise form JV-410 to include the required ICWA findings regarding inquiry, ICWA status, placement preferences, and active efforts;

27. Revise form JV-412 to reflect ICWA notice requirements;
28. Revise forms JV-415 and JV-418 to add findings related to active efforts;
29. Revise form JV-421 to reflect ICWA evidentiary requirements;
30. Revise forms JV-430 and JV-432 to add findings regarding active efforts;
31. Revise forms JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, and JV-457 to add required ICWA findings and orders.