

# **INDIAN CHILD WELFARE ACT (ICWA) LEGAL UPDATE**

**LIVE WEBINAR HELD APRIL 6, 2022**

*Speakers: Judge Shawna Schwarz, Judge of the Superior Court of California, County of Santa Clara; and Judge Mark Vezzola, Chief Judge of the Pala Band of Mission Indians and Chemehuevi Indian Tribal Courts*

Over the last several years there have been changes to California law implementing the requirements of the Indian Child Welfare Act, and in particular the requirements concerning inquiry and tribal engagement and notification. These were once again the subjects of appellate review this last year. Our experts will examine the themes in these cases, what courts are struggling with, and possible solutions and best practices around inquiry, notice and tribal engagement and participation more generally.

# Indian Child Welfare Act Legal Update

**Hon. Mark Vezzola**

Chief Judge

Pala Band of Mission Indians and  
Chemehuevi Indian Tribal Courts



April 6, 2022

**Hon. Shawna Schwarz**

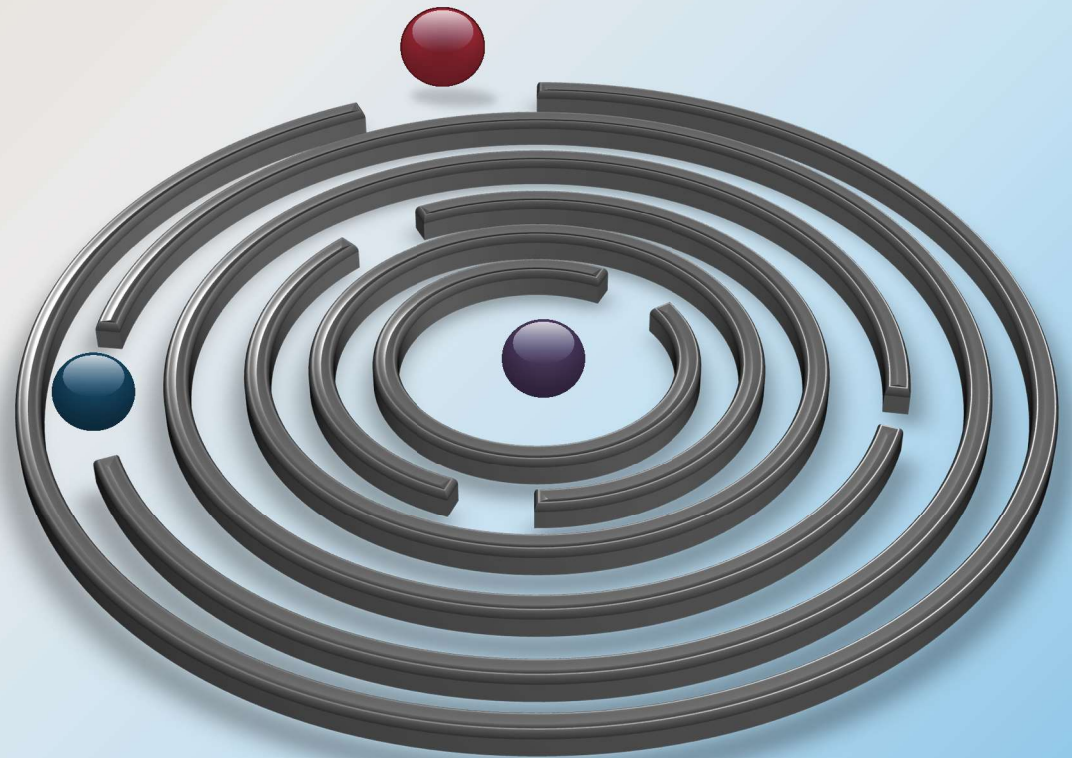
Supervising Judge

Santa Clara County Superior Court  
Dependency Division



# Agenda

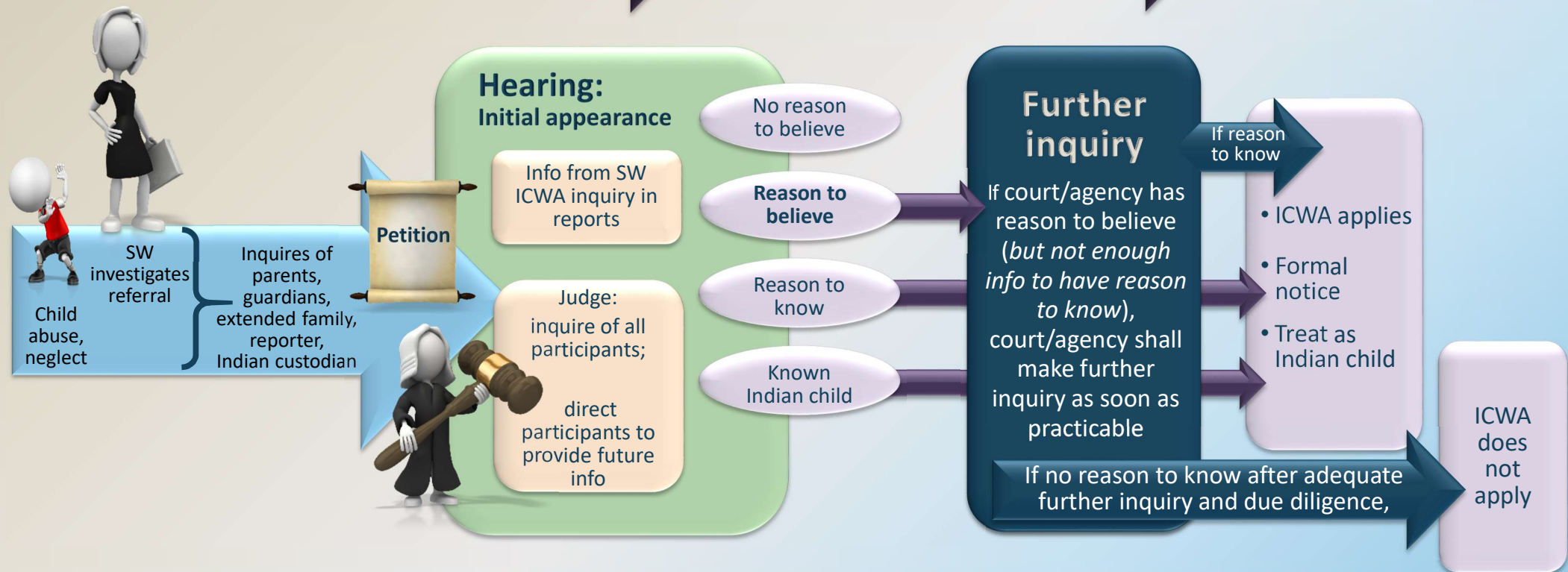
- Overview of “new” law
- Hypos
- Take-aways from hypos
  - Struggles
  - Inquiry
- Case law
- Tips / tricks / suggestions
- Resources



# Initial inquiry

# Further inquiry

# Notice



# Hypo #1

## Detention Hearing



- Mom, dad fill out ICWA-020 form; no info that Indian heritage
- Pars don't know of anybody in family who has lived on reservation, been enrolled, been ward of Indian court.

Judge inquires of maternal aunt in back of courtroom.

- Aunt: "I had ancestry.com test done, turns out I am 37.8% Native American!"
- Aunt never heard of anybody in family who has mentioned being Indian, has no tribe name.



## What should judge do next?

Find reason to believe.  
Order SW to do further inquiry.

Find no reason to believe and  
ICWA does not apply.  
Do not order further inquiry.



# Hypo #2

## Juris / Dispo Hearing

- Based on responses from parents at Detention Hearing, judge found that there was no reason to believe child is an Indian child. No other relatives were present. (ICWA-020 had “none of the above” checked, and after inquiry, parents had no info causing judge to have reason to believe.)
- Juris/Dispo report: in ICWA section, SW says that after Detention Hearing, while speaking to maternal grandmother about placement, SW inquired about ICWA. Maternal grandmother reported that her mother (child’s great grandmother), had always heard she was full-blooded Indian, but because she was adopted, she did not know the name of the tribe, so she was not registered and had never lived on a reservation.
- SW explored with maternal grandmother whether there were any living relatives who might have information, but there were none.
- SW contacted that BIA & Secretary of Interior and provided all info she had. The BIA/S. of Int. said there is not enough info to determine that child is Indian.



What  
finding  
should  
judge  
make?

No reason  
to believe  
child is  
Indian.

ICWA does  
not apply.

There is reason  
to believe child  
is Indian.

SW to conduct  
further inquiry.

There is reason to  
know child is Indian.  
ICWA applies.

SW to give formal  
notice to BIA/Secty  
of Interior.

After further inquiry  
& due diligence,  
there is no reason to  
know child is Indian.

ICWA does not  
apply.

# Hypo #3

Sometime in 2018...  
Prior to Detention Hrg



SW asks

- Matl gma: Navajo, Jalisco Apache
- Patl gma: no Indian ancestry

Detention Hearing

- Mom present; ICWA-020; Navajo
- Dad not present; warrant; told SW by phone fears arrest

Juris/Dispo (2018)

No ICWA findings made

As case proceeds...

- SW spoke to dad by phone 5 times; he still feared arrest; refused to come to court
- SW never asked dad about Indian heritage

.26 Hearing (Feb. 2020)

- Matl & patl rels present
- Letters from 11 of 14 tribes, child not eligible
- Judge inquires of family present: Reservation? Registration card? Ward of tribal court?

Judge?

No reason to believe; ICWA does not apply.

No reason to know after adequate further inquiry & due diligence. ICWA does not apply.

Matl gma: No.

Patl gma: "There is tribal descendency but as far as I know, they are not any kind of member."  
Gma learned this from her mother, who is in court; neither knows tribe, no other relatives would know.

Reason to believe; based on new info from patl gma. Order further inquiry.

Reason to believe (per patl gma's info). Order SW to ask father.

# Hypo #4

Detention  
Hearing

- Mom & dad both present; ICWA-020 says no heritage
- Each reports being from India.
- Both of their families are from India.
- They have no relatives who have ever lived in North America.



**What  
finding  
should  
judge  
make?**

No reason  
to believe  
child is  
Indian.

ICWA does  
not apply.

There is reason  
to believe child  
is Indian.

SW to conduct  
further inquiry.

There is reason to  
know child is Indian.  
ICWA applies.

SW to give formal  
notice to BIA/Secy  
of Interior.

After further inquiry  
& due diligence,  
there is no reason to  
know child is Indian.

ICWA does not  
apply.



# Struggles for judges, social workers



Participants don't know heritage

ICWA-020?

Evolving info

Differing info from same person

Parties withhold info

Extracting info difficult

Keeping track of info

Info received over multiple hearings

Each tribe responds to requests differently

# What info would trigger further inquiry?

Detention Hrg:  
patl gma says  
"There is tribal  
descendancy."

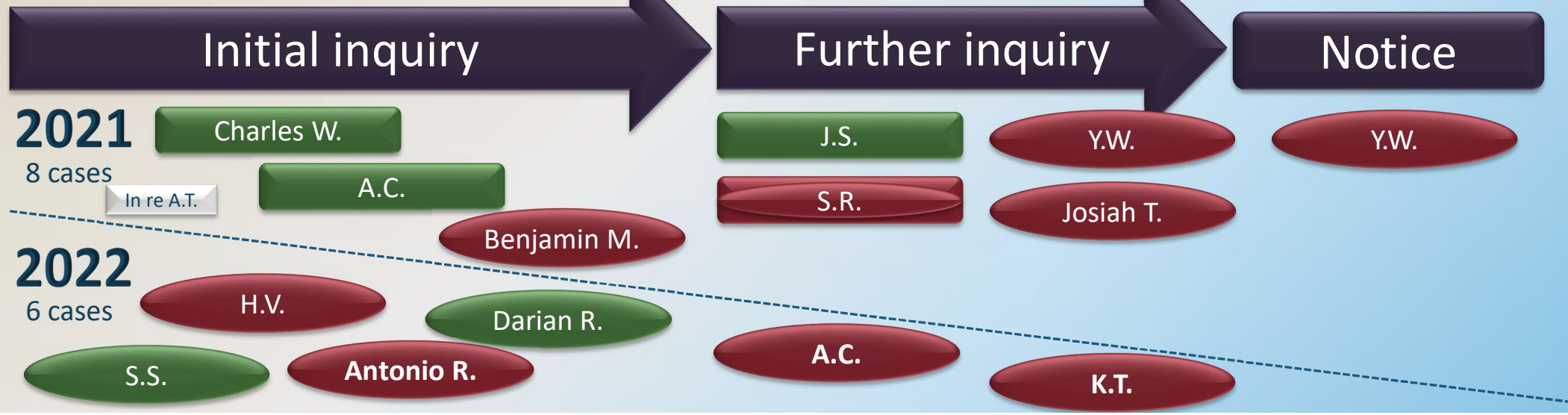
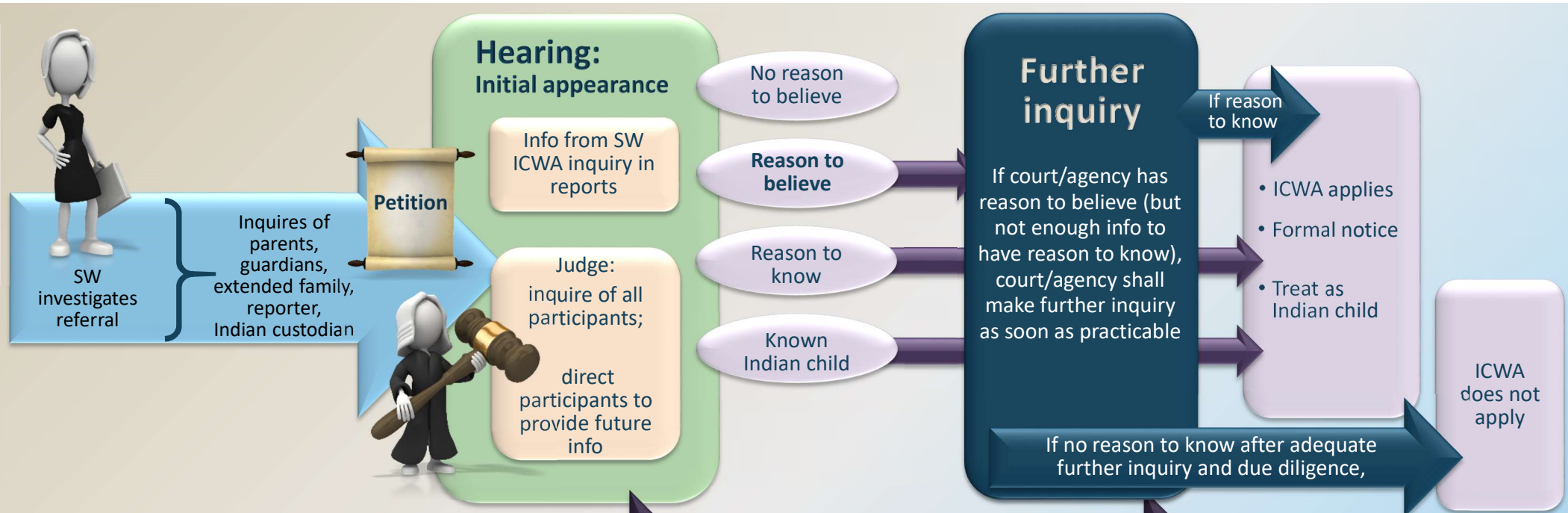
Detention Hrg:  
mom's ICWA-020  
says Cherokee.

Detention Hrg:  
matl aunt says DNA  
test shows she is  
45% Native  
American, no idea  
what tribe.

Detention Hrg:  
dad reports he is  
enrolled member  
of Ohlone Tribe.

Mother told SW  
that her gma was  
"full-blooded"  
Indian, but doesn't  
know name of  
tribe.

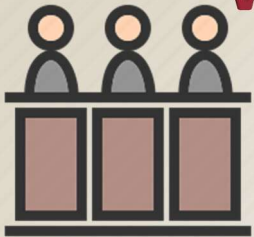
.26 Hrg: IC dad  
previously said no  
heritage. Now, "Ask  
my uncle. He did  
family tree. Don't  
know his phone  
number. "



Beware....

**KT**

4<sup>th</sup> Dist, Div 2  
San Bernardino



**“We publish our opinion not because the errors that occurred are novel but because they are too common.”**

**“Concerning, especially considering our court’s admonishment from nearly a decade ago that we were “well past the state of *growing* weary of appeals in which the only error is the [agency’s] failure to comply with ... ICWA.”**

Initial inquiry

Further inquiry

Notice

2021

8 cases

**Benjamin M.**  
Failure to investigate readily obtainable info is prejudicial error.

In re A.T.

**In re Charles W.**  
No further inquiry required where prior finding for different child, same parents, and mother's counsel asserted mother had no new info

**In re A.C.**  
Failure to inquire re dad's ancestry was harmless since he didn't assert ICWA heritage on appeal **D**

**In re J.S.**  
Ancestry.com results do not trigger further inquiry without additional information

**In re S.R.**  
Error to not conduct further inquiry when family provided very specific info

**In re Y.W.**  
Parent need not assert ancestry to show prejudicial error

**In re Josiah T.**  
Agency's failure to investigate for 7-18 months and disclose info to court is error

**In re Y.W.\***  
Incomplete notices require reversal.

Agency action

Court action

Not remanded

Remanded

**D** Dissent

2022

6 cases

**In re H.V.**  
Failure to ask extended family not harmless; mom does NOT have to assert heritage on appeal **D**

**In re Darian R.**  
Failure to interview family harmless error under Benjamin M. test

**In re A.C.**  
Failure to ask extended family is prejudicial error; ICWA-020 is not the last word. **D**

**In re S.S.**  
Failure to ask relative was harmless (per Benjamin M.) where rel would have benefited from asserting heritage but didn't

**In re Antonio R.**  
Failure to ask extended rels present at Dispo was prejudicial where rels' info was likely to be meaningful re whether child is Indian

**In re K.T.**  
Because Agency didn't investigate claims of Indian heritage, court should not have found that ICWA does not apply.

# Case law trends

Appeals coming fast and furious

Inquiry (initial, further) are problematic areas

Further inquiry – lots of reversals

Rejection of narrow Austin J. “reason to believe”

Mostly Agency action, court oversight

# What does case law teach us?

Error:  
harmless  
vs.  
prejudicial

Test to  
determine  
impact of error

Need  
parent  
assert  
heritage on  
appeal?

Trend:  
broad  
interpretation  
of reason to  
believe

Tribal engagement

Discretionary  
tribal  
participation?

**Who?**

1

**When?**

2

**How?**

3

**What to  
expect?**

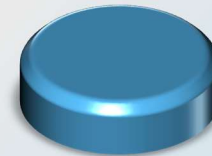
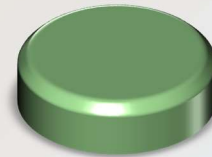
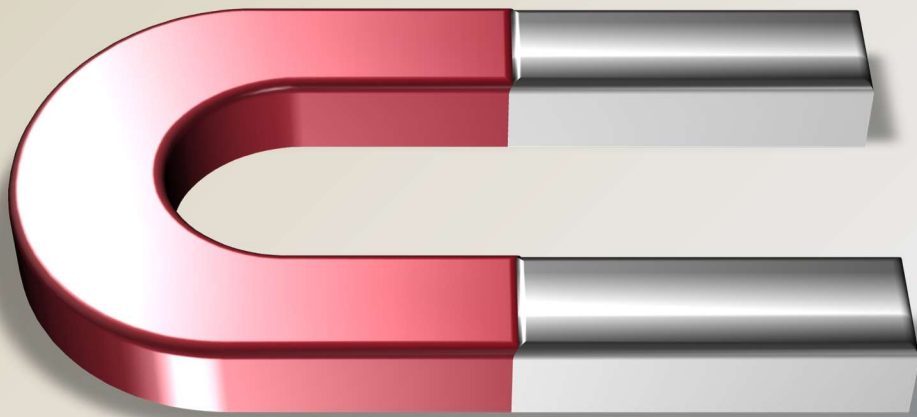
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Ways tribe can get involved?  
Notice of Intervention?

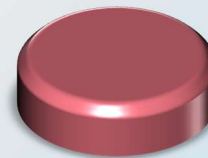


# Tips / tricks / suggestions / reminders

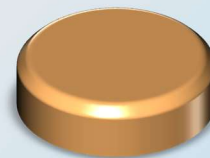
How to track who  
was asked, response



Late-appearing  
parties, participants

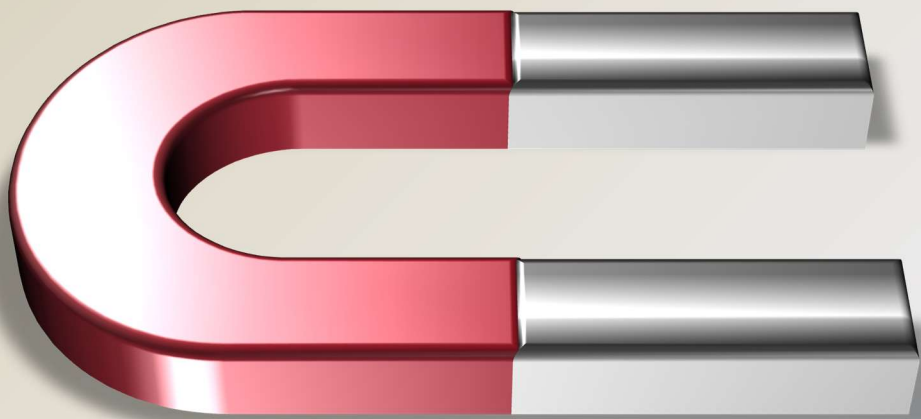


Don't forget relative child  
lives with...



