



Judicial Council of California

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Title: Rules and Forms | Indian Child Welfare Act: Implementation of Assembly Bill 3176 in Probate Guardianships and Conservatorships (Action Required)

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10/1/2021	1	Judicial Council	approved	Pass

Title

Rules and Forms | Indian Child Welfare Act: Implementation of Assembly Bill 3176 in Probate Guardianships and Conservatorships (Action Required)

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.