Precise minute orders

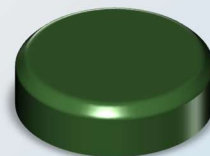
# Tips / tricks / suggestions / reminders



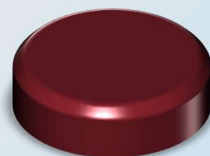
Ask attorneys to  
help get info



Pars not present:  
ask if on phone



Prevail on attys to  
take bigger role



Dedicated ICWA  
report at .26 Hearing?

# Final remarks

**2019 change in law**

Shift to front end inquiry

**Front load**

Supposed to be easier...

**Courts, agencies struggling**

More art than science

**Normalize ICWA inquiries**

Like family finding?

**How to track info?**

Courts need better way...

# Resources

Judicial Council of California Tribal/State Programs ICWA website:

<https://www.courts.ca.gov/3067.htm>

Includes job aids: <https://www.courts.ca.gov/8103.htm> and distance learning webinars: <https://www.courts.ca.gov/8075.htm#panel15022>

California Office of Social Services, Office of Tribal Affairs ICWA resources:

<https://cdss.ca.gov/inforesources/tribal-affairs/icwa> Includes ICWA Desk Reference

California Indian Legal Services Indian Child Welfare Act resources:

<https://www.calindian.org/indian-child-welfare/>

California Tribal Families Coalition: <https://caltribalfamilies.org/> Includes

California ICWA Compliance Task Force report: <https://caltribalfamilies.org/wp-content/uploads/2020/12/ICWAComplianceTaskForceFinalReport2017.pdf> and

educational resources: <https://caltribalfamilies.org/resources/>

# California Indian History

## SHORT OVERVIEW

### OF

## CALIFORNIA INDIAN HISTORY

### REGIONAL LIFEWAYS

One manner in which we can seek to understand aboriginal California Indian cultures is to look at the tribes inhabiting similar climatic and ecological zones. What emerges from this approach is a remarkable similarity in material aspects of the many different tribes inhabiting those territories. Generally speaking technologies and materials used to manufacture tools, homes and storage containers show great similarity. Hunting, trapping and fishing technologies also are shared across tribal lines terrain, available water plants and animals affected the density of populations, settlement patterns as each tribe adjusted to its environment.

### NORTHWEST

This area would include the Tolowa, Shasta, Karok, Yurok Hupa Whilikut, Chilula, Chimarike and Wiyot tribes. The distinctive northern rainforest environment encouraged these tribes to establish their villages along the many rivers, lagoons and coastal bays that dotted their landscape. While this territory was crisscrossed with thousands of trails, the most efficient form of transportation was the dugout canoe used to travel up and down rivers and cross the wider and deeper ones such as the Klamath. These tribes used the great coast Redwood trees for the manufacture of their boats and houses. Redwoods were cleverly felled by burning at the base and then split with elkhorn wedges. Redwood and sometimes cedar planks were used to construct rectangular gabled homes. Baskets in a variety of designs were manufactured in with the twined technique only. Many of these arts survived into the twentieth century and traditional skills have enjoyed a great renaissance in the past twenty years.

The elaborate ritual life of these tribes featured a World Renewal ceremony held each Fall in the largest villages. Sponsored by the wealthiest men in the communities, the ceremony's purpose was to prevent future natural catastrophes such as earthquakes, floods or failure of acorn crop or a poor salmon run. Supplication to supernatural spirits. Because such disasters directly threaten the community, great attention to detail and the utmost solemnity accompanied such ceremonies. This and other traditional rituals continue to be practiced, despite the grinding poverty that plagues many of these groups.

These tribes were governed by the most wealthy and powerful lineage leaders. The great emphasis on wealth found in these cultures is reflected in the emphasis on private ownership of food resources such as oak groves and fishing areas.

### NORTHEAST

This region included the Modoc, Achumawi, and Atsugewi tribes. The western portion of this territory was rich in acorn and Salmon. Further to the East, the climate changes from mountainous to a high desert type of topography. Here food resources were grass seeds, tuber berries along with rabbit and deer.

These Indians found tule to be a useful source of both food (the rootbulb is consumed) and a convenient material when laced together to form floor mats and structure covering. Volcanic mountains in the Western portion of their territory supplied the valuable trade commodity obsidian. The Social-political organization of these peoples was independent but connected to their neighbors by marriage ties. Following contact, the Achumawi and Atsugewi suffered a tremendous population decline due to vigilante violence and respiratory diseases. The Modocs spectacular 1872 resistance to removal to the Oregon territory was the last heroic military defense of native sovereignty in 19th century California Indian History.

Some surviving Northeast tribesmen received public land allotments around the turn of the century. The XL Rancheria was established for some of these Indians in 1938. Tragically the surviving Modocs were exiled to either Oregon or Oklahoma.

### CENTRAL CALIFORNIA

This vast territory includes: Bear River, Mattale, Lassick, Nogatl, Wintun, Yana, Yahi, Maidu, Wintun, Sinkyone, Wailaki, Kato, Yuki, Pomo, Lake Miwok, Wappo, Coast Miwok, Interior Miwok, Wappo, Coast Miwok, Interior Miwok, Monache, Yokuts, Costanoan, Esselen, Salinan and Tubatulabal tribes.

Vast differences exist between the coastal peoples, nearby mountain range territories, from those living in the vast central valleys and on the slopes of the Sierra Nevada. Nevertheless, all of these tribes enjoyed an abundance of acorn and salmon that could be readily obtained in the waterways north of Monterey Bay. Deer, elk, antelope and rabbit were available elsewhere in vast quantities.

In this region basketry reached the height of greatest variety. Perhaps the Pomo basket makers created the most elaborate versions of this art. Both coiled and twine type baskets were produced throughout the region. Fortunately, basket making survived the years of suppression of native arts and culture to once again become one of the most important culturally defining element for Indians in this region.

Common in this area was the semi-subterranean roundhouse where elaborate Kuksu dances were held in the past and continue to this day. These rituals assure the renewal of the world's natural foods both plant and animal. Despite differences, between tribes, these rituals share similar purposes.

Like everywhere else, in California, villages were fiercely independent and governed internally. The abundant food supply allowed for the establishment of villages of up to 1000 individuals, including craft specialists who produced specific objects and goods for a living. In smaller communities, each family produced all that was necessary for survival.

### **SOUTHERN CALIFORNIA**

Southern California presents a varied and somewhat unique region of the state. Beginning in the north, tribes found in this area are the Chumash, Alliklik, Kitanemuk, Serrano, Gabrielino Luiseno Cahuilla, and the Kumeyaay. The landmass and climate varied considerably from the windswept offshore Channel Islands that were principally inhabited by Chumash speaking peoples. Communication with their mainland neighbors was by large and graceful planked canoes powered by double paddle ores. These vessels were called "Tomols" and manufactured by a secretive guild of craftsmen. They could carry hundreds of pounds of trade goods and up to a dozen passengers. Like their northern neighbors, the Tactic speaking peoples of San Nicholas and Santa Catalina Islands built planked canoes and actively traded rich marine resources with mainland villages and tribes. Shoreline communities enjoyed the rich animal and faunal life of ocean, bays and wetlands environments. Interior tribes like the Serrano, Luiseno, Cahuilla, and Kumeyaay shared an environment rich in Sonoran life zone featuring vast quantities of rabbit, deer and an abundance of acorn, seeds and native grasses. At the higher elevations Desert Bighorn sheep were hunted.

Villages varied in size from poor desert communities with villages of as little as 100 people to the teeming Chumash villages with over a thousand inhabitants. Conical homes of arrowweed, tule or croton were common, while whale bone structures could be found on the coast and nearby Channel Islands. Interior groups manufactured clay storage vessels sometimes decorated with paint. Baskets were everywhere manufactured with unique designs. Catalina Island possessed a soapstone or steatite quarry. This unique stone was soft and could easily be carved with cutting tools and shaped into vessels, pipes and cooking slabs.

Each tribe and community had a chieftain, sometimes females, whose duty it was to organize community events and settle conflicts among their followers. This leader was usually assisted by a crier or assistant, Shaman or Indian doctors were known everywhere and greatly respected. The ritual use of the hallucinogen jimsonweed (*Datura meteloides*) was primarily in male puberty rituals. Like other California Indian communities, society was divided into three classes, the elite, a middle class and finally a less successful lower class. These robust peoples were among the first to encounter the strangers who would change their world forever.

### **HISTORY**

The Spanish entrada into Alta California was the last great expansions of Spain's vastly over extended empire in North America. Massive Indian revolts among the Pueblo Indians of the Rio Grande in the late 17th century provided the Franciscan padres with an argument to establish missions relatively free from colonial settlers. Thus, California and its Spanish Colonization would be different from earlier efforts to simultaneously introduce missionaries and colonists in their world conquest schemes. Organized by the driven Franciscan administrator Junipero Serra and military authorities under Gaspar de Portola, they journeyed to San Diego in 1769 to establish the first of 21 coastal missions.

Despite romantic portraits of California missions, they were essentially coercive religious, labor camps organized primarily to benefit the colonizers. The overall plan was to first militarily intimidate the local Indians with armed Spanish soldiers who always accompanied the Franciscans in their missionary efforts. At the same time, the newcomers introduced domestic stock animals that gobbled up native foods and undermined the free or "gentile" tribe's efforts to remain economically independent. A well-established pattern of bribes, intimidation and the expected onslaught of European diseases insured experienced missionaries that eventually desperate parents of sick and dying children and many elders would prompt frightened Indian families to seek assistance from the newcomers who seemed to be immune to the horrible diseases that

overwhelmed Indians. The missions were authorized by the crown to “convert” the Indians in a ten-year period. Thereafter they were supposed to surrender their control over the mission’s livestock, fields, orchards and building to the Indians. But the padres never achieved this goal and the lands and wealth was stolen from the Indians.

Epidemic diseases proved to be the most significant factor in colonial efforts to overcome native resistance. Soon after the arrival of Spanish colonists, new diseases appeared among the tribes in close proximity Spanish missions. Scientific study of demographic trends during this period indicate the Indians of the America’s did not possess any natural immunities to introduced European diseases. Maladies such as smallpox, syphilis, diphtheria and even children’s ailments such as chickenpox and measles caused untold suffering and death among Indians near the Spanish centers of population. Even before the outbreak of epidemics, a general population decline was recorded that can be attributed to the unhygienic environment of colonial population centers. A series of murderous epidemic diseases swept over the terrified mission Indian populations. Beginning in 1777 a voracious epidemic likely associated with a water born bacterial infection devastated Santa Clara Valley Costanoan children. Again, children were the primary victims of a second epidemic of pneumonia and diphtheria expended from Monterey to Los Angeles was recorded in 1802. By far the worst of these terrifying epidemics began in 1806 and killed thousands of Indian children and adults. It has been identified as measles and attacked Indian populations from San Francisco to the central coast settlement of Santa Barbara. Sadly, the missionary practice of forcibly separating Indian children from their parents and incarcerating children from the age of six in filthy and disease-ridden gender barracks most likely increased the suffering and death of above mentioned epidemics. Excessive manual labor demands of the missionaries and poor nutrition probably contributed to the Indians inability to resist such infections. Less easily measured damage to mission Indian tribes occurred as they vainly struggled to understand the biological tragedy that was overwhelming them. Faith in their traditional shaman suffered when native efforts were ineffective in stemming the tide of misery, suffering and death that life in the missions resulted in. With monotonous regularity, missionaries and other colonial officials reported upon the massive death and poor health of their Indian laborers. Pioneering demographer Sherburne F. Cook conducted exhaustive studies and concluded that perhaps as much as 60% of the population decline of mission Indians was due to introduced diseases.

#### **NATIVE RESISTANCE**

The unrelenting labor demands, forced separation of children from their parents and un-ending physical coercion that characterized the life of Indians under padre’s authority resulted in several well documented forms of Indian resistance. Within the missions, the so-called “converts” continued to surreptitiously worship their old deities as well as conduct native dances and rituals in secret. By far the most frequent form of mission Indian resistance was fugativism. While thousands of the 81,586 baptized Indians temporarily fled their missions, more than one out of 24 successfully escaped the plantation like mission labor camps. Many Mission Indians viewed the padres as powerful witches who could only be neutralized by assassination. Consequently, several assassinations occurred. At Mission San Miguel in the year of 1801 three padres were poisoned, one of whom died as a result. Four years later another San Miguel Yokut male attempted to stone a padre to death. In 1804 a San Diego padre was poisoned by his personal cook. Costanoan Indians at Mission Santa Cruz, in 1812, killed a padre for introducing a new instrument of torture which he unwisely announced he planned to use on some luckless neophytes awaiting a beating. Few contemporaries Americans know of the widespread armed revolts precipitated by Mission Indians against colonial authorities. The Kumeyaay of San Diego launched two serious military assaults against the missionaries and their military escorts within five weeks of their arrival in 1769. Desperate to stop an ugly pattern of sexual assaults, the Kumeyaay utterly destroyed Mission San Diego and killed the local padre in 1775. Quechan and Mohave Indians along the Colorado River to the east destroyed two missions, killed four missionaries and numerous other colonists in a spectacular uprising in 1781. This last rebellion permanently denied the only overland route into Alta California from Northern New Spain (Mexico) to Spanish authorities. Military efforts to reopen the road and punish the Indians were met with utter failure. The last great mission Indian revolt occurred in 1824 when disenchanting Chumash Indians violently overthrew mission control at Santa Barbara, Santa Ynez and La Purisima. Santa Barbara was sacked and abandoned while Santa Ynez Chumash torched 3/4 of the buildings before fleeing. Defiant Chumash at La Purisima in fact seized that mission and fought a pitched battle with colonial troops while a significant number of other Chumash escaped deep into the interior of the Southern San Joaquin Valley. After 1810 a growing number of guerrilla bands evolved in the interior when fugitive mission Indians allied with interior tribes and villages. Mounted on horses and using modern weapons, they began raiding mission livestock and fighting colonial military forces.

The impact of the mission system on the many coastal tribes was devastating. Missionaries required tribes to abandon their aboriginal territories and live in filthy, disease ridden and crowded labor camps. Massive herds on introduced stock animals and new seed crops soon crowded out aboriginal game animals and native plants. Feral hogs ate tons of raw acorns, depriving even the non-missionized tribes in the interior of a significant amount of aboriginal protein. Murderous waves of epidemic diseases swept over the terrified Mission Indian tribes resulting in massive suffering and death for thousands of native men, women and children. The short life expectancy of mission Indians prompted missionaries to vigorously pursue runaways and coerce interior tribes into supplying more and more laborers for the padres. Missionary activities therefore thoroughly disrupted not only coastal tribes, but their demand for healthy laborers seriously impacted adjacent interior tribes. Finally, by

1836 the Mexican Republic forcibly stripped the padres of the power to coerce labor from the Indians and the mission rapidly collapsed. About 100,000 or nearly a third of the aboriginal population of California died as a direct consequence of the missions of California.

Despite the devastating population decline suffered by tribes in whose territories missions had been established, many managed to maintain tribal cohesion. After 1800, most mission populations were a hodgepodge of different tribes speaking a multiplicity of languages. Because many Indians refused to learn or feigned ignorance of the Spanish language, missionaries appointed labor overseers from each tribe to direct work crews. Such practical policies kept tribesmen from losing culturally distinct identity. Further evidence of cultural persistence was the practice of tribes maintaining separate housing in multi-tribal Indian villages built next to the missions. Finally, many former mission Indians continued to speak their native languages and provide researchers with detailed ethnographic and linguistic data well into the 20th century.

### **INDIANS AND THE MEXICAN REPUBLIC**

In 1823 the Spanish Flag was replaced by that of the Mexican Republic. Little immediate change in personal or Indian policy occurred. However, the independence government was decidedly anti-clerical and the growing body of colonial leaders deeply resented the monopoly of Indian lands and the unpaid Indian labor enjoyed by the Franciscans. While no land grants to the colonists had occurred under Spanish rule, some 25 grazing permits or concessions had been issued to colonial citizens. This was the beginning of the dispossession of tribal lands by colonial authorities. The vast plantation like missions claimed about 1/6 of the present territory of the state. But legal title to these lands were assigned to the Spanish crown. The missions were only supposed to last 10 years, after which the developed estates were to be distributed to surviving mission Indians. It was assumed that the Indians would evolve into hardworking, tax paying citizens of Mexico. But the missionaries kept coming up with excuses why they should not surrender the rich pastoral and agrarian empire they had erected with the lands, resources and hard labor of mission Indians. The Mexican Republic's 1824 constitution declared Indians to be citizens with rights to both vote and hold public office. Despite this liberal declaration, Indians throughout the republic continued to be treated as slaves.

### **COLLAPSE OF THE MISSION SYSTEM**

In actual practice, the new government gave 51 land grants to its colonial citizens between 1824 and 1834. These lands actually belonged to various tribes then incarcerated in nearby missions. These actions just increased the lust for more Indian lands by a growing body of colonial ranchers. There followed a growing chorus of demands that the missionaries surrender their monopoly on Indian labor and "free" the Indians. The sincerity those sentiments should be seriously doubted. The power of this class prevailed and between 1834-36 the government revoked the power of the Franciscans to extract labor from the Indians and inaugurated a plan to distribute mission lands. Venal public officials in charge of the distribution granted the most valuable lands to themselves and their relatives. The secularization processes, it was called, was so restrictive that few ex-mission Indians were eligible for the distributed lands. More significant still, the majority of surviving mission Indians were not native to the areas of coastal missions. Most neophytes at this time had been forced to relocate from their tribal domains and promptly returned to them following their liberation.

Many of these returned exiles were faced with difficult tasks of reconstructing their decimated communities in the wake of crippling population declines. Furthermore, their tribal lands had become transformed by the introduction of vast herds of horses, cattle, sheep, goats and hogs that destroyed the native flora, the primary source of native diet. Wild game animals were likewise driven off by these new animals. What developed from this new condition was the emergence of guerrilla Indian bands made-up of former fugitive mission Indians and interior tribesmen from villages devastated by official and unofficial Mexican paramilitary attacks and slave hunting raids. Eventually a significant number of these interior groups joined together to form new conglomerate tribes. These innovative and resilient tribes quickly converted the anti-mission activities of their members into systematic efforts to re-assert their sovereignty by widespread and highly organized campaigns against Mexican ranchers and government authority in general.

Vastly overestimating their power, Mexican authorities authorized an additional 762 land grants by 1847. In reality, the effectiveness of Indian stock raiders increased dramatically when American and Canadian fur trappers provided a lucrative market for purloined horses by the mid 1830's. Interior Mexican ranches were increasingly abandoned in the face of economic ruin by native stock raiding activities. Even Johann A. Sutter was reduced to begging the Mexican government to buy his fort following a mauling at the hands of Miwok Indians near the Calaveras in June of 1846.

Despite these successes, a series of murderous epidemics in the twilight years of the Mexican era severely reduced the interior population. For instance, in 1833 an American party of fur trappers introduced a murderous scourge of malaria into the Sacramento and San Joaquin River drainages. While traversing the epicenter of the plague, J. J. Warner reported,

***“From the head of the Sacramento to the great bend and slough of the San Joaquin we did not see more than six or eight live Indians; while large numbers of their skulls and dead bodies were seen under almost every shade tree near the water, where the uninhabited and deserted villages had been converted into graveyards.”***



In this tragedy, more than 20,000 Central Valley Miwok, Yokuts, Wintun, and Maidu Indians perished. A new outbreak of small pox devastated Coast Miwok, Pomo, Wappo, and Wintun tribes. Approximately 2000 died in this 1837 epidemic originating from Fort Ross. By 1840 these and other murderous maladies had so thoroughly saturated the Indian population of Mexican California that diseases became endemic.

Mexican forced labor and violence at the hands of the militia and paramilitary slave hunting parties account for a significant amount of the population decline suffered by California Indians. On the eve of the American take-over the aboriginal population of approximately 310,000 had been reduced to about 150,000. This gut wrenching 50% decline had occurred in just 77 years. The implications for survivors is largely a mute tale of suffering and grieving over the loss of a stunning number of children, parents and elders. What came next was worse still.

### **THE AMERICAN INVASION**

Alta California the poorly managed and badly neglected stepchild of Mexico was rapidly overwhelmed by a combination of aggressive Indian raids and the arrival of United States Army, Navy and Marine forces in the summer of 1846. Despite a seemingly irrational murderous attack on Sacramento River Maidu Indian villages by U.S. Army forces under the command of John C. Fremont, the majority of California Indians involved in that struggle aided the Americans as scouts, warrior-soldiers and wranglers.

When Mexican resistance collapsed in January of 1847, thereafter Indian Affairs was administered by a succession of military governors. Stock raiding Indians in the interior recommenced their depredations when they learned Indian slavers such as Mariano Guadalupe Vallejo and Johann A. Sutter had been appointed as Indian sub-agents. Military government's policy was to suppress stock raiding and furthermore imposed draconian restrictions on the free movement of Indians and required Indians to carry certificates of employment.

### **THE GOLD RUSH**

The discovery of gold in the foothills of the Sierra Nevada at a sawmill construction site developed by Indian Agent Johann Sutter, ushered in one of the darkest episodes of dispossession widespread sexual assault and mass murder against the native people of California. Sutter immediately negotiated a treaty with the chief of the Coloma Nisenan Tribe which would have given a three-year lease to lands surrounding the gold discovery site. During those negotiations, the chief prophetically warned Sutter that the yellow metal he so eagerly sought was, "very bad medicine. It belonged to a demon who devoured all who searched for it". Eventually the military governor refused to endorse Sutter's self-serving actions.

Within a year a hoard of 100,000 adventurers from all over the world descended upon the native peoples of California with catastrophic results. The entire state was scoured by gold seekers. Thinly spread government officials were overwhelmed by this unprecedented deluge of immigrants and all effective authority collapsed. Military authorities could not prevent widespread desertion of soldiers and chaos reigned.

A virtual reign of terror enveloped tribesmen the mining districts. Wanton killings and violence against Indians resisting miners developed into a deadly pattern. An Oustemah Nisenan female named Betsy later recalled,

***"A life of ease and peace was interrupted when I was a little girl by the arrival of the whitemen. Each day the population increased and the Indians feared the invaders and great consternation prevailed .... as gold excitement advanced, we were moved again and again, each time in haste. Indian children.... when taken into town would blacken their faces with dirt so the newcomers would not steal them...."***

Numerous vigilante type paramilitary troops were established whose principal occupation seems to have been to kill Indians and kidnap their children. Groups such as the Humboldt Home Guard, the Eel River Minutemen and the Placer Blades among others terrorized local Indians and caused the premier 19th century historian Hubert Howe Bancroft to describe them as follows.

***"The California valley cannot grace her annals with a single Indian war bordering on respectability. It can, however, boast a hundred or two of as brutal butchering, on the part of our honest miners and brave pioneers, as any area of equal extent in our republic....."***

The handiwork of these well-armed death squads combined with the widespread random killing of Indians by individual miners resulted in the death of 100,000 Indians in the first two years of the gold rush. A staggering loss of two thirds of the population. Nothing in American Indian history is even remotely comparable to this massive orgy of theft and mass murder. Stunned survivors now perhaps numbering fewer than 70,000 teetered near the brink of total annihilation.

The newcomers sometimes met organized Indian resistance. In 1850 a Cupeno chief named Antonio Garra Sr. organized local Southern California Indians to resist an illegal tax imposed upon San Diego Indians by the county sheriff. Sporadic attacks upon both Americans and some Mexicans by Garra's followers resulted in a massive crackdown on Indian communities. Soon a rival Cahuilla chief captured Garra and turned him over to the authorities who promptly hung him and several of his followers. In 1851 several mountain Miwok tribes offered armed resistance to the hoard of miners overrunning their territory. When one tribe destroyed a

trading-post owned by an American who kept at least 12 Indian “wives” a paramilitary militia was formed and aggressively attacked Indians throughout the southern mines area. Eventually this group calling itself the “Mariposa Battalion” breached the unknown granite fortress of the valley of Yosemite. A ruthless campaign against the Yosemite Indians resulted in the capture of their Chief Teneya and a temporary exile to the San Joaquin River “Indian Farm”.

In reality, these Indian campaigns were motivated by rapacious greed of the miners to gain Indian lands and provide political capital for ambitious office seekers. Sadly, both the state and federal government eventually reimbursed the vast majority of these paramilitary forays for expenses incurred. This is indeed a dreary story of subsidized murder on a scale unequalled in all of this country’s Indian wars.

### **TREATY MAKING AND TREATY REJECTION**

In 1849 Washington sent two special emissaries to California to report on the nature of Mexico’s recognition of Indian land titles in California. Neither spoke to a single Indian and eventually produced an ambiguous and inaccurate report to the great disadvantage of the Indians. Upon this misinformation, and in an attempt to stem the unprecedented chaos and mass murder of the gold miner’s confrontation with the California Indians, Congress authorized three federal officials to make treaties with the California Indians. Their purpose was to extinguish Indian land titles and provide the Indians with territories that would be protected from encroachment by non-Indians. They were given just \$25,000 to accomplish this monumental task. Soon after their arrival in San Francisco in January of 1851, the enormous size of territory prompted the commissioners to split up and negotiate treaties on their own. The reports and correspondence of the treaty commissioners clearly demonstrate that the suspicious and reluctant Indians who could be persuaded to attend the treaty meetings were only vaguely aware of its purpose. This can be attributed to the frequent problems of translators who often had to translate several Indian dialects into Spanish and again into English. Few if any of the Indians could understand English. The random manner in which the commissioners organized the meetings resulted in the majority of tribes not participating. Despite these crippling drawbacks, the treaty process proceeded until January 5th of 1852. In all, eighteen treaties were negotiated. The treaties agreed to set aside certain tracts of land for the signatory tribes. They additionally promised the assistance of farmers, school teachers, blacksmiths, stock animals, seeds and agricultural equipment, cloth and much more. In return, the signatory tribes promised to forever quitclaim to the United States their lands. Just what specific lands being surrendered were not specified. Anthropologists in the 20th century could only identify 67 tribes, 45 village names and 14 alternative spellings of tribal names. Eighteen groups were unidentifiable. Despite the obvious fact that not all California Indian tribes had been consulted or contacted they too would be bound by the negotiations. Nevertheless, the federal government promised to reserve 7,466,000 acres of land to the dispossessed Indians,

An immediate outcry from an enraged public followed the completion of the commissioner’s task. It was revealed that the commissioners had overspent their budget by a half a million dollars in the incredibly inflated economy of gold rush California. Local newspapers orchestrated an abusive campaign and local politicians echoed the fears of their compassionate electorate that the treaty reserves might contain something valuable, like gold. Most Americans simply wanted the Indians removed to some other territory or state. California’s newly elected state senators provided the final blow. On July 8, 1852, the Senate in executive session refused to ratify the treaties. They were filed with an injunction of secrecy that was finally removed in 1905!

Meanwhile, Congress had created a commission to validate land titles in California. The commission was required by law to both inform the Indians that it would be necessary to file claims for their lands and report upon the nature of these claims. Because no one bothered to inform the Indians of these requirements, no claims were submitted. Through this neat trick, the federal government “legally” avoided the normally lengthy and duplicitous negotiations over land sessions.

The practical result was the complete dispossession of the Indians in the eyes of the government. Despite this chicanery, several tribes would violently and later legally contest these frauds to defend their territory, homes and families.

From the native viewpoint, signatories of the treaties had agreed to move to specific locations promised in the treaties. Yet such attempts often met with violent attacks by miners and others opposed to the very existence of Indians. Non-treaty groups simply endured the madness and race hatred of those waging a merciless war against them. Most tribes did their best to withdraw from all contact with the mayhem overwhelming them.

### **A HARSH STATE GOVERNMENT**

The formation of the state government proved to be an official instrument of the oppressive mentality of the miner’s militia. In Governor McDougall first address to the legislature he promised, “a war of extermination will continue to be waged between the races until the Indian race becomes extinct. ....” Despite guarantees in the Treaty of Guadalupe Hidalgo, Indians were denied state citizenship, voting rights and more important still, the right to testify in court. These acts effectively removed all legal redress for native peoples and left them to the mercy of anyone who chose to sexual assault, kidnap even murder them. Despite entering the union as a free state in 1850, the California legislature rapidly enacted a series of laws legalizing Indian slavery. One of the laws sanctioned an indenture system similar to Mexican peonage in widespread practice throughout California prior

to 1850. All levels of state, county and local governments participated in this ugly practice that evolved into a heartless policy of killing Indian parents and kidnapping and indenturing the victim's children. Indian youth could be enslaved by the cruel act to the age of 30 for males and 25 for females. This barbarous law was finally repealed four years after President Lincoln's emancipation proclamation in 1863.

The federal government finally decided to establish an Indian policy in California in 1854 when Edward F. Beale was appointed Superintendent of Indian Affairs for California. Beale quickly established a prototype Indian preserve within the boundaries of the Army's military reserve in the Southern San Joaquin Valley, called Fort Tejon. The site was chosen because of the continuing problem of local horse raiding by Southern California Indians. Yokut, Gabrielino and Kitanemuk tribesmen were gathered together on this barren 50,000-acre parcel called San Sebastian. Beale's instruction from Washington authorized him to establish four additional reserves with a \$250,000 budget. Apparently, Beale squandered his entire allocation on less than 200 Indians at San Sebastian. This action becomes comprehensible only when it is known that within a decade, Beale wound up owning much of that short-lived reserve. His behavior in office set the standard for decades of widespread corruption and incompetence that distinguishes the Bureau of Indian Affairs in California and elsewhere. Following Beale's removal from office in 1856, Col. T.J. Henely established Indian Reserves on the Klamath River, Nome Lackee near Colusa, Nome Cult (Round Valley) and the Mendocino Reserve at the mouth of the Noyo River on the coast. The latter two were both located in Mendocino County.

These hastily organized communities provided little in the way of support or even minimal refuge for native peoples cajoled to move there. These unsurveyed reserves lacked game, suitable agricultural lands and water. They soon became overrun with white squatters who systematically corrupted the Indians and introduced an epidemic of venereal diseases. More unsatisfactory still, were Indian Farms located on lands rented from newcomers now holding legal title to said lands. The Fresno and Kings River Indian Farms were established in the south-eastern San Joaquin Valley along the rivers of the same name. Federal records clearly show these farms provided only a handful of Indians homes, the majority completely lacked cultivation, but they did provide paychecks for the superintendent's friends and political cronies. The majority of these early reserves and Indian Farms were abandoned in the 1860's due to the state's Indian slavery codes that allowed all able-bodied males, females and even children to be indentured to white citizens. A great many reservation residents could not participate in the agricultural and ranching programs because their labor "belonged" to private state citizens. Frequently, federal and Indian agents themselves indentured his wards for personal enrichment. Government records for this period show that fewer than 3000 of the less than 70,000 surviving California Indians received recognition let alone provisions for reservations. South of the Tehachapi Mountains California Indians remained totally ignored by Washington. So what were the vast majority of Indians doing during this period?

#### **LATE 19TH CENTURY ADAPTATION AND RESISTANCE**

The vast majority of California Indians struggled to survive without government aid or recognition. Many on the verge of actual starvation dispersed throughout their territories and sought to support themselves through agriculture and ranch labor for the new "owners" of California. This was a traditional pattern of behavior when drought and other natural catastrophes struck. Deprived of land and their life sustaining resources, they were left with no other options. With a few notable exceptions, the mass murder of the Gold Rush era diminished, as Indian victims became scarce and survivors learned to avoid Americans whenever possible. The great hardships of this adaptation were made bearable with the development of a messianic cult movement called the Ghost Dance of 1870. In part triggered by the introduction of Christian missionary activities, this new religious movement was pan-tribal in nature and obviously a response to the massive population decline. The movement promised the return of dead relatives and the disappearance of the oppressors. It was most desperately embraced by those tribes who had most recently suffered great population declines. Despite lasting only a few years, it was fundamental in revitalizing intra-tribal religious integration. In short, it provided hope for the nearly hopeless situation Indian found themselves confronted with.

The last organized violent reaction to dispossession and federal Indian policy erupted between 1860-1872. The first was a series of Indian wars in Northwestern California. Here Yurok, Karok, Hupa and other tribes fought the increasingly paranoid and aggressive Americans who routinely murdered them, stole their children and burned their villages. Jack Norton, a Hupa historian characterized the situation as a "deranged frontier". Attempts to disarm Indians and continued kidnapping for sexual slavery quickly led to violent resistance. In 1858, the militia established a fort in the Hupa Valley to make war on the Wilkut and Chilula tribes. Many members of those tribes had been captured and deported to the Mendocino Reservation. Frustrated by the stiff resistance of interior groups, the militia found it easier to murder nearby inoffensive peaceful and non-hostile Indians. The notorious Indian Island massacre in Humboldt Bay was the bitter fruit of that race hatred. Eventually some Hupa Indians agreed to assist the soldiers in hunting their hostile neighbors. Despite this defection, several bands of Hupa joined the hostiles and effectively resisted until 1864 when they surrendered. This led to the establishment of the Hupa Valley Reservation in August of 1864.

Because both state and federal authorities seriously underestimated the number of surviving California Indians, plans to remove all Indians to the handful of reservations already established, proved impractical. Several attempts to place multiple tribes on single reservations frequently resulted in violence, mass murder

and war. The Modoc war of 1872 was caused by such a policy that insisted the Modocs be deported out of California to the Klamath Reservation in Oregon. Driven twice from that reserve, a third attempt to deport the Modocs back to Klamath resulted in a stunning war in 1872. The Indian service removed the Konkow Indians of Chico and the Atsugewi of Shasta County to the Round Valley Reservation in 1862. Squatters overrunning the Reservation descended upon these unfortunate tribesmen and murdered 45 of them. The mob justified its actions by claiming the Indians might steal food from the squatters. Survivors fled in terror back to Chico, only to be again removed to Round Valley sometime afterwards. The BIA showed little interest in assisting such tribes. Those lucky enough to have reservations established in the aboriginal territories were understandably reluctant to share the scant advantages they enjoyed with newly arrived emigre tribes. Also true was the fact that no tribes desired to be relocated outside of their aboriginal territories. After all, each tribe's creation story emphasized the sacred nature of its own particular landscape. Tradition emphasized territorially and to stray from it required one to steal food resources from neighboring tribes. Non-Indians could not fathom the intensity and depth of the Indians spiritual attachment to their territories.

A steady population decline accompanied by widespread reports of destitution and hunger haunted those tribes without reserved lands. Despite hardship encountered, survival demanded innovation and adaptation. Being driven to the edge of extinction, Indians demonstrated again and again a strong will to survive. That determination notwithstanding, the widespread kidnapping, slavery and violence took a frightful toll on tribesmen and their cultures. Leadership lineages became scattered and displaced. Many ceremonies could no longer be held because access to sacred places was now denied. Cultural mandates to feed ceremonial guests could no longer be achieved by those who otherwise were able to hold public rituals. Finally, Christian missionaries gained control at many reservations under President Grant's Peace Policy of 1869. These folks were determined to destroy Indian culture and aboriginal belief systems that undergirded it.

The California superintendency attracted a succession of special investigators caused by constant reports of corruption that reached Washington. Special reports conducted in 1858, 1867 and 1883 clearly and thoroughly document the corruption and inefficiency plaguing government programs for Indians. President Grant's Peace Policy of 1869 inaugurated an era of acculturation under duress. Policy makers in the government declared the only path of salvation for surviving Indians would be Christianization, along with the adaptation of private ownership of property. Once these twin goals were realized, Indians would be rewarded with citizenship and take their place among the lower classes with other non-whites in American society. Reservation agents insisted their residents join churches and cease practicing the old ways. The General Allotment Act of 1887 forcibly divided reservation tribal lands, doling out small parcels to individual Indians and their families. If the allottee built a house, engaged in farming or ranching, sent his children to government Indian schools and renounced his tribal allegiance and otherwise pleased the agent, he would (after 25 years) receive title to his land and citizenship. Unlike tribal lands, these parcels would become taxable. The program was inaugurated in California in 1893. By 1930 approximately 2,300 allotments had been carved out of the tiny communal tribal reservation lands. Traditional Indians opposed the detribalizing goals of allotment. The uneven and unequal distribution of allotments was used by Indian agents to keep tribal populations divided and politically impotent. Nevertheless, considerable tribal resistance and pan-tribal organizing developed in opposition to allotment. The program ground to a halt in 1930 due to Indian opposition and failure of BIA to complete the necessary paperwork. The law was repealed in 1934. Thousands of acres of California Indian lands and millions of acres nationally were lost to this destructive and ill-conceived policy.

### **PAN-INDIAN GROUPS, LANDLESS INDIANS AND RANCHERIAS**

Several hundred individual land allotments were distributed to California Indians from public lands found principally in northern California. Often times these were isolated havens from hostile neighbors. Many were assigned to clusters of individuals who were related by kinship and are likely core tribal members who otherwise had no lands. The tribal communities often held traditional ceremonies and participated in those of their more fortunate reservation Indians.

Southern California Indians were finally provided with recognition when several parcels of their former tribal domains were set aside by executive order beginning in 1873 with the establishment of the Tule River Indian Reservation. Fourteen Southern California Indian Reservations were set aside by executive orders beginning in 1891 and amended in 1898. Unfortunately, Indians in both Orange and Los Angeles counties were excluded from land distributions due in part to the value of coastal real estate. Nevertheless, small tribes from this area participated in pan-Indian organizations.

Reduced to severe destitution the majority of Indians struggled to support their families as landless laborers. Only 6,536 Indians were recognized and living on reservations about the turn of the century. Every Indian who survived to see the dawn of the 20th century had witnessed great suffering and the irreplaceable loss of numerous grandparents, mothers, fathers and children. Some lineages disappeared altogether. The nadir had been reached. Demographer S.F. Cook determined the California Indian population declined to fewer than 16,000 individuals in 1900. This figure represents a gut wrenching descent from over 300,000 into a vortex of massive death in just 131 years of colonization! These staggering losses prompted non-Indians of good will to assist Indian tribes in efforts to secure lands for the still numerous landless Indians.

Several Indian reform groups blossomed before and after the turn of the century. One of their earliest successes was a long legal effort to prevent the Cupa Indians from being dispossessed of their ancestral village of Warner's Hot Springs. While losing the legal case Cupa Indians and their allies managed to secure lands on the nearby Pala Indian Reservation in San Diego County. More important for the majority of landless Indians were the efforts of the Northern California Indian Association that goaded the BIA into enumerating landless Indians in 1905. The result of the survey and political pressure from Indians and their friends resulted in federal actions creating 36 new reservations and Rancherias in 16 Northern California counties. Rancherias were very small parcels of land aimed at provided homesites only for small bands of landless Indians. They are all located in Northern California. Unfortunately, the BIA's investigator failed to visit 12 other counties, thus ignoring the luckless Indians in those areas. Between 1933 and 1941 Congress authorized the enlargement of several Southern California reservations by 6492 acres. No rancherias or homesites were made available for landless Southern California Indians.

Important developments occurred as a result of political activism on the part of both tribes and pan-Indian organizations from 1921 to the present. Beginning with the early efforts of the Indian Board of Cooperation, numerous California Indians self-help organizations and tribes pushed for a lawsuit over the failure of the United States to compensate the Indians of California for the loss of their aboriginal lands. Congress relented and passed the Jurisdictional Act of 1928. This legislation allowed the Indians to sue the federal government and use the state Attorney general's office to represent them. Lacking control of their legal representative a controversial settlement was finally achieved in 1944. \$17,053,941.98 was offered for the failure of the government to deliver the 18 reservations promised in treaty negotiations of 1851-2. Incredibly, the government decided to deduct all of its "costs" of providing reservations, supplies and even the salaries of corrupt and do-nothing Indians agents native peoples had endured for nearly a century. After an-other long battle, little more than 5 million dollars were finally distributed on a per-capita basis to 36,095 California Indians in 1951. A paltry \$150. was distributed to surviving Indians. This parsimonious and unfair settlement prompted California Indians to seek further legal redress.

The efforts of California Indians to sue the federal government under the Jurisdictional Act of 1928 resulted in the creation of the federal Indian Claims Commission in 1946. This federal body allowed Indian groups to press for compensation to tribes over the theft of their lands in the 19th century. By August of 1951, twenty-three separate petitions had been filed by attorneys on behalf of tribes in California. After 20 years of tortuous maneuvering all separate claims were consolidated into a single case. A compromise settlement of \$29,100,000 was offered for 64,425,000 acres of tribal territory. After deduction of attorney's fees (\$12,609,000) and the addition of interest and about half a million left over from the first settlement the payment worked out to an offer of 47 cents per acre! The purchase of public domain lands in California in 1850 was never less than \$1.50 per acre. This outrageous offer offended many Indians who had pinned their hopes on a settlement that would provide seed money for desperately needed economic development. Despite bitter opposition by many of the original claimants, the federal government prepared a census of eligible Indians in preparation for an anticipated judgment. The BIA organized a series of meetings to convince the litigants to accept the settlement. Eventually a majority of the groups agreed, except the Pit River tribe. They offered strong, vociferous and persistent opposition. However, through questionable balloting, the government declared they had accepted the offer in 1964. Nearly 65,000 California Indians were deemed eligible to share in the settlement. Payments of little more than \$600 per person was distributed in 1968. What is of great significance here is the fact that the entire claims activities were conducted outside of normal court proceedings protected by the constitution. Thus, Indians are the only class of citizens in the United States who are denied constitutional protection of their lands by extra-constitutional means.

## **TERMINATION**

During the divisive and controversial land claims battle the BIA began to submit plans to end all services to California Indians and transfer all authority over federal Indian reservations to the State. This new policy, called Termination, was put into motion in 1951. Special agents were sent to prepare for the end of federal jurisdiction over tribal lands. At first the state was enthusiastic over the prospect of increasing its tax base with the anticipation of the privatization of federal trust properties. Termination became law in California under authority of the Rancheria Act of 1958. This statute allowed tribes to vote on a plan to divide communal tribal property into parcels to be distributed to its members. Distributees would receive title to their lands and be free to sell it and be obliged to pay property tax from that time forward. The BIA targeted the smallest, least organized and most isolated tribes to persuade them to accept this plan for cultural and tribal suicide. Government personnel promised acceptance would result in freedom and economic independence. They further made elaborate promises to upgrade squalid housing, pave roads, build bridges, construct water projects and even provide college scholarships in return for a vote to terminate. Between 1958 and 1970 twenty-three rancherias and reservations were terminated. Chronically high unemployment rates, low educational achievement and sometimes emergency medical needs soon forced many to make loans on, or sell their lands. Worse still, many BIA services like health, education were abruptly ended for all Indians in the state. Like the earlier allotment policy, the implementation of termination set in motion a series of events that

ultimately divested small tribes of 10,037 acres of land, disrupted tribal institutions and traditions and ultimately left these tribes more desperate, and impoverished than ever. Termination failed miserably to improve the socioeconomic or political power of the California Indians.

The occupation of Alcatraz Island in the San Francisco Bay, by nearly 100 American Indian College students in the fall of 1969 ushered in a new era of Indian affairs. A new generation of young, energetic and highly educated California Indians emerged during this period. Highly skeptical of the government they were committed to protecting tribal sovereignty. More important still, they found great value in tribal traditions. They encouraged traditional ceremonies, language retention and sought to remove impediments to the exercise of tribal religious practices. These developments paralleled a new generation of tribal leaders who would dynamically defend tribal rights. These activities made three things apparent; many California Indians were still landless, terminated tribes had been swindled, and some tribes had never been recognized by the federal government. However, reservation, landless and unrecognized tribesmen all shared lives of desperate poverty and little hope for employment or economic development.

In recognition of the growing sophistication of California Indians, the state legislature created the, Native American Heritage Commission in 1978. This all Indian commission works as a liaison between state, federal and tribal governments. It has been successful in protecting Indian burials, sacred places and providing access to government lands to harvest native plants for ceremonial practices and basketmaking.

To date 17 rancherias and reservations have reversed the disastrous termination process. Other tribes are currently pursuing legal avenues to reverse their termination status. Unrecognized tribes have vigorously pursued acknowledgment processes whose requirements are so impossibly demanding that many large tribes in Arizona and New Mexico could not today meet such standards of cultural continuity. Nevertheless, the Acagchemem of San Juan Capistrano the Muwekma of the San Francisco Bay area, and the Coast Miwok of Marin County are close to federal recognition and acquiring a trust land base.

Government developed economic development plans have a history of nearly a century of total failure. Currently more than thirty reservations and rancherias have established gaming businesses on their lands. Some are highly successful while other are not. Some public opposition to these activities seems to center around the fear that Indians may be cheated by their business partners. Such fears smack of paternalism and ignore the reality that few if any valuable resources can be found on Indian lands. Few private investors have come forward to work with Indian tribes outside of the gaming industry. With few choices, wise reservation leadership view gaming as an interim step toward greater economic independence. The Viejas Band of Kumeyaay Indians are the best example of how that dream can be achieved.

The amazing adaptive capabilities of California Indians has demonstrated the resiliency and genius of these much misunderstood and hardworking tribes can achieve under the most unfavorable of circumstances. We know, and our friends and counter parts in local and national governmental agencies must understand that only through the exercise of our tribal sovereignty can we successfully take our rightful place in our prosperous and free nation. We enter the next century filled with optimism.

**Professor Edward D. Castillo**

*Cahuilla-Luiseno*

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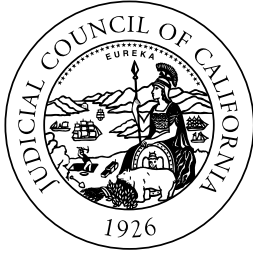
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# JUDICIAL COUNCIL OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

## **Why Is Notice Under The Indian Child Welfare Act (ICWA) So Hard To Get Right?<sup>1</sup>**

### **Introduction**

More Indian Child Welfare Act (ICWA) cases are overturned for failure to give proper notice than for any other cause. Given that ICWA has been around since 1978, why is this still such a problem?

The answer is that finding out where to send notice is much more complicated than many people realize. This is particularly true in California. California has more than 100 federally recognized Indian tribes, as well as unrecognized tribes, and more individuals with Indian ancestry than any other state in the nation. Many of these individuals trace their Indian ancestry to tribes outside of California; for an individual who does trace his or her ancestry to a historical California Indian tribe, finding out whether he or she is “a member or eligible for membership” in a federally recognized tribe, and if so which tribe, can be very difficult.

### **Historical Conditions and Policies in California**

There are many historical conditions and policies that make the application of ICWA in California very complicated and very difficult. These include:

- Comprehensive treaties with California Indians were never implemented the way they were in many other areas of the United States.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- Early California Indian law and policy provided that:

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<sup>1</sup> Prepared by the Tribal/State Programs Unit, Center for Families, Children & the Courts, Judicial Council of California. Updated March, 2019

- A justice of the peace had the legal authority to remove Indians from lands in a white person's possession;
  - Any Indian could be declared vagrant (upon word of a white person) and thrown into jail, and his or her labor could be sold at auction for up to four months, with no pay (called "indenture" but, in effect, slavery);
  - Indian children could be kidnapped, sold, and used as indentured labor, which was effectively slavery;
  - Any Indian could be put into indentured servitude (one report mentioned 110 servants who ranged from ages 2 to 50, 49 of whom were between 7 and 12 years old); and
  - Government-sponsored militias organized against Indian tribes were allowed.<sup>2</sup>
- As a result, of these policies as well as disease brought by settlers, between 1840 and 1870, California's Indian population plummeted from an estimated 300,000 to an estimated 12,000.
  - Those who survived scattered into small groups and hid themselves and their identity because it was too dangerous to remain as a group and be identified as Indian.
  - No land base was set aside for most Indians in California.
  - Few California tribes have substantial "reservations."
  - Instead of substantial reserve lands for California's Indian population, in the early 1900s, small plots of land were set aside for "homeless California Indians."
  - When the federal government did recognize tribes, it tended to identify tribes not by their historical identity, but in terms of the locality in which lands were set aside for them.
  - Then, during the "termination period," in the 1950s and 1960s, the federal government "terminated" more than 40 California tribes; they were no longer recognized as Indians or tribes.
  - Also, during this same timeframe (ie. the 1960's), the federal government relocated 60,000–70,000 Indians from other parts of the country to California, mainly to the Los Angeles and San Francisco Bay areas.
  - Since the 1970s, many terminated tribes have been restored through litigation and legislation.<sup>3</sup>

This history makes compliance with ICWA requirements in California very complicated and difficult. ICWA requires that when a child is a "member of or eligible for membership in and the biological child of a member of" a federally recognized tribe, notice of most involuntary child custody proceedings must be sent to that tribe. Notice must be sent to the tribal chairman unless the tribe has designated another agent for service of ICWA notice. The Department of Interior is charged with maintaining and publishing a list of "Agents for Service of ICWA Notice" in the federal register. The list

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<sup>2</sup> For more information on early California Laws and Policies relating to Indians, please see Johnston-Dodds, Kimberly, [\*Early California Laws and Policies Related to California Indians\*](#) (California Research Bureau, Sacramento, CA, 2002). See also [California Indian History Primary Sources and Information 1846-1879](#).

<sup>3</sup> For further information on Termination, Restoration and Federal Acknowledgement of Unrecognized California Tribes, please see the Final Report of the Advisory Council on California Indian Policy, 1997.



was last published on [May 9, 2019](#)<sup>4</sup>. The Bureau of Indian Affairs (BIA) Regional Office in Sacramento acknowledges that the information in the federal register list is often out of date as soon as it is published.

Further, in California, because of the historical events described above, the way people with Indian ancestry identify themselves may not be consistent with the way in which tribes are identified by the federal government.<sup>5</sup>

This is a map of historic California tribal territories:



<sup>4</sup> As of May, 2019. That list can be accessed [here](#).

<sup>5</sup> To a greater or a lesser extent, the same is also true of many tribes throughout the United States.



As the reader can see when comparing these two maps, many of the names by which the federal government currently recognizes tribes bear no relationship to historical tribal identifications.

A similar situation is true, in differing degrees, for many tribes across the United States.

### **Sorting Through Tribal Lists**

At the time of writing, the most recent BIA list of federally recognized Indian tribes was published on February 1, 2019, and can be found [here](#).

This is an alphabetical list of federally recognized tribes throughout the country and contains no contact information.

At the time of writing, the most recent BIA list of Agents for Service of ICWA Notice was published in May 9, 2019 can be found [here](#).

This lists the tribes, alphabetically, by BIA region (most California tribes are in the Pacific Region).

If an individual is an enrolled member<sup>6</sup> of a federally recognized tribe, he or she will likely be able to tell you the name of the tribe as it is identified in the federal register. Many people who identify as California Indians, however, may not be able to tell you the name of their tribe as it appears in the federal register. They may instead identify their tribe by its historic tribal name, for instance Pomo or Cahuilla. If someone states they have Pomo ancestry, it will not be possible to go to the federal register list of Agents for Service of ICWA Notice and look under “P” to find Pomo tribes. There are more than 20 federally recognized tribes whose members trace their ancestry to the historic “Pomo” tribe. Not a single one of these tribes’ federally recognized tribal names begins with the word “Pomo.” Only six of these tribes even have the word “Pomo” in their federally recognized tribal name.

Similarly, if someone states that he or she has Cahuilla ancestry, it is not possible to look up Cahuilla in the federal register and be certain you have found his or her tribe. Although there is a federally recognized tribe named “Cahuilla,” it does not include all people of Cahuilla ancestry. There are nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla nation. Of those, the federally recognized tribal name of only one (the Cahuilla Band of Mission Indians) begins with the word Cahuilla. Only three have the word Cahuilla in their federally recognized tribal name.

To further complicate matters, several tribes have traditional territories and reservation land bases that straddle the California border. For instance, the Colorado River Indian Tribes (“CRIT”) are recognized by the federal government as a single federally recognized tribe. CRIT is, however, composed of descendants of four distinct historic tribes—the Mohave, Chemehuevi, Hopi, and Navajo—who had land set aside in common

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<sup>6</sup> Caution: Not all tribes require “enrollment” for membership. In many cases simple descent from an individual on a base roll or early member of the tribe may be enough for membership.

for them by the federal government in 1865. The reserve straddles the California/Arizona border, with a substantial portion of the reservation lying within San Bernardino County. Nevertheless, because the primary community and tribal offices are located in Arizona, the Colorado River Indian Tribes are not even listed as a “California” tribe in the federal register of Designated Agents for Service of ICWA Notice. Instead, they are listed under the Western Region of BIA, which includes Arizona. The same is true of the Chemehuevi Indian Tribe, the Fort Mojave Indian Tribe, and the Fort Yuma Tribe and perhaps others that also have reserve lands that straddle the California/Arizona border.

The federal Bureau of Indian Affairs has created a list of tribes by tribal affiliation. That list was last updated 11/28/2015. It is available here: [Indian Child Welfare Act; Designated Tribal Agents for Service of Notice](#)

### **Why Don’t People Claiming Native American Ancestry Know Whether They Are a Member of a Federally Recognized Tribe or, If So, to Which Tribe They Belong?**

State and local agency personnel are sometimes frustrated that people with Indian ancestry may have very little information about their potential links to federally recognized tribes. Similarly, sometimes there is frustration that, when notice is sent to tribes, the tribes sometimes take a very long time to determine whether particular individuals are members or eligible for membership in their tribes.

Many of the historical factors discussed above contribute to the problem that people of Indian ancestry are sometimes disconnected from their tribal communities and do not know whether they are members of or eligible for membership in a federally recognized tribe. As discussed in the previous section, not all the historic California tribes currently have status as “federally recognized tribes.” Reservations were not set aside for all the tribes in California, even the tribes that signed the eighteen 1851–1852 unratified treaties. The idea of a comprehensive “list” of federally recognized tribes is quite recent; one was first published in 1979. The “list” was primarily based on those groups for which the federal government held lands in trust, and thus left out many individuals and families that descend from historic California tribes and identify as Indian even though they might not be eligible for membership in a federally recognized tribe. These people’s status as “Indian” has in many ways been confirmed by federal laws and policies. Federal legislation still contains a unique definition of California Indian that more people than just members of federally recognized tribes and that recognizes this broader category as eligible for health and education services from the BIA. This definition, from 25 U.S.C.A. § 1679, is given below:

#### **(b) Eligible Indians**

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

- (1) Any member of a federally recognized Indian tribe.

(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant--

(A) is living in California,

(B) is a member of the Indian community served by a local program of the Service, and

(C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.<sup>7</sup>

Further, there may be close historical family connections between people who are currently members of federally recognized tribes and those who are not. An individual's ancestors may primarily identify with a group that is not currently federally recognized, but they may still be eligible for membership in one or more federally recognized tribes. This is why there is an obligation to "work with all of the tribes of which there is reason to know the child may be a member" to verify the child's status.<sup>8</sup> This allows each tribe to investigate and make a determination about the child's eligibility.

It is important to know that membership criteria vary from tribe to tribe and may change over time. Membership criteria for many California tribes is based on descent from a "base roll" that in many cases was established by the BIA and does not necessarily reflect any historic practice of the tribe. Following are several examples of membership criteria for several California tribes<sup>9</sup>:

Example 1:

(a) The membership of the XXXXXXXXXXXX Band of Mission Indians shall consist of all persons whose names appear on the last official per capita payroll of June 1954, and children born to such members as issue of a legal marriage, provided such children shall possess at least 1/8 degree of Indian blood.

(b) No new members may be adopted.

Example 2:

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<sup>7</sup> 25 U.S.C.A. § 1679

<sup>8</sup> California Welf & Inst. Code § 224.2(g)

<sup>9</sup> These examples are taken from tribal constitutions found online at the National Indian Law Library's [Tribal Law Gateway](#). We have removed the names of the tribes because we do not know whether the membership criteria are still current.

SECTION 1. The membership of the xxxxxxxx Band of Pomo Indians shall consist of-

(a) All persons of Indian blood whose names appear on the official census rolls of the band as of April 1, 1935;

(b) All children born to any member of the band who is a resident of the rancheria at the time of the birth of said children.

SEC. 2. The general community council shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, when the resources of the band make such adoptions feasible.

An individual may know that his or her ancestors identified as Cahuilla but may not know whether any such ancestors' names appeared on a "per capita payroll of June 1954." An individual may not know whether he or she or his or her children possess 1/8 degree Indian blood without completing a family tree (as required by the ICWA-030 form). An individual may know that his or her ancestors identify as Pomo but not know whether any of their names appear on a census roll from April 1, 1935. They may not know whether a particular ancestor was a "resident of the rancheria" at the time of the birth of their children. Similarly, a tribe may not be able immediately to determine whether a particular individual is a member of or eligible for membership in a given tribe without conducting extensive family background research, going back several generations or often beyond. This is why tribes require the detailed information required in the ICWA-030 form. This is why it is critical that this information be complete and accurate. Even with this information, it may take some time for a tribe to be able to check this historical information and decide about tribal membership.

## **Indian Child Welfare Act Inquiry and Notice requirements under federal & California state law<sup>1</sup>**

### **Federal Regulations at 25 C.F.R. Part 23**

#### **§23.105 How do I contact a Tribe under the regulations in this subpart?**

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

- (a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its Web site at [www.bia.gov](http://www.bia.gov).
- (b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.
- (c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see [www.bia.gov](http://www.bia.gov)).

#### **§23.107 How should a State court determine if there is reason to know the child is an Indian child?**

- (a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
- (b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an “Indian child,” the court must:
  - (1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and
  - (2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child” in this part.
- (c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

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<sup>1</sup> Current as of December 2020.

- (1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
  - (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
  - (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
  - (4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;
  - (5) The court is informed that the child is or has been a ward of a Tribal court; or
  - (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.
- (d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

**§23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?**

- (a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.
- (b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.
- (c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

**§23.11 Notice.**

- (a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or



Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in §23.111, consistent with the confidentiality requirement in §23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by §23.111.

...

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

### **§23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?**

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* §23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

- (3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
- (4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
- (5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
- (6) Statements setting out:
- (i) The name of the petitioner and the name and address of petitioner's attorney;
  - (ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.
  - (iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.
  - (iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.
  - (v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.
  - (vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and §23.115.
  - (vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.
  - (viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.
  - (ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.
- (e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in §23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

## **California Welfare & Institutions Code**

### **§ 224.2. Determination whether child is an Indian child; considerations; scope of inquiry; membership status**

(a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. The duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether he or she has any information that the child may be an Indian child.

(b) If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.

(c) At the first appearance in court of each party, the court shall ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(d) There is reason to know a child involved in a proceeding is an Indian child under any of the following circumstances:

(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child.

(2) The residence or domicile of the child, the child's parents, or Indian custodian is on a

reservation or in an Alaska Native village.

(3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child.

(4) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child.

(5) The court is informed that the child is or has been a ward of a tribal court.

(6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(e) If the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.

(1) There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).

(2) When there is reason to believe the child is an Indian child, further inquiry is necessary to help the court, social worker, or probation officer determine whether there is reason to know a child is an Indian child. Further inquiry includes, but is not limited to, all of the following:

(A) Interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.3.

(B) Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility.

(C) Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility. Contact with a tribe shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of notices under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Contact with a tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case.

(f) If there is reason to know, as set forth in subdivision (d), that the child is an Indian child, the party seeking foster care placement shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.3.

(g) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership.

(h) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

(i)(1) When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record and after review of the report of due diligence as described in subdivision (g), and a review of the copies of notice, return receipts, and tribal responses required pursuant to Section 224.3, that the child does not meet the definition of an Indian child as used in Section 224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) If the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, subject to reversal based on sufficiency of the evidence. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3.

(j) Notwithstanding a determination that the federal Indian Child Welfare Act of 1978 does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information required by Section 224.3 that was not previously available or included in the notice issued under Section 224.3, the party seeking placement shall provide the additional information to any tribes entitled to notice under Section 224.3 and to the Secretary of the Interior's designated agent.

### **§ 224.3. Matters involving an Indian child; notice to interested parties; time to notify; proof**

(a) If the court, a social worker, or probation officer knows or has reason to know, as described in subdivision (d) of Section 224.2, that an Indian child is involved, notice pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) shall be provided for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1. The notice shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe. Copies of all notices sent shall be served on all

parties to the dependency proceeding and their attorneys. Notice shall comply with all of the following requirements:

- (1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.
- (2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.
- (3) Notice of all Indian child custody hearings shall be sent by the party seeking placement of the child to all of the following:
  - (A) All tribes of which the child may be a member or citizen, or eligible for membership or citizenship, unless either of the following occur: (i) A tribe has made a determination that the child is not a member or citizen, or eligible for membership or citizenship. (ii) The court makes a determination as to which tribe is the child's tribe in accordance with subdivision (e) of Section 224.1, after which notice need only be sent to the Indian child's tribe.
  - (B) The child's parents.
  - (C) The child's Indian custodian.
- (4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent.
- (5) In addition to the information specified in other sections of this article, notice shall include all of the following information:
  - (A) The name, birth date, and birthplace of the Indian child, if known.
  - (B) The name of the Indian tribe in which the child is a member, or may be eligible for membership, if known.
  - (C) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.
  - (D) A copy of the petition by which the proceeding was initiated.
  - (E) A copy of the child's birth certificate, if available.
  - (F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.
  - (G) The information regarding the time, date, and any location of any scheduled hearings.
  - (H) A statement of all of the following:
    - (i) The name of the petitioner and the name and address of the petitioner's attorney.
    - (ii) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding.
    - (iii) The right of the child's parents, Indian custodians, and tribe to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.
    - (iv) The right of the child's parents, Indian custodians, and tribe to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.
    - (v) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian custodians.

(vi) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978.

(vii) In accordance with Section 827, the information contained in the notice, petition, pleading, and other court documents is confidential. Any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal that information to anyone who does not need the information in order to exercise the tribe's rights under the federal Indian Child Welfare Act of 1978.

(b) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1, unless it is determined that the federal Indian Child Welfare Act of 1978 does not apply to the case in accordance with Section 224.2. After a tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (H) of paragraph (5) of subdivision (a) need not be included with the notice.

(c) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing, except as permitted under subdivision (d).

(d) A proceeding shall not be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for a hearing held pursuant to Section 319, provided that notice of the hearing held pursuant to Section 319 shall be given as soon as possible after the filing of the petition to declare the Indian child a dependent child. Notice to tribes of the hearing pursuant to Section 319 shall be consistent with the requirements for notice to parents set forth in Sections 290.1 and 290.2. With the exception of the hearing held pursuant to Section 319, the parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. This subdivision does not limit the rights of the parent, Indian custodian, or tribe to more than 10 days' notice when a lengthier notice period is required by law.

(e) With respect to giving notice to Indian tribes, a party is subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child or counsels a party to do so.

(f) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

(g) For any hearing that does not meet the definition of an Indian child custody proceeding set forth in Section 224.1, or is not an emergency proceeding, notice to the child's parents, Indian custodian, and tribe shall be sent in accordance with Sections 292, 293, and 295.

**[For right to notice for other hearings not covered by 224.3, see §§290.1(a)(4) & (6); 290.2(a)(4) & (6); 291 (a)(4)&(6)&(g); 292 (a)(4)&(6); 293(a)(4) & (6);294(a)(3) & (5); 295(a)(4) & (6); 296; 297; & 727.4. For hearings not covered by 224.3 – parents and a tribe which has confirmed that the child is a member or eligible for membership in the tribe, are entitled to the same notices that all other parties are entitled to.]**

**§ 306. Duties of social workers; Indian child as ward of tribal court or subject to exclusive jurisdiction of tribe; temporary custody; transfer of custody to tribe; petition**

\*\*\*

(b) Upon receiving temporary custody of a child, the county welfare department shall inquire pursuant to Section 224.2, whether the child is an Indian child.

(c) If it is known or if there is reason to know the child is an Indian child, any county social worker in a county welfare department may take into custody, and maintain temporary custody of, without a warrant, the Indian child if removing the child from the physical custody of his or her parent, parents, or Indian custodian is necessary to prevent imminent physical damage or harm to the Indian child. The temporary custody shall be considered an emergency removal under Section 1922 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1922).

(d) If a county social worker takes or maintains an Indian child into temporary custody under subdivision (a), and the social worker knows or has reason to believe the Indian child is already a ward of a tribal court, or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code, or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, the county welfare agency shall notify the tribe that the child was taken into temporary custody no later than the next working day and shall provide all relevant documentation to the tribe regarding the temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or who is subject to the tribe's exclusive jurisdiction, the county welfare agency shall transfer custody of the child to the tribe within 24 hours after learning of the tribe's determination.

(e) If the social worker is unable to confirm that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (d), or is unable to transfer custody of the Indian child to the child's tribe, prior to the expiration of the period permitted by subdivision (a) of Section 313 for filing a petition to declare the Indian child a dependent of the juvenile court, the county welfare agency shall file the petition. The county welfare agency shall inform the state court in its report for the hearing pursuant to Section 319, that the Indian child may be a ward of a tribal court or subject to the exclusive jurisdiction of the child's tribe. If the child welfare agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the agency shall inform the state court, provide a copy of the written confirmation, if any, and move to dismiss the petition. This subdivision does not prevent the court from authorizing a state or local agency to maintain temporary custody of



the Indian child for a period not to exceed 30 days in order to arrange for the Indian child to be placed in the custody of the child's tribe.

## **California Rules of Court**

### **Rule 5.481. Inquiry and notice**

#### **(a) Inquiry**

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party reporting child abuse or neglect, whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or in an Alaska Native village, and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.

(2) At the first appearance by a parent, Indian custodian, or guardian, and all other participants in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights, proceeding to declare a child free of the custody and control of one or both parents, preadoptive placement, or adoption proceeding; and at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement, as described in Welfare and Institutions Code section 224.1(d)(1), or that may result in an order for guardianship, conservatorship, or custody under Family Code section 3041; the court must:

(A) Ask each participant present whether the participant knows or has reason to know the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child; and

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

(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know or believe that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903, to gather the information listed in Welfare and Institutions Code section 224.3(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5);

(B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's membership status or eligibility. These contacts must at a minimum include the contacts and sharing of information listed in Welfare and Institutions Code section 224.2(e)(3).

(5) The petitioner must on an ongoing basis include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child's Indian status, as well as evidence of how and when this information was provided to the relevant tribes. Whenever new information is received, that information must be expeditiously provided to the tribes.

**(b) Reason to know the child is an Indian child**

(1) There is reason to know a child involved in a proceeding is an Indian child if:

(A) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village;

(C) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(D) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(E) The court is informed that the child is or has been a ward of a tribal court; or

(F) The court is informed that either parent or the child possesses an identification card indicating membership or citizenship in an Indian tribe.

(2) When there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership. Due diligence must include the further inquiry and tribal contacts discussed in (a)(4) above.

(3) Upon review of the evidence of due diligence, further inquiry, and tribal contacts, if the court concludes that the agency or other party has fulfilled its duty of due diligence, further inquiry, and tribal contacts, the court may:

(A) Find there is no reason to know the child is an Indian child and the Indian Child Welfare Act does not apply. Notwithstanding this determination, if the court or a party subsequently receives information that was not previously available relevant to the child's Indian status, the court must reconsider this finding; or

(B) Find it is known the child is an Indian child, and that the Indian Child Welfare Act applies, and order compliance with the requirements of the act, including notice in accordance with (c) below; or

(C) Find there is reason to know the child is an Indian child, order notice in accordance with (c) below, and treat the child as an Indian child unless and until the court determines on the record that the child is not an Indian child.

(4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, must be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

**(c) Notice**

(1) If it is known or there is reason to know an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court, must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.3, Family Code section 180, and Probate Code section 1460.2 for all initial hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, or an order of guardianship, conservatorship, or custody under Family Code section 3041. For all other hearings, and for continued hearings,

notice must be provided to the child's parents, legal guardian or Indian custodian, and tribe in accordance with Welfare and Institutions Code sections 292, 293, and 295.

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2) in any case described by rule 5.480(2)(A)-(C).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (b)(1).

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

### **Advisory Committee Comment**

Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence, information sharing, and notice under the Indian Child Welfare Act and state law.

### **Rule 5.668. Commencement of hearing-explanation of proceedings (§§ 316, 316.2)**

#### **(a) Commencement of hearing**

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court must give advisement as required by rule 5.534 and must inform each parent and guardian present, and the child, if present:

(1) Of the contents of the petition;

(2) Of the nature of, and possible consequences of, juvenile court proceedings;

(3) If the child has been taken into custody, of the reasons for the initial detention and the purpose and scope of the detention hearing; and

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, the court-ordered reunification services must be considered to have been offered or provided on the date the petition is sustained or 60 days after the child's initial removal, whichever is earlier. The time for services must not exceed 12 months for a child three years of age or older at the time of the initial removal and must not exceed 6 months for a child who was under three years of age or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.

#### **(b) Parentage inquiry**

The court must also inquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child as set forth in section 316.2.

**(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))**

(1) At the first appearance in court of each party, the court must ask each participant present at the hearing whether:

- (A) The participant knows or has reason to know the child is an Indian child;
- (B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village;
- (C) The child is or has ever been a ward of a tribal court; and
- (D) Either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).



(3) If there is reason to believe that the case involves an Indian child, the court must require the agency to proceed in accordance with section 224.2(e).



(4) If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in section 224.2(g) that the child does not meet the definition of an Indian child.

**(d) Health and education information (§ 16010)**

The court must order each parent and guardian present either to complete *Your Child's Health and Education* (form JV-225) or to provide the information necessary for the social worker or probation officer, court staff, or representative of the local child welfare agency to complete the form. The social worker or probation officer assigned to the dependency matter must provide the child's attorney with a copy of the completed form. Before each periodic status review hearing, the social worker or probation officer must obtain and include in the reports prepared for the hearing all information necessary to maintain the accuracy of form JV-225.

**Judicial Council Forms**

<a href="#"><u>ICWA-010(A)*</u></a> 	<i>Indian Child Inquiry Attachment</i>
<a href="#"><u>ICWA-020*</u></a> 	<i>Parental Notification of Indian Status</i>

<a href="#"><u>ICWA-030*</u></a> 	<i>Notice of Child Custody Proceeding for Indian Child</i>
<a href="#"><u>ICWA-030(A)</u></a> 	<i>Attachment to Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act)</i>

# ICWA Inquiry & Further Inquiry At-a-Glance

Inquiry

Possible inquiry results

What is triggered by responses

Court & Agency have affirmative and continuing duty to inquire whether child for whom petition may be or has been filed, is or may be Indian child. (WIC § 224.2(a))

## Initial inquiry

Duty to inquire begins at initial contact, including inquiring of reporter of abuse/neglect if child may be Indian child. (WIC § 224.2(a))

If child is placed into temporary custody, Agency has duty to inquire whether child is Indian child. (WIC § 224.2(b))

At first appearance, court shall inquire of each participant present whether s/he knows or has reason to know child is an Indian child. Court shall instruct parties to inform court if party later receives information that provides reason to know child is Indian child. (WIC § 224.2(c) & (d))

## Further inquiry

If court or Agency has reason to believe child is Indian child, but does not have sufficient information to determine there is reason to know that child is Indian child, court and Agency shall make further inquiry as soon as practicable.

(WIC § 224.2(e))

Non-federally recognized Indian child

Indian child

Reason to know  
(WIC § 224.2(d))

Reason to believe  
(WIC § 224.2(e))

Non-Indian

- ICWA does not apply
- Court may allow child's non-federally recognized tribe to participate (WIC § 306.6)

- Child whose Indian status can be confirmed
- ICWA applies
- Tribe may intervene

- Further inquiry
- Treat as Indian child until court declares on record child is not Indian child

- Further inquiry

### Application of ICWA minimum federal standards:

- Notice
- Active efforts
- Qualified expert witness
- Placement preferences
- Findings (higher standards)
- Transfer

If court finds that proper and adequate further inquiry and due diligence have been conducted and there is no reason to know child is Indian child, court may make finding that ICWA does not apply; however, later receipt of new information requires further inquiry. (WIC § 224.2(i)(2))

- Continuing duty to inquire throughout life of case
- ICWA does not apply

# ICWA Inquiry, Notice & Findings Overview

Agency completes initial ICWA inquiry under WIC §224.2(a) & (b), and if there is reason to believe child is Indian child<sup>1</sup>, further inquiry per §224.2(e). Agency shall include all inquiry details in court report.

**At first appearance, on record the court shall:**

Inquire of each party and each participant present whether s/he knows or has reason to know that the child is an Indian child.<sup>1</sup> (See specific questions.<sup>2</sup>)

Court shall instruct<sup>3</sup> all parties to inform court if they later receive information that provides reason to know the child is an Indian child.<sup>1</sup>

(Simply asking if the family has Native American / Eskimo heritage is no longer sufficient.)



**Findings:**

- ICWA notice is not necessary.
- ICWA does not apply.

Regular statutes apply.

At every hearing court shall instruct parties to inform<sup>3</sup> if any new ICWA information.

**Findings:**

- Agency has done further §224.2(e) inquiry and there is no reason to know child is Indian child; and
- ICWA does not apply.

**OR**

- Agency is ordered to complete further §224.2(e) inquiry, and
- File evidence of the inquiry, including contacts w/ extended family members, tribes, BIA, CA DSS, and/or others.
- Court assesses if "reason to know" child is Indian child.

**Findings:**

Agency has presented evidence of due diligence to identify and work with tribes child may be member of or eligible for.

**OR** Agency is required to exercise due diligence to identify, work with tribes to verify child's status, provide notice, and file proof of due diligence and notice.

**AND**

**AND** Notice has been given as required by law.

**Apply ICWA unless and until Court can confirm child is NOT an Indian child.<sup>6</sup>**

**Agency sends notice (ICWA-030) to:**

- Federally-recognized tribes (all bands, if family does not specify which),
- The Bureau of Indian Affairs, and
- The Secretary of the Interior.

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**Return receipts**

- Before proceeding, confirm that tribe(s) received notice at least 10 days before hearing.
- Continue to send notice for each hearing until responses from all tribes.

**What if no response from all tribes?**

- No more "60-day rule."
- Based on evaluation of underlying evidence, all of the circumstances and evaluation of agency due diligence reports, upon finding of "proper and adequate further inquiry and due diligence," court can determine there is "no reason to know" and find ICWA does not apply. (WIC §224.2(i)(2))

**Letter:** child not member, not eligible for membership

**Findings:**

- ICWA does not apply.
- No more notice unless further information gives reason to know child is Indian child.

**Letter:** child is member of tribe

**OR**

**Letter:** child eligible for membership and is biological child of member

**ICWA applies**

**Notice** on ICWA-030 by registered mail, return receipt requested for hearings that culminate in foster care placement, TPR, preadoptive placement, or adoptive placement.

All responses (letters and return receipts) must be part of court file.

All other notices to tribe same way as other parties.

**Relevant issues:**

- Active efforts
- Intervention
- Transfer
- Placement preferences
- Qualified expert witness
- Findings (higher standards)
- Tribal customary adoption



**1 Definition of Indian child:**

25 U.S. Code § 1903(4): Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe; and  
WIC §224.1(b): An unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or their attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding.

**2 At the first appearance in court of each party, the court must ask each participant present at the hearing:**

**From JV-410:**

- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
- Whether the residence or domicile of the child, either of the child’s parents, or Indian custodian is on a reservation or in an Alaskan Native Village, and if yes, the name of the tribe or village;
- Whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
- If the child, either of the child’s parents, or the child’s Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.

Or...

**§ 224.2(c)**

Ask whether the participant knows or has reason to know that the child is an Indian child. (see fn. 5 for “reason to know”)

**Rule 5.668(c), whether:**

- The participant knows or has reason to know the child is an Indian child;
- The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village;
- The child is or has ever been a ward of a tribal court; and
- Either parent or the child possesses and identification card indicating membership or citizenship in an Indian tribe.

**3 Rule 5.668(c)(2)** The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

**4** The Agency should be conducting further inquiry before the first hearing in court, except in an emergency situation per WIC §319(b)(1)-(9).  
**Rule 5.668(c)(3)** If there is reason to believe that the case involves an Indian child, the court must require the agency to conduct further inquiry per WIC §224.2(e).

**5 WIC §224.2(d) Reason to know.** The circumstances that may provide reason to know the child is an Indian child include the following:

- Person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family informs the court that the child is an Indian child;
- The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village;
- Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
- The court is informed that the child is or has been a ward of a tribal court; or
- The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

**Rule 5.668(d)** If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in WIC §224.2(g) that the child does not meet the definition of an Indian child.

**6 WIC 224.2(i) Treat child as Indian child**

When there is reason to know that the child is an Indian child, **the court shall treat the child as an Indian child unless and until** the court determines on the record and after review of the report of due diligence as described in WIC §224.2(g), and a review of the copies of notice, return receipts, and tribal responses required pursuant to §224.3, that the child does not meet the definition of an Indian child as used in §224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

# Overview of ICWA case law 2021 and 2022

In 2021, eight ICWA cases total. In 2022, six ICWA cases in first four months.

To compare those:

- 2021: One new ICWA case every 6.5 weeks.
- 2022: One new ICWA case every **two** weeks.

To understand issues/trends/takeaways from the cases, best to see where they fit in the context of law. Quick primer on the law....

- Recall that big changes in 2016 re BIA ICWA Regulations
- Starting Jan. 2019, CA implemented those new regulations via AB3176. So big changes in how ICWA is handled starting Jan. 2019.

**Think of ICWA as three part process: (and a flow chart is a helpful visual here....)**

- 1) Duty of initial inquiry
- 2) Duty of further inquiry
- 3) Notice

**Initial inquiry:** SW and court each have duty of initial inquiry:

- SW: While investigating, even before filing petition, SW has to ask parents, guardians, extended family, reporter of abuse, Indian custodian.
- Court: judge inquires of all participants at first appearance (usually Detention or Initial Hearing, but can be any hearing where participant is appearing for first time). Ask all participants. Direct participants to inform if they receive info in future.
- Based on information in SW report and responses of initial inquiry, court finds one of the following:
  - No reason to believe
  - Reason to believe
  - Reason to know
  - Known Indian child

**Further inquiry (if reason to believe):**

- If court/agency has reason to believe (but not enough info to have reason to know), court/agency shall make further inquiry as soon as practicable.
- Judge is ordering Dept to do further inquiry.

**Notice (if reason to know or known Indian child)**

- If reason to know, or known Indian child, or further inquiry creates reason to know, then formal ICWA notice.

To understand the 14 ICWA cases, helpful to look at where they fall on along the process.

Rather than affirmed or reversed, look at whether it was *remanded or not remanded*. Getting “conditionally affirmed” but sent back to fix ICWA, same as limited reversal/remand....

Some brewing issues/disputes:

- What makes for harmless error vs. prejudicial error?
- What test should be used to determine magnitude of error?
- Does parent have to assert Indian heritage on appeal?
- Trend: broad interpretation of reason to believe.

ICWA: applicability where UCCJEA issue		
Not remanded (affirmed)		
	<b>In re A.T.</b>	
4/20/21	63 Cal.App.5th 267	First Dist., Div. Three (Sonoma)
Juvenile Court properly applied UCCJEA and dismissed dependency action in favor of family court proceedings in Washington state after finding ICWA inapplicable because the child had been placed with the non-offending parent. If ICWA had applied, then ICWA would have trumped UCCJEA.		

Remaining 13 ICWA cases almost equally split between initial inquiry cases (7) and further inquiry cases (6).

Initial inquiry			
Not remanded			
<p><b>A.C.</b> 6/25/21 65 Cal.App.5th 1060 4th Dist., Div. 2 San Bernardino</p>	<p><b>Charles W.</b> 7/9/21 66 Cal.app.5th 483 4th Dist., Div. 1 San Diego</p>	<p><b>Darian R.</b> 2/24/22 75 Cal.App.5th 502 2nd Dist., Div. 1 Los Angeles</p>	<p><b>S.S.</b> 2/24/22 75 Cal.App.5th 575 2nd Dist., Div. 1 Los Angeles</p>
<p>Failure to inquire about father's ancestry was harmless – not prejudicial - since dad didn't assert ICWA heritage on appeal. No reason to suppose result would have been different. Reverse/remand for further inquiry would take effort/expense, delay permanency.</p> <p>See Dissent: ICWA errors should be presumptively prejudicial.</p>	<p>No further inquiry is required where there was prior finding that ICWA did not apply for different child, same parents are involved, and mother's counsel asserted that mother had no new information.</p> <p>Even if error, harmless. Dad didn't assert on appeal he had heritage. Based on prior finding and pars' unequivocal denials, not reasonably probable that further inquiry would yield different result.</p>	<p>Failure to interview family is harmless error under Benjamin M. test -- unlikely that any further inquiry of family members would have yielded information about Indian ancestry.</p>	<p>Failure to ask maternal grandmother was harmless (per Benjamin M.) where she requested placement, so she would have benefited from asserting heritage but didn't.</p>
<p>~~~~~ Criticized by Antonio R., Benjamin M., Y.W. ~~~~~ Relies on harmless error test.</p>		<p>~~~~~ Same panel of justices heard decided SS and Darian R. Relies on Benjamin M. definition of prejudice. Criticized by Antonio R., distinguished by in re A.C. (2022) ~~~~~</p>	

Initial inquiry		
Remanded		
<p><b>Benjamin M.</b> 10/22/21 70 Cal.App.5th 735 4th Dist., Div. 2 San Bernardino</p>	<p><b>H.V.</b> 2/18/22 75 Cal.App.5th 433 2nd Dist., Div. 5 Los Angeles</p>	<p><b>Antonio R.</b> 3/16/22 B314389 2nd Dist., Div. 7 Los Angeles</p>
<p>Agency failed to obtain information that appeared to have been both readily available and potentially meaningful.</p> <p>Test = was there readily obtainable information likely to bear meaningfully on whether child is Indian child?</p>	<p>Failure of the agency to inquiry about ICWA with extended family is not harmless; mother does not have to assert heritage on appeal.</p> <p>See dissent: can have too much of a good thing....</p>	<p>Failure to ask extended relatives present at Disposition Hearing was prejudicial where relative's information was likely to be meaningful regarding whether child in Indian.</p> <p>Although the parents had no knowledge of Indian ancestry, WIC § 224.2(a) requires agency to inquire of extended family members, which it did not do.</p>
<p>~~~~~ Rejects harmless error as test, articulates its own test. ~~~~~</p>	<p>~~~~~ Followed by Antonio R. ~~~~~</p>	<p>~~~~~ Sticks with Y.W. decision: failure to inquire most of the time is prejudicial and reversible. ~~~~~ Doesn't like Benjamin M. test; it requires speculation and has no place in analysis of prejudicial error.</p>

## Further Inquiry

Not remanded

**J.S.**

3/2/21

62 Cal.App.5th 678

2nd Dist., Div. 7 (Los Angeles)

Ancestry.com results do not trigger further inquiry without additional information.

Substantial evidence supported a finding that ICWA did not apply because an inquiry under WIC § 224.2(e) did not identify a tribe. Ancestry website company query results, even if a reliable source of possible Indian ancestry, suggested “Native American” ancestry over a vast geographic area. As such, the information had little usefulness in determining whether children were Indian children as defined under ICWA.

Remanded

**S.R.**

4/28/21  
64 Cal.App.5th 303  
4th Dist., Div. 2  
San Bernardino

**Y.W.**

10/19/21  
70 Cal.App.5th 542  
2nd Dist., Div. 7  
Los Angeles

**Josiah T.**

11/8/21  
71 Cal.App.5th 388  
2nd Dist., Div. 8  
Los Angeles

It was error to not conduct further inquiry when the family provided very specific information.

Disclosure by grandparents that children's great-grandmother was a member of Yaqui Tribe of AZ gave Agency reason to believe children could be Indian children and triggered duty for the department to inquire further, including by contacting Yaqui Tribe. Very specific evidence of Indian ancestry provided reason to believe children were Indian children, even if that evidence did not directly establish children or parents were members or eligible for membership.

There is loose fit between info that triggers further inquiry and specific info for reason to know.

Parent need not assert ancestry to show prejudicial error; parent may not know about relationship to tribe.

Agency failed to conduct adequate inquiry into mother's possible Indian ancestry. Though agency initially did not know how to contact mother's biological parents, once SW learned of potentially viable lead to locate them, SW made no effort to pursue it. Agency's failure to conduct adequate inquiry into children's possible ancestry made it impossible for parents to demonstrate prejudice.

Biological parent of adopted parent is extended family member; here, Agency didn't make reasonable efforts to locate biological parents.

Parent need not assert Indian ancestry on appeal. Disagrees with In re A.C. (2021)

Agency's failure to investigate ICWA for 7 to 18 months and disclose information to the court is error.

Grandmother's statement that she had Cherokee ancestry and that her grandmother was person with Cherokee heritage triggered duty of further inquiry, even though she declined to provide information about her grandmother and denied having further information regarding heritage. DCFS did nothing about disclosure of Cherokee ancestry for seven months, thus failed to fulfill duty to engage in further inquiry as soon as practicable. Further, DCFS did not inform court in a timely fashion that paternal grandmother had disclosed Cherokee ancestry.

Remanded

**A.C.**

3/4/22  
B312391  
2nd Dist., Div. 1  
Los Angeles

**K.T.**

3/23/22  
E077791  
4th Dist., Div. 2  
San Bernardino

Failure to ask extended family is prejudicial error; ICWA-020 is not the last word.

Although the parents had no knowledge of Indian ancestry, WIC § 224.2(a) obligated social services department to inquire of extended family members, which it did not do.

See strong dissent (Crandall): there is permanency / ICWA dichotomy. All counsel should take more responsibility.

Same panel as Darian R. and S.S., but here, using Benjamin M. test, there was readily obtainable info that bears meaningfully on whether child is Indian child.

Agency does not discharge its duty of further inquiry until they make meaningful effort to locate and interview extended family.

Where no information that SW followed up with relatives, it was failure of agency to discharge duty of further inquiry.

Judge did not inquire of relatives in court, instead referred to ICWA issues in sibling's case.

## Published Appellate ICWA Decisions 2021

1. **In re A.C.** 4<sup>th</sup> DCA, Div. 2, 65 Cal.App.5th 1060 280 Cal.Rptr.3d 526 (June 25, 2021)

**Holding:** The juvenile court's failure to inquire or investigate father's Indian ancestry was harmless error since he did not assert such ancestry on appeal.

**Facts:** The juvenile court exercised jurisdiction over A.C. based on failure to protect and support then removed her from both parents' custody. Although the court ordered the parents to complete a "Parental Notification of Indian Status" form at the detention hearing, San Bernardino County Children and Family Services (CFS) neither notified father of this nor asked about his Indian ancestry when he was later located. The court also neglected to order father to complete the form during his first appearance. After the Confederate Tribes of the Colville Reservation determined that A.C. was ineligible for membership despite mother being a member, the court found the Indian Child Welfare Act (ICWA) did not apply at the 12-month review hearing and terminated mother's services but extended father's for 6 more months. Parental rights were later terminated and father appeals regarding ICWA noncompliance. Under ICWA, the court is mandated to ask each participant at the beginning of the proceeding whether he or she "knows or has reason to know that the child is an Indian child." The court and the social services agency also have an "affirmative and continuing duty" to make the same inquiry under California law, in addition to the court's obligation to order the agency to employ reasonable diligence to locate and inform parents of the court's order to complete the ICWA-020 form. Additionally, the agency has an ongoing obligation to inquire and document its efforts to determine the child's Indian status including asking parents and extended family members about such ancestry. Here, the court erred by failing to ask father at his first and subsequent appearances whether he had any Indian ancestry and CFS erred by neglecting to ask father and his relatives about this ancestry.

CFS concedes that there was a failure to inquire about father's Indian ancestry but argues the error was harmless. In determining whether an error is prejudicial regarding failure to comply with a California law that is higher than ICWA requirements, it is deemed harmless unless the appellant can establish a reasonable probability of a more favorable result notwithstanding the error. When a parent asserts a failure to inquire, they must show that if the inquiry were made, he or she would have claimed Indian ancestry. Without father's offer of proof or affirmative assertion of Indian ancestry, there is no miscarriage of justice, and a reversal is not warranted. Similarly, under federal law, the party must also show prejudice resulted from the error. Here, there was no error in federal law because the father was unavailable at the beginning of the proceedings and there is no federal duty to make inquiries of extended family members. Assuming there was an error, father again failed to show prejudice. The court rejected father's argument that the record is void because of CFS's failure to adequately investigate his Indian ancestry. At a minimum, he must at least claim the child may have Indian ancestry. Although ICWA notice issues can be raised for the first time on appeal, there needs be some showing of prejudice before reversing an order terminating parental rights. Requiring father to submit post judgment evidence of his Indian ancestry would entail him going outside of the record which is an exception to the normal appellate process. However, this benefits father and relying on *Josiah Z.* (2005) 36 Cal.4th 664, it is warranted in rare cases so long as it isn't used to attack the

substantive merits of the trial court's decision. Because father failed to assert a claim of Indian ancestry, like the father in *In re Rebecca R.* (2006) 143 Cal. App.4th 1426, the failure to conduct ICWA inquiry was harmless and requiring the trial court and CFS to go through the inquiry process would be "wasteful and a mere delaying tactic" that disturbs the intended finality of WIC §366.26 orders. The order is affirmed.

2. *In re A.T.* 1<sup>st</sup> DCA, Div. 3, 63 Cal.App.5th 267 (April 20, 2021)

**Holding:** The provisions of the Indian Child Welfare Act (ICWA) do not apply when an Indian child is removed from one parent in a dependency proceeding and placed with the other non-offending parent. The placement with a parent does not qualify the proceedings as a "child custody proceeding" within ICWA.

**Facts:** A.T. lived with his parents in Washington state (WA) until their divorce in 2019, and the family law court awarded A.T.'s mother physical custody with visitation to the father. In violation of the family law custody order, the mother took seven-year-old A.T. to California (CA) and after four months, a dependency petition was filed, alleging that the mother was demonstrating severe mental health issues that impacted A.T.'s mental and physical wellbeing. Mother was an enrolled member of the Yurok Tribe, but A.T. was ineligible for enrollment because he did not meet the tribe's "blood quantum requirement". The mother filed an ICWA-020 form claiming Yurok and Wiyot tribal ancestry.

After a contested detention hearing, A.T. was detained and placed with a maternal aunt in the same county. The father requested placement with him in WA and agreed to further assessment by the Sonoma County Human Services Department (Department). In November 2019, the jurisdiction hearing was continued to allow the CA juvenile court to contact the WA court to ascertain which state properly had jurisdiction over the dependency case under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Father advised that the WA family law court had recently found A.T.'s mother in contempt, granted a restraining order and ordered her to return A.T. to the father's care in WA. At that same November 2019 hearing, the CA juvenile court granted the Department's request that A.T. would be placed with the father with attendant conditions.

In December 2019, the Wiyot Tribe intervened in the dependency case and a tribal representative appeared in court and declared that A.T. was eligible for enrollment in the tribe. In January 2020, the juvenile court stated that it had been in contact with the WA family court and determined WA had "exclusive jurisdiction" over the case under the UCCJEA. The Department, A.T.'s counsel and the father urged the court to dismiss the case in favor of jurisdiction in WA and that the ICWA provisions did not apply to placement with a parent. The Wiyot tribe and the mother asserted that ICWA applied and asked the court to keep the case in CA. The juvenile court properly determined that ICWA did not apply for two reasons: (1) A.T. was not an "Indian child" within ICWA terms because although he was eligible for inclusion in the Wiyot tribe, the mother was not an enrolled member and (2) A.T. was currently placed with the father, who was a non-offending parent, and that fact made the ICWA provisions inapplicable.

The ICWA statutes do not apply when a child is removed from one parent and placed with the other non-offending parent. Such proceedings do not qualify as a "child custody proceeding"

under ICWA. The court properly applied the UCCJEA to determine that Washington was the state with "exclusive jurisdiction" over the child. The order dismissing the dependency action is affirmed. The Department's motion to dismiss the appeal is denied as moot.

3. [In re Benjamin M.](#) 4<sup>th</sup> DCA, Div. 2. 70 Cal.App.5th 735 285 Cal.Rptr.3d 682 (October 22, 2021)

**Holding:** The Agency's failure to investigate readily obtainable information about whether the minor was an Indian child was prejudicial error.

**Facts:** The minor was removed from Mother. Father's whereabouts remained unknown throughout the proceedings, though paternal relatives were in contact with the Agency. The Agency did not question paternal relatives about the minor's Indian ancestry. Mother denied Indian ancestry. The trial court found that the Indian Child Welfare Act (ICWA) did not apply. Parental rights were terminated at the 366.26 hearing. The appellate court conditionally reversed the orders and remanded to the juvenile court with directions to comply with ICWA. The Agency and the court have a duty to inquire whether a minor subject to the proceedings of the court may be an Indian child. Here, the parties agreed that the Agency and the juvenile court failed to comply with their duty of initial inquiry when they failed to inquire of Father's family members whether the minor had Indian ancestry on his paternal side. Thus, the sole issue on appeal was whether prejudice resulted from this failure. The appellate court declined to apply *In re A.C.* (2021) 54 Cal.App.5th 1060, noting that ICWA imposes notice requirements that are, at their heart, as much about effectuating the rights of Indian tribes as they are about the rights of the litigants already in a dependency case. Requiring a parent to prove that the missing information would have demonstrated a reason to believe that the Minor may be an Indian child would effectively impose a duty on that parent to search for evidence that the Legislature has imposed only on the Agency. "[I]n ICWA cases, a court must reverse where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child."

4. [In re Charles W.](#) 4<sup>th</sup> DCA, Div. 1, 66 Cal.App.5th 483 280 Cal.Rptr.3d 852 (June 17, 2021)

**Holding:** No further ICWA inquiry was required where there was a prior court finding that ICWA did not apply and the parents' representations in court through counsel was that there no change in information and no Indian ancestry.

**Facts:** The parents had a history of substance abuse that lead to a prior petition and removal of their two children in 2018. The mother reunified and the case was dismissed. In that case, the court found that ICWA did not apply. Several months later the couple had another child. A new petition was filed after the parents and the children were found by police in a hotel room with a large quantity of illicit drugs within reach of the children. During the initial investigation, Mother told the social worker she had Yaqui and Aztec heritage. The agency filed a completed ICWA-010(A) indicating Mother's report of "Yaqui and Aztec Native American heritage" and Father's denial of Indian heritage. The agency also kept a field demographic worksheet, that listed Sioux tribal affiliation for the children.



At a special hearing to appoint counsel, the parties appeared remotely due to COVID-19 protocols. Mother was present telephonically. Mother's counsel indicated that an ICWA-020 was filed in the previous case and that mother continues to indicate no Native American ancestry. The mother did not contest these representations and the court found ICWA did not apply, and no further inquiry was required. At the jurisdiction and disposition hearing, the court confirmed that ICWA did not apply. The father appealed.

Father claims that the agency did not make a sufficient inquiry of Indian heritage through the mother. Section 224.2(b) requires that after a child is placed in custody, the agency has the duty to inquire about Indian heritage, including, but not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child. Substantial evidence supports the finding that ICWA does not apply. Mother was present throughout the hearing, and she was in apparent agreement with her counsel's representation of "no Native American ancestry." Counsel is an officer of the court and a practitioner in juvenile dependency matters; there is no reason to believe he misreported Mother's ancestry or misunderstood the implications of his report. Furthermore, the court reasonably relied on a prior finding involving the same family. As to the social workers worksheet listing Sioux tribal affiliation, given the parents subsequent interviews in which no Sioux affiliation was named, this denotation was too vague and attenuated to give the court reason to believe the children might be Indian children.

Father also argues that the court had a duty to directly inquire of mother regarding her Indian heritage, and that the lack of an ICWA-020 form in the case was an error. Based on counsel's representation with mother present and the previous case finding that ICWA did not apply, it was appropriate for the court to rely on the attorney's representations. And while the ICWA-020 should have been filed, when the agency has no reason to know the child may be an Indian child, the agency is not required to cast about for information or pursue unproductive investigative leads. Any error would also be harmless, as there is no new assertion of Indian ancestry and there would be no miscarriage of justice absent further inquiry. The court's findings and orders are affirmed.

5. [In re J.S.](#) 2<sup>nd</sup> DCA, Div. 7. 62 Cal.App.5th 678 276 Cal.Rptr.3d 876 (March 02, 2021)

**Holding:** Ancestry.com results that a relative has significant Native American ancestry, without additional information regarding a possible tribe or geographic area of origin, is not sufficient to trigger a duty to further inquire under the Indian Child Welfare Act (ICWA).

**Facts:** Paternal grandmother submitted her DNA to Ancestry.com, the results of which indicated that she was 54% Native American. Paternal grandmother was shocked by these results and was not aware that any of her relatives were eligible for enrollment in any tribe. The results did not provide an associated tribe of descent. Based on this information, the court found that ICWA did not apply. Mother appealed the jurisdictional and dispositional findings and contended that the department had not complied with ICWA. The appellate court rejected the argument and affirmed. Federal regulations implementing ICWA require that state courts ask each participant in a child custody proceeding whether they have a reason to know if a child is an Indian child. An Indian child is a member of, or is eligible for membership in, a federally recognized Indian tribe

or is the biological child of a member of a federally recognized tribe. The term "Native American" has a different connotation for purposes of Ancestry.com, which includes ethnic origins from North and South America. Because the Ancestry.com results did not contain the identity of a possible tribe or any specific geographical region, the results have little usefulness in determining whether the minors were Indian children as defined under ICWA. Transmission of notice to the Bureau of Indian Affairs would have been an idle act as they could not have assisted the Department in identifying a tribal agent for any relevant federally recognized tribe without the identity of the tribe or at least a specific geographic area of possible ancestry origin.

6. [In re Josiah T.](#) 2<sup>nd</sup> DCA, Div. 8. 71 Cal.App.5th 388 286 Cal.Rptr.3d 267 (November 08, 2021)

**Holding:** Substantial evidence did not support the court's finding that there was no reason to know that the child was Indian based on DCFS's failure to make further inquiry about the father's Cherokee Indian ancestry and to disclose full information about its investigation to the court.

**Facts:** In 2017, Los Angeles County Department of Children and Family Services (DCFS) removed Josiah and his three older siblings following a lengthy investigation after the parents fled the state to evade investigation of domestic violence allegations. The court found it had no reason to know ICWA applied regarding mother after she denied having Indian ancestry. As for father, the court did not ask about his Indian ancestry when he appeared at the older siblings' arraignment. DCFS failed to ask him about any Indian ancestry, neglected to promptly report possible Choctaw ancestry that was disclosed by paternal relatives, and although paternal grandmother reported Cherokee ancestry to DCFS, they delayed disclosing this to the court. They later reported that the paternal grandmother disclosed Cherokee ancestry, but later denied such ancestry. Subsequent reports only contained information about her denial of Indian ancestry. The court found there was no reason to know that Josiah was an Indian child after DCFS received responses from the Bureau of Indian Affairs and three Choctaw tribes that he was not Choctaw.

Substantial evidence did not support the juvenile court's finding that there was no reason to know that Josiah was Indian. Under ICWA, courts have an affirmative and continuing duty to inquire whether a child may be an Indian. Further inquiry is required when there is reason to believe that an Indian child is involved, and formal notice is required when there is reason to know that child is Indian. In this case, DCFS did not fulfill its initial duty of inquiry because it failed to ask known paternal relatives about Indian ancestry until almost 18 months after the case began when reunification services were terminated. The paternal grandma's statements that she had Cherokee ancestry through her grandmother was sufficient support a "reason to believe" Josiah was Indian and trigger the duty to make further inquiry, but DCFS waited seven months before it followed up with other paternal relatives. They also failed to inquire if father's maternal side had Indian ancestry and did not contact the Bureau of Indian Affairs or any of the Cherokee tribes to see if Josiah had any Indian ancestry.

The paternal grandma's later statements that she did not have Cherokee ancestry was insufficient to justify DCFS's failure to make further inquiry for 7 months. When there is a conflict in the evidence, the social worker still has a duty to make further inquiry as held In re Gabriel G. (2012) 206 Cal.App.4th 1160. Additionally, DCFS also failed its obligation under California Rules of Court, rule 5.481.(a)(5) to provide the court with all information regarding the child's Indian status on an ongoing basis rather than waiting several months to provide the information in a report. By omitting this information, the evidence was insufficient to support the court's finding that it had no reason to know that Josiah could be Indian.

The case is remanded for DCFS to provide full disclosure of its investigation and then the court can decide whether there is reason to know that Josiah is an Indian child. The orders terminating parental rights are reversed and can be reinstated if the court receives no further information about Indian ancestry after DCFS conducts an adequate investigation.

7. [In re S.R.](#) 4<sup>th</sup> DCS, Div. 2 64 Cal.App.5th 303 278 Cal.Rptr.3d 766 (April 28, 2021)

**Holding:** In a dependency case, disclosure of specific information regarding Indian ancestry does provide "reason to believe" that the children may be Indian children, thus triggering the court and the child welfare department's duty to inquire further under the Indian Child Welfare Act ("ICWA").

**Facts:** At the permanency planning review hearing after reunification services were terminated to the parents, the maternal grandparents sought custody of the two young children. The maternal grandmother completed the ICWA Inquiry form. She indicated that the children had other unidentified relatives with Indian ancestry and had relatives who lived on federal trust land or an Indian reservation. The maternal grandfather completed the same form and indicated that he had lineage tracing to the Yaqui tribe of Arizona and the children had other relatives who lived on federal land or an Indian reservation. He further identified the children's great-grandmother as a Yaqui ancestor, and she currently resided with the grandparents. The parents denied knowledge of Indian ancestry at the time of detention. After the disclosures by the grandparents, the juvenile court did not inquire about the children's Indian ancestry, and the Agency did no further investigation. Parental rights were thereafter terminated, and adoption was ordered as the permanent plan. The mother appealed on the basis that the court should have applied the provisions of the ICWA to the case, since there was evidence that the children had Indian ancestry.

The juvenile court and the county child welfare department have an "affirmative and continuing duty" to inquire whether a child who is the subject of a juvenile dependency petition is an Indian child. The department must provide notice to the Indian tribe in any case involving foster placement of the child or termination of parental rights where the court knows or has reason to know that the child is an Indian child.

If information becomes available suggesting affiliation with a tribe, there is a duty of further inquiry regarding the possible Indian status of the child. The question of tribal membership is

determined by the tribes, not the courts or the child welfare department. The court and the department each erred in not conducting further inquiry with the very specific information in this case, even if the evidence did not directly establish the children or their parents are members or eligible for membership in the tribe. The WIC 366.26 orders are conditionally reversed, and the matter remanded to the juvenile court to comply with the inquiry and notice provisions of ICWA and related California law.

8. [In re Y.W.](#), 2<sup>nd</sup> DCA, Div. 7. 70 Cal.App.5th 542 285 Cal.Rptr.3d 498 (October 19, 2021)

**Holding:** A parent need not assert Indian ancestry to show that the Agency's failure to make an appropriate inquiry under the Indian Child Welfare Act (ICWA) was prejudicial.

**Facts:** The minors were removed due to the parents' substance abuse. At the detention hearing, Father said he believed his grandmother was 95% Cherokee. Mother, who was adopted, said she did not have Indian ancestry. The Agency mailed ICWA-030 forms to the various Cherokee tribes. The notice listed Mother's biological parents as unknown, and specified some of Father's paternal grandmother's information, but neglected to include her date and place of birth. The Agency located Mother's adoptive parents who stated that they knew the name of Mother's biological father and had contact information for a maternal aunt. The Agency did not follow up to obtain further information about Mother's biological parents. At the section 366.26 hearing, the court found that ICWA notice was proper, that ICWA did not apply, and terminated parental rights. The appellate court affirmed the orders but remanded the case with directions to comply with ICWA. If the court or Agency has reason to believe that an Indian child is involved in a proceeding but does not have sufficient information to determine that there is a reason to know that the child is an Indian child, the court and the Agency shall make further inquiry regarding the possible Indian status of the child. (§ 224.2, subd. (e).) As part of its inquiry, section 224.2, subdivision (b) requires the Agency to ask extended family members whether the child is or may be an Indian child. Here, the Agency failed to satisfy its duty to inquire because once the social worker learned of a potentially viable lead to locate Mother's biological parents, it did not make meaningful efforts to locate and interview them. Further, the Agency omitted key information about Father's relative on the ICWA-030 forms. The appellate court disagreed with *In re Rebecca R.* (2006) 143 Cal.App.4th 1426 and *In re A.C.* (2021) 54 Cal.App.5th 1060, concluding that "[i]t is unreasonable to require a parent to make an affirmative representation of Indian ancestry where the Department's failure to conduct an adequate inquiry deprived the parent of the very knowledge needed to make such a claim." A parent does not need to assert he or she has Indian ancestry to show the Agency's failure to make an appropriate inquiry under ICWA was prejudicial.

# 2022 (Current as of April 5, 2022)

1. [In re A.C.](#), 2<sup>nd</sup> DCA, Div. 1 – Cal. Rptr. 3d – 2022 WL 630860 (March 4, 2022)

**Holding:** When there is some indication that a child may be an Indian child, a child welfare agency’s failure to ask the child’s extended family about possible Indian heritage under the Indian Child Welfare Act (ICWA) constitutes prejudicial error.

**Facts:** A.C. and two siblings were removed from mother and father and declared dependents after Welfare and Institutions Code (WIC) sections 300, 360, and 342 petitions were filed by the Department of Children and Family Services (DCFS) of Los Angeles County. Both parents filed ICWA-020 forms in which they each denied Indian ancestry for A.C., and the dependency court found that it had no reason to know or to believe that A.C. was an Indian child as described by ICWA. For no stated reason, a detention report stated that mother denied Indian ancestry for her family, but ICWA may apply. There was no further ICWA inquiry reported by DCFS. At different points in time, A.C. and the two siblings were placed with two different maternal aunts and a maternal cousin. Father lived with his paternal grandmother and paternal uncle. Social workers did not ask these maternal and paternal relatives about potential Indian ancestry.

ICWA requires the child welfare department to inquire about possible Indian ancestry with the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect. (WIC section 224.2(b).) The term “extended family member” is defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, as a person at least 18 years old who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (25 U.S.C. 1903(2).)

The detention report stated that A.C. might be an Indian child, and the fact that DCFS failed to conduct any further inquiry into mother’s and father’s extended family members was prejudicial. The ICWA-020 form filled out by both parents is not intended to constitute a complete inquiry into Indian heritage and further inquiry by the department may be required by ICWA. Mother herself was in the foster care system and may not have known her cultural heritage, so it was even more important that DCFS ask maternal relatives about possible Indian heritage.

The majority opinion discussed different perspectives about the appropriate standard of review for an ICWA inquiry challenge and the resulting prejudice analysis. In determining that prejudice existed in this case, the appellate court weighed the competing interests of ICWA and prompt resolution of dependency cases. ICWA was designed to remedy child welfare abuses by officials, judges, and adoption agencies that led to widespread removal of Indian children from their homes and communities. The importance of ICWA’s goal warrants enforcement of its requirements, even if it delays permanency for children.

In discussing the harmless error standard that has been applied to ICWA inquiry challenges, the dissent noted that the ICWA-020 form admonished father to provide new information on Indian ancestry to the court, but father remained silent. The dissent argued that remand for further ICWA inquiry should require a proffer that a relative has information about Indian ancestry to minimize unwarranted delays in permanency for children.

The jurisdiction and disposition orders concerning A.C. are affirmed with instructions, but the case is remanded for compliance with WIC section 224.2.

2. [\*In re Antonio R.\*](#), 2<sup>nd</sup> DCA, Div. 7 –Cal. Rptr.3d – 2022 WL 794843 (March 29, 2022)

**Holding:** Information from extended family members is meaningful in determining whether a minor is an Indian child, and it is not necessary to show that the information is likely to indicate the child is in fact of Indian heritage. An agency’s failure to include extended family members in its inquiry is inadequate and therefore prejudicial.

**Facts:** In October 2018, the Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code (WIC) section 300 petition alleging that mother abused drugs and failed to supervise and protect then one-year-old Antonio. Mother and father both denied Indian ancestry, and the court found that ICWA did not apply. Paternal grandparents told the court that father did not have Indian ancestry, but DCFS did not ask maternal grandmother, maternal aunts, and a maternal uncle who were in the courtroom for the disposition hearing. In August 2021 at the WIC 366.26 hearing, maternal grandmother was questioned but was not asked if Antonio may have Indian ancestry. The court terminated mother’s and father’s parental rights and designated maternal grandmother and maternal grandfather prospective adoptive parents. Mother appealed, claiming DCFS failed to comply with the inquiry and notice provisions of ICWA and WIC section 224.2(b).

DCFS has a duty under WIC section 224.2(b) to ask extended family members about a child’s possible Indian ancestry despite denials by both mother and father. The duty of inquiry extends beyond parents because relatives may have information that parents do not have. Requiring inquiry of extended relatives is also meant to counter possible reluctance of parents and Indian custodians to having tribes involved. The court and the agency have a continuing duty of further inquiry. Despite opportunities over the course of nearly three years to speak with them at court hearings and outside of court, DCFS failed to ask maternal relatives about Antonio’s possible Indian ancestry. The court failed to ensure that DCFS met its duty and erred in finding that ICWA did not apply.

The order terminating mother’s and father’s parental rights is conditionally affirmed. The matter is remanded for the juvenile court and DCFS to comply with the inquiry and notice provisions of ICWA and California law.

3. [\*In re Darian R.\*](#), 2<sup>nd</sup> DCA, Div. 1 75 Cal. App. 5<sup>th</sup> 502 (February 24, 2022)

**Holding:** The DCFS’s failure to interview extended family members as part of the ICWA inquiry was not a prejudicial error because there was no readily obtainable information that would meaningfully help determine whether the children were Indian.

**Facts:** Following an unsuccessful family maintenance case involving the two older children, Los Angeles County Department of Children and Family Services (DCFS) removed the parents' three children over their problems with substance abuse and mental health issues. The court previously determined that the Indian Child Welfare Act (ICWA) did not apply in the family maintenance case and made the same determination after both parents reported no known Indian ancestry. The court terminated both parents' parental rights after they failed to reunify with their children. Mother appeals arguing that DCFS and the court failed to comply with ICWA by neglecting to interview the maternal grandfather and aunt about the children's Indian ancestry.

As part of compliance with ICWA, WIC §224.2 requires only the child welfare agency to interview extended family members about Indian ancestry. DCFS's failure to interview the maternal grandfather and aunt was error. In determining whether this error is prejudicial, the court applied *In re Benjamin M.* (2021) 70 Cal.App.5th 735 holding failure to interview extended family members is prejudicial if there is "readily available information" in the record that is likely to help determine whether the child is Indian. Additional inquiry in this context is required where there is a reasonable probability that it will yield meaningful information about the Indian ancestry.

In this case, DCFS error in failing to interview the extended maternal relatives was not prejudicial. Continual inquiry of the maternal grandfather and aunt is unlikely to reveal meaningful information about the children's Indian ancestry. The juvenile court previously determined that ICWA did not apply in the family maintenance case and because the children all have the same parents and thus the same ancestry, it is unlikely to uncover new information. Additionally, unlike *In re Y.W.* (2021) 70 Cal.App.5th 542, mother was not estranged from her relatives and therefore unaware of any potential relationship with a tribe. Mother lived with the maternal grandfather and aunt and was subject to an ongoing court order to provide information related to ICWA. Accordingly, it is unlikely that continual inquiry will yield meaningful information.

The juvenile court's order terminating mother's parental rights is affirmed.

4. [In re H.V.](#), 2<sup>nd</sup> DCA, Div. 5 75 Cal. App. 5<sup>th</sup> 422 (February 18, 2022)

**Holding:** The county agency's failure to comply with ICWA inquiry duties by not interviewing extended family members was not a harmless error because mother neglected to assert Indian ancestry on appeal. Accordingly, the case is remanded to ensure ICWA compliance.

**Facts:** The juvenile court sustained a petition filed by Los Angeles County Department of Children and Family Services (Dept.) based on mother's violent altercation with her companion that endangered her child. The Dept. had no reason to believe the child was Indian after interviewing mother, but there was no indication that they asked the maternal great-grandparents about this ancestry. Mother reported she did not have any Indian ancestry on the Parental Notification of Indian Status form and at the detention hearing, where she also indicated that the alleged father did not have such ancestry. The court found that neither mother nor the alleged father had any Indian ancestry.

5. [\*In re K.T.\*](#), 4<sup>th</sup> DCA, Div. 2 2022 WL 872477 (March 23, 2022)

**Holding:** When there is reason to believe that children may be Indian children because parents and extended family members provided specific tribal information to the child welfare agency and the agency fails to conduct further inquiry or investigation, it is prejudicial error.

**Facts:** In June 2019, K.T. and his younger half-brother, D.M., were declared dependents after a court found true allegations of physical abuse by mother. In October 2019, mother gave birth to K.T.'s younger sister, D., who was also declared a dependent. Mother informed San Bernardino Children and Family Services (CFS) of possible Blackfeet ancestry. Mother and maternal grandmother provided names and contact information for maternal grandfather and great-grandmother. Father filed two ICWA-020 forms, the first claiming Blackfeet and Cherokee ancestry, and the second claiming Choctaw ancestry. Paternal grandmother provided dates and places of birth for herself and paternal great-grandfather. At the detention hearing for D., maternal relatives were present in the courtroom and counsel for D. informed the court that they claimed Cherokee heritage. Without inquiring of these relatives, the court noted there was a dependency hearing for D.'s siblings and ordered CFS to consult with social workers in the siblings' case to prepare ICWA notices for D. CFS sent notices to Blackfeet and Cherokee tribes that omitted tribal and biological information for maternal great-grandmother and contained no information about paternal great-grandfather. CFS sent no notices Choctaw tribes. Nothing in the record showed that social workers followed up on information about D.'s Indian ancestry, and CFS sent the same notices for D. that they sent for her siblings. Nearly two years later, when parents failed to reunify, the court found that ICWA did not apply to K.T. or D., that the children were likely to be adopted, and terminated parental rights of mother and father. Parents appealed, arguing that CFS failed to conduct adequate inquiry as required by Welfare and Institutions Code (WIC) section 224.2.

ICWA requires notice to tribes when a court or social worker knows or has reason to know that proceedings involve an Indian child. The child welfare agency has a duty to conduct additional investigation if the court or social worker has reason to believe the child is an Indian child. Reason to believe is defined as having information suggesting that a child's parent or the child is a member or may be eligible for membership in a tribe. The duty of further inquiry is triggered even when the information is not strong enough to trigger the notice requirement. To satisfy this duty, an agency must, as soon as it is able, interview parents and extended family members and share information with the Bureau of Indian Affairs (BIA) and tribes so tribes can determine membership or eligibility and whether it will participate in the proceedings.

Mother, maternal grandmother, father, and paternal grandmother provided information about Indian ancestry, giving CFS reason to believe that K.T. and D. were Indian children. CFS should have contacted relatives whose names were provided and submitted all information to the BIA and tribes. In light of his two ICWA-020 forms, CFS should have clarified with father whether he was claiming Choctaw heritage in addition to Blackfeet and Cherokee heritage. Because CFS did not adequately investigate claims of Indian heritage, the juvenile court should not have found that ICWA did not apply.



The order terminating parental rights is conditionally reversed. The matter is remanded for the juvenile court to direct CFS to comply with the inquiry and notice provisions of ICWA and update the court.

6. [In re. S.S.](#), 2<sup>nd</sup> DCA, Div. 1 75 Cal. App. 5<sup>th</sup> 575 (February 24, 2022)

**Holding:** DCFS's failure to conduct ICWA inquiry of the maternal grandmother was a harmless error absent any readily available information in the record likely to meaningfully determine whether the child is Indian.

**Facts:** Los Angeles County Department of Children and Family Services (DCFS) removed S.S. from mother and placed her in foster care with a non-relative. The court found there was no reason to know that Indian Child Welfare Act (ICWA) applied after mother reported no known Indian ancestry. Although the maternal grandmother came forward requesting placement, DCFS failed to inquire about her Indian ancestry. The juvenile court denied the grandmother's request for placement after she had only inconsistent virtual visits, terminated mother's parental rights, and designated the foster parent as the prospective adoptive parent. Mother appeals arguing DCFS failed to complete the ICWA inquiry.

WIC §224.2 requires the court and county welfare agency to make an affirmative and continuing duty to inquire whether the child may be Indian which includes asking extended family members about this ancestry. In determining whether such a failure is prejudicial, ordinarily the appellant must show a more favorable outcome absent the error. However, this is difficult where there are deficiencies in the record because of the agency's failure to document or conduct the ICWA inquiry. In resolving this issue, the court in *In re Benjamin M.* (2021) 70 Cal.App.5th 735 rejected requiring an affirmative assertion of Indian ancestry on appeal and held that an error is prejudicial, and a reversal is warranted if the record shows a failure to complete the initial duty of inquiry and there is "readily obtainable information that was likely to bear meaningful upon whether the child is an Indian child."

Here, DCFS met the duty of inquiry for mother but not for the grandmother. Although both S.S. and mother's counsels requested that the grandmother be assessed for placement, they never asserted any possible Indian ancestry knowing that she would've been preferred for placement under ICWA. This omission indicates there is no such information that will bear meaningfully to reveal that S.S. is an Indian child. Accordingly, DCFS's failure to conduct ICWA inquiry of the grandmother is harmless.

The juvenile court's order is affirmed.



## Juvenile Dependency Courts

### Recommended Legal Findings and Orders under the Indian Child Welfare Act (ICWA)\*

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|---|
| <p><b>I. Inquiry (at the initial hearing, the dispositional hearing, hearing to terminate reunification services, and hearing to select a permanent plan in every case) (25 C.F.R. § 23.107; WIC, § 224.2; CRC 5.481(a))</b></p> <p>A. The court finds that the agency and the court have inquired whether the child is or may be an Indian child; and</p> <p>B. The court finds that the ICWA-010(A) attachment has been completed and is in the court file; and</p> <p>C. The court finds that both parents and the Indian Custodian (if any) have completed the ICWA-020 and those documents are in the court file; and</p> <p>D. The court finds, after the agency has inquired and the court has inquired,</p> <ol style="list-style-type: none"><li>1. that there is no reason to believe or reason to know that the child is or may be an Indian child; or</li><li>2. that there is reason to believe the child may be an Indian child; and<ol style="list-style-type: none"><li>a. the agency has provided evidence that it has completed further inquiry as required by WIC 224.2(e) including interviewing the parents, Indian custodian, and extended family and has contacted the BIA to obtain information contained in Welfare and Institutions Code section 224.3(a)(5), contacting the BIA and CDSS and multiple contacts to tribes that the child may be affiliated with by telephone, facsimile or email to determine the child's status; or</li><li>b. the agency has not provided evidence that it has completed further inquiry as required by WIC 224.2(e) and is ordered to complete such further inquiry and file proof with the court; or</li></ol></li><li>3. that there is reason to know the child is an Indian child; and<ol style="list-style-type: none"><li>a. the agency has filed evidence that it has used due diligence to identify and work with all tribes of which there is reason to know the child may be a member to verify the child's status; or</li><li>b. the agency is ordered to use due diligence to identify and work with all tribes of which there is reason to know the child may be a member to verify the child's status and file proof of such due diligence with the court; and</li><li>c. the agency is required to provide notice to the child's tribe(s) in accordance with WIC § 224.3; and</li><li>d. the court will treat the child as an Indian child until the court is able to determine that the child is not an Indian child; or</li></ol></li><li>4. the child is an Indian child. The child's tribe is _____. The Indian Child Welfare Act applies.</li></ol> |
| <p><b>II. Application (at any hearing) (ICWA § 1903(1) &amp; (4); WIC, § 224.1(a) &amp; (d); CRC 5.480)</b></p> <p>A. The child may be an Indian child, and therefore the act may apply, and the agency shall make further inquiry and efforts to determine the child's status; or.</p> <p>B. The child is an Indian child, because the court has proof of tribal membership or the tribal determination received by the court indicates that the child is a member or is eligible for membership, or.</p> <p>C. The child is not an Indian child, because the tribal determination received by the court indicates that the child is not a member and is not eligible for membership. This finding may be revisited if new information is received that gives reason to believe or reason to know the child is an Indian child.</p>  |
| <p><b>III. Tribal Representative/Intervention (at every hearing) (ICWA § 1911(c); WIC, § 224.3(a)(5)(H)(ii), 224.4; CRC 5.482(d) &amp; 5.534(e))</b></p> <p>A. The (<i>name of tribe</i>) _____ Tribe has acknowledged that the child is a member of or is eligible for membership in the tribe and will monitor the case.</p> <p>B. The (<i>name of tribe</i>) _____ Tribe has designated (<i>name of representative</i>) _____ to be the tribe's representative and is entitled to the rights</p>   |

\*All citations in this chart are to the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.), federal regulations at 25 C.F.R. Part 23, California Welfare and Institutions Code (WIC), and California Rules of Court (CRC).

<p>listed in Judicial Council form ICWA-040, <i>Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child</i>.</p> <p>C. The (<i>name of tribe</i>) _____ Tribe has intervened in this case and will be treated as a party to the proceedings.</p>
<p><b>IV. Continuances (all hearings except detention) (ICWA § 1912(a); WIC, § 224.3(a)(5)(H)(iv); CRC 5.482(a)(3)</b>  Upon request, this court grants the parent, Indian custodian, or tribe a continuance of up to 20 days to prepare for the hearing.</p>
<p><b>V. Appointment of Counsel (at every hearing) (ICWA § 1912(b); WIC, § 317(a)(2))</b></p> <p>A. The Court finds that the parent(s) and/or Indian custodian appear to be indigent; and</p> <p>B. The Court hereby appoints counsel to represent the parent(s) and/or Indian custodian; or</p> <p>C. The Court finds that the parent(s) and/or Indian custodian do not appear to be indigent.</p>
<p><b>VI. Notice (at every hearing) (ICWA § 1912(a); WIC, § 224.3; CRC 5.481(c))</b></p> <p>A. The hearing is an “Indian child custody proceeding” (WIC § 224.1(d)(1)) because there is “reason to know” the child is an Indian child and the hearing may culminate in the removal, foster care placement, preadoptive placement, adoptive placement of the child or termination of parental rights to the child. The court finds that:</p> <ol style="list-style-type: none"> <li>1. Notice in form ICWA-030, <i>Notice of Child Custody Proceeding for Indian Child</i>, has been provided by certified mail with return receipt requested to all tribes of which the child may be a member or eligible for membership and to the BIA;</li> <li>2. Notice to the tribe(s) was addressed to the tribal chairperson unless the tribe has designated another agent for service of ICWA notice;</li> <li>3. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor’s Indian status.</li> </ol> <p>B. There is “reason to know” the child is an Indian child, but the hearing is not one that hearing may culminate in the removal, foster care placement, preadoptive placement, adoptive placement of the child or termination of parental rights to the child. The court finds that notice has been provided to the child’s tribe(s) in the same manner as to other parties.</p>
<p><b>VII. Tribal Consultation (Dispositional &amp; Review Hearings) (CRC 5.690(c)(2)(C) &amp; 5.708(f)(7))</b></p> <p>A. The Court finds that in developing the case plan the agency has:</p> <ol style="list-style-type: none"> <li>1. Solicited and integrated into the case plan the input of the child’s identified Indian tribe; <b>or</b></li> <li>2. Not solicited and integrated into the case plan input from the child’s identified Indian tribe; <b>and</b> <ol style="list-style-type: none"> <li>a) the Court orders the agency to solicit and integrate into the case plan input from the child’s identified Indian tribe, <b>or</b></li> <li>b) the Court finds that the child’s identified Indian tribe was unable, unavailable or unwilling to participate in development of the case plan.</li> </ol> </li> </ol>
<p><b>VIII. Standards for Emergency Removal/Detention (25 CFR §23.113; WIC §§ 224.1(l), 305.5(g), 315, 319(b),(d),(e) &amp; (i), 319.4; CRC 5.484, 5.676(b) &amp; (d))</b></p> <p>A. It is known or there is reason to know the child is an Indian child;</p> <p>B. Emergency removal or continued emergency placement of the child is necessary to prevent imminent physical damage or harm to the child;</p> <p>C. The petition requesting emergency removal or continued emergency placement includes all of the evidence and information required by section 319(b) &amp; (d) of the <i>Welfare and Institutions Code</i> and CRC, rule 5.484(a).</p>
<p><b>IX. Detriment and Standard of Proof (at removal unless an emergency, disposition &amp; termination of parental rights hearings) (ICWA § 1912(e) &amp; (f); WIC, §§ 361(a)(6), 361.7, 366.26(c)(2)(B); CRCs 5.484(a), 5.484(a))</b></p> <p>A. For a non-emergency detention and removal for foster-care placement, the court finds by <i>clear and convincing</i> evidence, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical danger to the child.</p> <p>B. For termination of parental rights, the court finds by evidence <i>beyond a reasonable doubt</i>, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p>
<p><b>X. Active Efforts (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1912(d); WIC, §§ 361(d), 361.7; CRCs 5.484(c), 5.485(a)(1))</b></p>

- A. If a tribe has indicated that the child would be eligible for enrollment if certain steps are followed, the court finds that the agency has made active efforts by taking steps to secure tribal membership. (CRCs 5.482(c), 5.484(c).)
- B. The court finds, after reviewing the report, that active efforts have been made to provide culturally appropriate services and rehabilitative programs designed to prevent the breakup of the Indian family, that these efforts include available resources of native agencies, the tribe and extended family, and that these efforts have been unsuccessful.
- C. The court finds that the agency has incorporated culturally appropriate services into the case plan for the child and the parent(s) or Indian custodian.
- D. The court finds that the agency has consulted with the child's tribe in development of the case plan for the child and the parent(s) or Indian custodian.

**XI. Placement Preferences (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1915; WIC, § 361.31; CRC 5.484(b))**

- A. The court finds that
  - the agency adhered to the placement preferences under the act when placing the child;
  - the child is detained in a placement that adheres to the placement preferences under the act; and
  - the agency has consulted with the child's tribe and Indian organizations concerning the appropriate placement of the child.
- OR
- B. The court finds good cause to deviate from the placement preferences under the act on the grounds that \_\_\_\_\_.
- OR
- C. The court finds that the placement does not comply with the ICWA placement preferences and finds no good cause to deviate from the placement preferences and orders \_\_\_\_\_.

**XII. Jurisdiction and Transfer (at any hearing) (ICWA § 1911; WIC, § 305.5; CRC 5.483)**

- A. The court finds that the child resides or is domiciled on the reservation of the \_\_\_\_\_ Tribe or that the child is under the jurisdiction of the court of the \_\_\_\_\_ Tribe, and, accordingly, the \_\_\_\_\_ Tribe has exclusive jurisdiction.
- B. The court finds that this juvenile court and the court of the child's tribe have concurrent jurisdiction.
- C. The (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and finding no good cause not to transfer, this court transfers the case to the tribal court of (*name of tribe*) \_\_\_\_\_ Tribe. The court will terminate jurisdiction only after receiving confirmation that the tribal court has accepted the transfer, and will make orders consistent with WIC 305.5(d) at that time.
- D. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following reason is good cause not to transfer the case to the tribal court:
  - 1. The child's parent objects to the transfer;
  - 2. The child's tribe does not have a tribal court, or any other administrative body as defined in section 1903 of the act; or
  - 3. The tribal court of the child's tribe declined the transfer.
- E. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following circumstances in the case constitute in the court's discretion good cause not to transfer the case to the tribal court \_\_\_\_\_ In reaching this conclusion the court has not relied on any of the factors set out in WIC 305.5(e)(2)

**XIII. Permanency Planning (each hearing after disposition when the child's tribe has been identified) (WIC, §§ 358.1, 361.5, 366.21, 366.22, 366.24, 366.25, 366.26; CRCs 5.708 (c)(2), 5.715(b)(5), 5.720(b)(4), 5.722(b)(3), 5.725(d)(1), 5.725(d)(2)(c)(vi))**

- A. The Court finds that the proposed permanent plan and placement:
  - a. complies with the ICWA placement preference requirements (see X above); or
  - b. there is good cause to deviate from the placement preferences under the act on the grounds that \_\_\_\_\_ or
  - c. the plan does not comply with ICWA requirements and the agency is ordered \_\_\_\_\_
- B. The Court finds that the agency has consulted with the tribe about the appropriate permanent plan for the child, and has specifically discussed whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or

C. The Court finds that the agency has not consulted with the tribe about the child's permanent plan and whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful and the agency is ordered to consult with the tribe.

## SAMPLE COURT ICWA INQUIRY ON THE RECORD:

### **A. Questions for the Agency**

1. Did agency staff ask the individual reporting abuse/neglect whether the individual had any information suggesting the child might be an Indian child?
2. Did agency staff ask both parents about their possible tribal affiliation, and whether the child might be an Indian child?
3. Did the agency ask extended family members and others who have an interest in the child whether they had any information suggesting the child might be an Indian child?
4. What information about tribal possible affiliation was obtained during all of this? Was there anything suggesting the child might be an Indian child?

### **B. Questions for Parents (same for extended family members present in court)**

1. Do you know if you or your family have Indian or Native American ancestry/heritage?
  - a. If Yes, please tell me about your Indian or Native American ancestry/heritage?
  - b. If Yes, is the ancestry/heritage on your mother's or father's side of the family?
  - c. If Yes, how did you learn of your Indian or Native American ancestry/heritage?
  - d. If Yes, besides yourself, are there other members of your family that may have knowledge about your family's Indian or Native American ancestry/heritage?
2. Do you know if you or your family are affiliated with an Indian tribe?
3. Do you think that you, your children, your parents, grand-parents or great-grand parents are/were members of a tribe?
4. Do you think that you, your children, your parents, grand-parents or great-grand parents have applied to be members of a tribe?
5. Have you or the child ever lived on an Indian reservation or Alaska Native Village?
6. Do you know if any members of your family have ever lived on federal trust land, or an Indian reservation, or Alaska Native Village?
7. Have any members of your family ever participated in federal programs/services, such as the Title VII Indian Education Program or Tribal TANF ?
8. Have you or any family member received medical treatment at an Indian health clinic or public health services hospital?
9. Have you or any family member attended an Indian school?

### **C. Questions for other participants**

1. Does anyone present know or have any information giving them reason to know that the child is an Indian child?

### **D. Instructions to all participants**

If either the agency or the court's inquiry has given "reason to believe" the child may be an Indian child, the court must order the agency to complete "further inquiry" (if it has not already done so) in accordance with section 224.2(e) of the Welfare and Institutions Code and file proof of that further inquiry including all individuals interviewed, contacts with the BIA, CDSS and the tribe(s) the family may be affiliated with and the results of that inquiry.

If either the agency or the court's inquiry gave "reason to know the child is an Indian child (as defined in section 224.2(d) of the Welfare and Institutions Code) the court must:

- order the agency to provide formal notice to the tribe(s) the child may be affiliated with;
- order the agency to provide evidence by way of report, declaration, or testimony that the agency has used due diligence to identify and work with all of the tribes that the child may be affiliated with;
- treat the child as an Indian child (ie. apply all of ICWA's substantive requirements) until the court can determine that the child is NOT an Indian child.

If neither the agency nor the court's inquiry has given "reason to believe" or "reason to know" the court shall instruct all parties to inform the court if they subsequently receive information that provides reason to believe or reason to know the child is an Indian child.

## SUGGESTED ICWA INQUIRY QUESTIONS

The following list of questions can be used every referring party others, such as a child, parents, Indian custodian, extended family members, reporting party, or any others with an interest in the child to determine whether the child is a member of or eligible for membership in a federally recognized Tribe. As with working with any child or family, it is good practice to explain that you are trying to get a determination of the child's tribal membership or membership eligibility because it is required under applicable law and additional services and support may be available.

### FAMILY AND SOCIAL CONNECTIONS:

1. Is the child or any of the child's great-grandparents, grandparents, or parents a member of a Tribe or an Alaska Native village? Might the child be eligible for membership in a Tribe or an Alaska Native village?
  - a. In what Tribe(s) or Alaska Native village(s) is that membership/citizenship?
  - b. Does anyone in the child's biological family have identification paperwork (an enrollment card or other documentation) from the Tribe or Alaska Native village?
  - c. Has anyone in the biological family ever applied for membership/citizenship in a Tribe?
2. If the answer to question 1 is yes, ask the following and document in the child's record:
  - a. What is the member/citizen's full name and, if applicable, maiden name?
  - b. What is their date and location of birth and/or death?
3. Is there anyone in the family or family's social circle who would have more information about the parent or child's tribal membership or eligibility for membership? (Document names and contact information.)
4. Does the child or any of the child's relatives receive services or benefits from a Tribe or the federal government due to their Indian status? Examples may include scholarships, grants, Tribal Temporary Assistance to Needy Families (Tribal TANF), and health services at an Indian health clinic. (Document names, dates, and locations.)
5. Is there any other information that suggests the child or their biological parents are members of an Indian Tribe?

### RESIDENCY:

6. Does the child or their parent reside on an Indian reservation, rancheria, or in an Alaskan Native village? (Document names, dates, and locations.)
7. Has the child or a family member ever attended a federal Indian school or tribal school? (Document names, dates, and locations.)



COURT INVOLVEMENT:

8. Has the child ever been involved in a custody proceeding in a tribal court? (Document names, dates, and locations.)
  - a. Has the child or a biological family member ever been involved in a tribal court matter?
9. Has the child or parent ever been involved in a state proceeding where either the Department or the court determined that the child or parent are Indian?

FOR FURTHER INQUIRY:

- Have you received any further information about the child's possible tribal membership status since we last met?
- Can you think of anyone else I should reach out to?
- Do you have any family records or documents I can review to follow up on?
- Have you or your attorney made any further efforts to find out more information since we last met?

Based on the prior information provided, was each identified Tribe (and all associated bands) contacted to determine the child's eligibility or enrollment? Has the BIA been contacted?

### Initial Contact

During initial contact with the child/family, and at every phase thereafter, the social worker or probation officer have a duty to *inquire* if the child is or may be a Indian child (WIC § 224.2).

### Inquiry

Inquiry may reveal information that gives a reason to believe the child may be an Indian child without rising to the level of reason to know. For example, among other indicators, belief could be based on the child:

- having Indian ancestry
- being domiciled on a reservation
- Having received Indian health/education services

### Reason to Believe

#### Further Inquiry

If the social worker, probation officer, or court have reason to believe the child may be an Indian child, they must conduct further inquiry to determine if there is reason to know.

*Further inquiry* must include contacting the parent(s), guardian(s), Indian custodian, the BIA, the Tribe(s), and any other person who might reasonably have more information regarding the child's tribal membership status or eligibility (WIC § 224.2 (e)).

When contacting a Tribe or Tribes as part of further inquiry, minimum contacts must include a phone call, fax, or e-mail to the Tribe's ICWA designee (WIC § 224.2(e)(2)(C)).

If any additional information arises at any point during further inquiry, a "reason to believe" can turn into a "reason to know" a child is an Indian child. Alternatively, the Tribe(s) can confirm that the child is not an Indian child. Only Tribes can make membership/eligibility determinations.

### Reason to Know

Circumstances when there is a reason to know a child is in an Indian child are:

- (1) A person having an interest in the child (including the child) informs the court that the child is an Indian child.
- (2) The residence or domicile of the child or a parent/Indian custodian is on a reservation or in an Alaska Native village.
- (3) Any participant in the proceedings informs the court that they have discovered information indicating that the child is an Indian child.
- (4) The child gives the court reason to know.
- (5) The court is informed that the child is or has been a ward of a tribal court.
- (6) The court is informed that either the parent or the child has a membership or citizenship identification card from an Indian Tribe.

WIC § 224.2 (d)

### Formal Notice

Formal notice **MUST** be sent to the child's Tribe(s) and parents, guardian, or Indian custodian according to WIC § 224.3.

If there is reason to know, the court shall treat the child as an Indian child unless the court determines on the record that the child is not an Indian child (WIC § 224.2 (i)).

# INDIAN ANCESTRY QUESTIONNAIRE

**Name** (person completing form): \_\_\_\_\_ **Phone #:** \_\_\_\_\_

**Petition number(s) of children:** \_\_\_\_\_

The information requested below is necessary to determine whether the Indian Child Welfare Act (ICWA) applies to this case. The ICWA provides legal protections designed to prevent the breakup of Indian families, and may provide important rights and benefits to the Indian parent(s) and their child/ren. Please complete as much of the requested information to assist the family in determining whether the ICWA applies to the case.

1. Name of Person Interviewed: \_\_\_\_\_

2. Relationship to child:  Parent  Indian Custodian  Guardian  Other: \_\_\_\_\_

3. a)  The mother and/or father is or may be a member of or eligible for membership in a federally recognized Indian tribe (*Circle one of the underlined*):

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

b)  The child/ren is/are or may be a member(s) of or eligible for membership in, a federally recognized Indian tribe:

Name, (including middle names), date and place of birth of each child this information applies to: \_\_\_\_\_

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

c)  One or more of the grandparents, great-grandparents or other lineal ancestor is or was a member of a federally recognized tribe:

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

Name and relationship of ancestor(s): \_\_\_\_\_

d)  The child's mother and/or father is a resident of or domiciled on a reservation or an Alaska Native Village (*Circle one of the underlined*)

List name or reservation or Alaska Native Village, if known: \_\_\_\_\_

e)  The child/ren is/are a resident(s) of or domiciled on a reservation or an Alaska Native Village.

Name, (including middle names) of each child this information applies

to: \_\_\_\_\_

f)  The child/ren is or has been a ward of a tribal court:

Name, (including middle names) of each child this information applies

to: \_\_\_\_\_

g)  Either parent or the child possess an Indian identification card indicating membership or citizenship in an Indian tribe.

Name of tribe(s) (name each): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Describe any known Indian ancestry of the child/ren by completing the attached family tree, **filling in as much information as possible**. Indicate on the family tree who is an enrolled member or eligible for enrollment and include his/her enrollment number. If more space is needed, use the box at the bottom of the form.

5. Have any members of your family ever participated in federal programs/services, such as the Title VII Indian Education Program or Tribal TANF? If yes, name of family member, type of service(s), where and when services(s) were received.

\_\_\_\_\_  
\_\_\_\_\_

6.  Has parent or any family member received medical treatment at an Indian health clinic or public health services hospital? If yes, name of family member, type of treatment, date and location where treated.

\_\_\_\_\_  
\_\_\_\_\_

7.  Has parent or any family member attended an Indian school? If so, name the family member, Indian school, dates attended, and location of school.

\_\_\_\_\_  
\_\_\_\_\_

8.  Has parent or any family member lived on federal trust land, or reservation? If yes, specify the name and address of location, date, and name of person.

\_\_\_\_\_  
\_\_\_\_\_

9. If the parent claiming Indian status is the child's father, has paternity been informally acknowledged or formally established? If formally established, has there been biological testing, a paternity judgment, a signed Declaration of Paternity, etc.?

\_\_\_\_\_  
\_\_\_\_\_

10. Please provide any additional information that would help in determining if the child/ren is/may be an Indian child/ren, including names and contact information for family members who have additional family and tribal information.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Indian Ancestry Family Tree

DOB = Date of Birth  
 POB = Place of Birth  
 POD = Place of Death  
 DOD = Date of Death

### INSTRUCTIONS

Please add dates and places of birth, and places and dates of death (if applicable/known), as well as full names, including middle, maiden names, aliases and nicknames.

**For tribes, clarify the specific band and location** (eg. Cherokee, Keetoowah, Oklahoma).

<b>Child(ren):</b>			
DOB:			
POB:			
Enrolled?			
Tribe:			

<b>Maternal Grandfather:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		→

<b>Maternal Grandmother:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		→
Former Address:		
Telephone Number:		

<b>Maternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

MOTHER	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	→

<b>Other</b> (i.e. direct lineal ancestors)
---

# Indian Ancestry Family Tree

DOB = Date of Birth  
 POB = Place of Birth  
 POD = Place of Death  
 DOD = Date of Death

## INSTRUCTIONS

Please add dates and places of birth, and places and dates of death (if applicable/known), as well as full names, including middle, maiden names, aliases, and nicknames.

For tribes, clarify the specific band and location. (eg. Cherokee, Keetoowah, Oklahoma).

FATHER	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	

<b>Other</b> (i.e. direct lineal ancestors)
---

<b>Child(ren):</b>			
DOB:			
POB:			
Enrolled?			
Tribe:			

<b>Paternal Grandfather:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

<b>Paternal Grandmother:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

<b>Paternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

**ICWA Inquiry/Further Inquiry:**

The following efforts were made to inquire/further inquire as to the child's possible Indian status, if individuals were available:

- Interviewed the child's mother
- Interviewed the child's father
- Interviewed the child's guardian (if applicable)
- Interviewed the Indian Custodian (if applicable)
- Interviewed Relatives/Extended Family Members/NREFMs
- Interviewed the child/ren.

**INFORMATION ABOUT PERSONS INTERVIEWED AND INITIAL INQUIRY (WIC 224.2(a)-(b))**

*For each person interviewed, include the following paragraph explaining the information he/she provided regarding the child/ren's Indian status.*

On 00/00/0000, social worker [specify name], interviewed [specify name(s)], [specify relationship], who stated the child is/is not/may be an Indian child and the child and/or a parent's primary residence is/is not on an Indian reservation or Alaska Native Village.

**FURTHER INQUIRY, ADDITIONAL FAMILY HISTORY INFORMATION PROVIDED BY PERSONS INTERVIEWED (WIC 224.2(e))**

*Gather the information for each family member below and identify the person(s) who provided the information.*

a. Child's biological mother

*Identify who provided the information in these sections, e.g. mother.*

Source of Information and Date Information Provided: mother/father/guardian/name and relationship of extended family member

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

b. Child's biological father (note that ICWA requirements follow biological connection to father, not legal connection)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

c. Mother's biological mother (i.e., child's maternal grandmother)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

d. Mother's biological father (i.e., child's maternal grandfather)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

e. Father's biological mother (i.e., child's paternal grandmother)

Source of Information and Date Information Provided:

Name:



Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

f. Father's biological father (i.e., child's paternal grandfather)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

g. Mother's biological grandmother on her mother's side (i.e., child's maternal great-grandmother)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

h. Mother's biological grandmother on her father's side (i.e., child's maternal great-grandmother)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

i. Mother's biological grandfather on her mother's side (i.e., child's maternal great-grandfather)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

j. Mother's biological grandfather on her father's side (i.e., child's maternal great-grandfather)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:  
If deceased, date and place of death:  
Telephone Number:

k. Father's biological grandmother on his mother's side (i.e., child's paternal great-grandmother)

Source of Information and Date Information Provided:

Name:  
Any maiden or married name, former names, or aliases:  
Current address:  
Former address:  
Birth date and place:  
Tribal, band, or Alaska Native village affiliation, including name and location:  
Membership or enrollment number, if known:

If deceased, date and place of death:  
Telephone Number:

l. Father's biological grandmother on his father's side (i.e., child's paternal great-grandmother)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

m. Father's biological grandfather on his mother's side (i.e., child's paternal great-grandfather)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

n. Father's biological grandfather on his father's side (i.e., child's paternal great-grandfather)

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

The following efforts were made to further inquire as to the child's possible Indian status:

- Utilized the BIA and its resources for assistance in identifying the names and contact information of the tribe(s) in which the child may be a member or eligible for membership. (WIC 224.2(e))

On *[insert date]*, the undersigned reviewed the BIA List of Designated Tribal Agents located in the Federal Register, Vol. 85, No. 84 (April 30, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-09155.pdf> which identified the following Tribes and their Designated Agents:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

**AND/OR**

- The undersigned was unable to obtain accurate contact information for the tribe(s) from the Federal Register and the Department's internal tribal contact information resource document. On *[insert date]*, contacted the BIA (Pacific Regional Office) at (916) 978-6000 to obtain assistance in identifying the contact information for the tribe. The BIA representative *[insert name]* provided the following contact information for the tribe(s):

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

- Contacted the CDSS' Office of Tribal Affairs for assistance in identifying the names and contact information of the tribe(s) in which the child may be a member or eligible for membership by e-mailing [ICWAinquiry@dss.ca.gov](mailto:ICWAinquiry@dss.ca.gov). (WIC 224.2(e))

The undersigned was unable to obtain accurate contact information for the tribe(s) after utilizing the BIA and its resources, on *[insert date]*, the undersigned e-mailed the CDSS Office of Tribal Affairs (OTA) for assistance [TribalAffairs@dss.ca.gov](mailto:TribalAffairs@dss.ca.gov). In response, CDSS OTA provided the following contact information for the tribe(s):

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

These materials are in draft form and subject to change.

The following efforts were made to further inquire as to the child's possible Indian status:

- Contacted by telephone, fax, email, or mail, the tribe(s) or designated agent of the tribe(s) and contact with any other person that may reasonably be expected to have information regarding the child's membership or eligibility status. (WIC 224.2(e))

Tribe: *[Insert Name]* Designated Agent: *[Insert Name]*

Dates of Attempted Contact: *[insert date], [insert date], [insert date]*

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *[Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”]*

Tribe: *[Insert Name]* Designated Agent: *[Insert Name]*

Dates of Attempted Contact: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”*

Tribe: *[Insert Name]*

Designated Agent: *[Insert Name]*

Dates of Attempted Contact: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”]*

**ICWA Formal Notice:**

The Department has complied with the ICWA notice provisions contained in California

Rules of Court, Rule 5.480 et seq.

Name of Biological Parent Who is Member of Indian Child’s Tribe (25 USC Section 1903):

Name of Biological Parent Who May be Eligible for Membership in Indian Child’s Tribe:

Name of Indian Child’s Tribe (25 USC Section 1903 Subd. (5)):

Date Indian Child’s Tribe Noticed:

How Notice was Sent to Indian Child’s Tribe: (Certified Mail, return receipt requested)

Response from Indian Child’s Tribe: