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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: Tuesday, January 24, 2012

Title

Probate Guardianship: Information concerning a proposed ward's possible Indian connections requested in a Judicial Council form that is filed with a petition for the appointment of a guardian.

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 7.1015 and revise forms GC-210(CA) and ICWA-005-INFO

Recommended by

Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

Agenda Item Type

Action Required

Effective Date

July 1, 2012

Date of Report

December 14, 2011

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Executive Summary

The Probate and Mental Health Advisory Committee recommends revising the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)), which must be used by guardianship petitioners to provide background information about the proposed ward. Form GC-210(CA) would be modified to request specific information about the child's possible Indian connections and instruct petitioners on their duty to make initial inquiries about those connections. In addition, the *Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO), which provides general instructions about the requirements of the federal Indian Child Welfare Act (ICWA)¹ in all child

¹ 25 U.S.C. § 1901, et seq.

custody proceedings, would be modified to refer to form GC-210(CA). Rule 7.1015(d)(2) of the California Rules of Court would also be amended to refer to that form and to conform with ICWA and state law concerning the duty of initial inquiry about a proposed ward's Indian connections.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective July 1, 2012:

1. Revise the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) to instruct guardianship petitioners about their initial duty to inquire about their proposed ward's possible connections to Indian people and tribes and call for all of the information about those connections that must be given to the court when a petition for appointment of a guardian of an Indian child is filed;
2. Revise the *Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) to refer to and describe the proper use of the revised guardianship form in a case involving an Indian child, improve the entire form's appearance and readability, and clarify the form's explanation of the responsibilities to prepare, serve, and file the notice to parents and Indian tribes described in the form; and
3. Amend rule 7.1015(d)(2) of the California Rules of Court to refer to the revised *Guardianship Petition—Child Information Attachment* instead of the form it would replace in guardianship practice involving an Indian child, and to add the child's Indian custodian to the list of persons of whom a guardianship petitioner must inquire about the child's Indian connections.

Copies of the revised forms are attached at pages 13–19. The text of the amended rule is attached at page 12.

Previous Council Action

Rule 7.1015, concerning guardianship and some conservatorship proceedings involving Indian children, was adopted effective January 1, 2008, in response to the 2006 legislation that implemented ICWA as state law.² The *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) was adopted effective January 1, 2007. Its purpose was to contain the requests for information about each proposed ward removed from the original guardianship petition (form GC-210) when a second version of the petition was adopted in the plain-language style for optional use in guardianships of the person (form GC-210(P)). The attachment form was designed for use with either form petition. In 2008, the new form was revised to add its current

² Stats. 2006, ch. 838 (Sen. Bill 678). See Prob. Code, §§ 1459.5 and 1460.2, added to the code by sections 18 and 19 of that legislation.

references to the Indian Child Welfare Act in item 1c on page 1. The *Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) was adopted effective on January 1, 2008, at the time a new separate group of forms was created for use in all child custody matters involving Indian children, including probate guardianships.

Rationale for Recommendation

Guardianship Petition—Child Information Attachment (form GC-210(CA))

This form, referred to in this report as the *Child Information Attachment*, must be completed and attached to every guardianship petition for each child for whom a guardian is sought. The form requests the personal information about the proposed ward that is necessary for a guardianship proceeding.

Duty of initial inquiry. Item 1c on page 1 of form GC-210(CA) concludes with instructions concerning the responsibility of a guardianship petitioner whose proposed ward is or may be an Indian child to give notice to the child’s parents and Indian tribe of their rights under ICWA and state law that implements the federal law. But the item provides no advice concerning the duty of the petitioner to make an initial inquiry concerning the proposed ward’s possible connections to one or more Indian tribes. That duty is described in rule 7.1015(d)(2) of the California Rules of Court as follows:

Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents or any other legal guardian, whether the child is or may be an Indian child, and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to his or her petition.³

Rules 5.480–5.487 apply ICWA to all child custody matters in California. Rule 7.1015(b)(2) explicitly applies these rules to probate guardianships. Rule 5.481(a)(1) defines the duty of initial inquiry under ICWA in a guardianship or conservatorship proceeding as follows:

The party seeking a . . . guardianship . . . [or] conservatorship . . . must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians whether the child is or may be an Indian child 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.

³ A “petitioner” is defined in rule 7.1015(a)(2) as a petitioner for the appointment of a guardian of the person of a child or the conservator of the person of a married or formerly married minor child.

Item 1c of form GC-210(CA) would be changed to add the following instructions before its questions about the proposed ward's Indian tribal connections and the state of knowledge the petitioner has or should have concerning the child's status as an Indian:

(If the Petition to which this form is attached asks for the appointment of a guardian of this child's estate only, skip this item 1c, select item 8a on page 5, and answer the rest of the items in this form. If the Petition asks for the appointment of a guardian of this child's person or this child's person and estate, complete the steps described here. Ask the child, if he or she is old enough, and the child's parents or any other legal guardian, and any Indian custodian, whether the child is or may be an Indian (Native American) child. You may not rely merely on your own knowledge and belief about the child. If possible, ask these persons before you file your petition, including this form, so you can use the information you receive to answer questions (1) and (2) below. Answer those questions, item 8 on page 5, and the rest of the items in this form.) (For more information about your duties concerning a child who is or may be an Indian child involved in a guardianship of the person under the Indian Child Welfare Act ("ICWA") (25 U.S.C. § 1901 et seq.) and California law, including making the inquiry described above and completing this form, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO).)

Although the duty to make this inquiry before the petition for guardianship is filed is expressed in unconditional terms in rules 5.481 and 7.1015, the instruction advises the petitioner to do so "if possible."⁴ Failure to make or complete this initial inquiry before filing a guardianship petition is not jurisdictional. At this preliminary stage of the proceeding, this failure does not jeopardize any rights under ICWA that any party, interested person, or Indian tribe connected to the child may ultimately have. Efforts to find and communicate with the child's parents, legal guardian, or Indian custodian before the petition is filed may be unsuccessful despite diligence. Prompt action in an emergency threatening the child's health or safety may be required; the inquiry may not be possible before the petition must be filed to secure the child's protection.

If the inquiry has not been made or completed before the petition is filed, the form would require the petitioner to disclose that fact, the reasons why not, and the efforts made to complete the task in his or her responses to item 8 on page 5 of the revised form, discussed in more detail below. See item 8b(3) of the revised form.

Replacement for form ICWA-010(A). The rules quoted above require completion of the *Indian Child Inquiry Attachment* (form ICWA-010(A)); a form designed for use in all child custody proceedings subject to ICWA, to disclose to the court the information about the proposed ward's

⁴ The form that currently addresses this inquiry, the *Indian Child Inquiry Attachment* (form ICWA-010(A)), also permits selection of a statement that the inquiry has not been made.

Indian connection revealed by the initial inquiry. In current guardianship practice, that completed form must be attached to the guardianship petition in addition to a completed *Child Information Attachment*.

The advisory committee has modified the latter form by adding a new item 8 on a new page 5, and changing existing item 8 to item 9.⁵ The new item would ask for the information now requested in form ICWA-010(A) and replace that form in guardianship practice. This change is proposed to decrease the burden on guardianship petitioners, many of whom are self-represented, by reducing the number of mandatory attachments required with the petition.

There are differences between existing form ICWA-010(A) and the proposed new material on page 5 of the *Child Information Attachment*. These are as follows:

- All references in item 2 of form ICWA-010(A) concerning proceedings in the juvenile court would be deleted from the *Child Information Attachment*.
- Form ICWA-010(A) does not provide an option that completion of the form is not required. Item 8a of the revised *Child Information Attachment* would provide that option for guardianships of the estate. ICWA does not apply to those guardianships (Prob. Code, § 1459(a)(1)). If item 8a is selected, an instruction advises that the rest of item 8 need not be completed.
- Form ICWA-010(A) permits a response that the initial Indian child inquiry has not been made but does not request an explanation. Item 8b of the revised *Child Information Attachment* would provide responses that the inquiry either has or has not been made or completed. If the latter response is selected, the form provides three non-exclusive selections for reasons why not.

The first reason is that the inquiry is unnecessary because the petitioner knows the child is an Indian child and has identified his or her tribe or tribes on page 1 of the form. The second reason is that the petitioner or the proposed guardian is the child's Indian custodian.⁶ ICWA does not apply to a case in which the proposed guardian is the child's Indian custodian (Prob. Code, § 1459(a)(1)). The third reason is inability to communicate with the child's parents or other legal guardian. If that option is selected, the petitioner must provide reasons for the inability and describe the efforts to communicate.

⁵ Revised item 9 is a single-sentence statement, as follows: "Except as otherwise stated in this form, the statements made in the Petition to which this form is attached fully apply to this child." This statement is moved to item 9, the last item in the form, to ensure that it continues to refer to all prior statements in the form.

⁶ An Indian custodian is defined in ICWA as "any Indian person who has legal custody of an Indian person under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child." (25 U.S.C. § 1903(6).)

- Form ICWA-010(A) provides space for the identification of two persons of whom inquiry has been made, with details such as the person’s relationship to the child, his or her address and telephone, the date questioned, and the means of communication. Information about additional persons contacted is to be placed in an attachment. Item 8c of the revised *Child Information Attachment* would call for all of that information to be supplied in one or more attached pages.

This change permits space for responses to item 8b, noted above, and more space than is currently provided in form ICWA-010(A) for listing other reasons to know the child is or may be an Indian child.

Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child (form ICWA-005-INFO)

Placement of the Indian child inquiry material in the *Child Information Attachment* requires changes in the basic instruction form that describes that inquiry, the *Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO, referred to in this report as the *Information Sheet*.) The title of this form would be changed to refer to child information attachments in the plural and the instructions on page 1 would be modified to refer to page 5 of the *Child Information Attachment*, in addition to form ICWA-010(A).

The need to make these changes in the form gave the committee an opportunity to revise the *Information Sheet* as a whole. The committee proposes the following additional changes to improve the form:

- The font would be increased from 9 points to 10 points, and spacing between the lines of text increased to 12 points throughout the form, to improve the form’s readability.
- The statement about the clerk’s refusal to accept a petition without an attached form ICWA-010(A), on the first page of the form just above the heading for form ICWA-030, would be modified to except probate guardianships. The equivalent guardianship form, the *Child Information Attachment*, must be filed with the petition in every case in any event, whether or not the case is subject to ICWA.
- On page 1 of the form, paragraph 2 of the “Tips on how to fill out ICWA-010(A)” says that the petitioner is to contact the child’s parents, Indian custodian, *and grandparents and great grandparents* and then inquire of them. The initial duty to inquire leading to form ICWA-010(A) or the new item 8 on page 5 of the *Child Information Attachment* does not extend to the child’s grand- or great-grandparents but does extend to the child’s legal guardian if other than a parent. See Cal. Rules of Court, rules 5.481(a)(1) and 7.1015(d)(2). The child’s legal guardian would be added and the grand- and great-grandparents deleted from the paragraph.

The recommendation to get contact information from grand- and great-grandparents in paragraph 1 of the “tips” has been retained because the idea is sound, particularly in the notice phase if the initial inquiry shows a possible Indian connection to the child; but petitioners do not have a duty to make the initial inquiry of grand- or great-grandparents. Paragraph 3 of the “tips” does say that if the petitioner is in touch with other relatives of the child, he or she should ask them the same questions. That paragraph would cover grand- and great-grandparents if the petitioner is already in contact with them at the time the petition is being prepared.

- The following statement appears in the first paragraph of the discussion of form ICWA-030, the *Notice of Child Custody Proceeding for Indian Child*:

After taking the steps listed above to find out whether the child is an Indian child, if you know or have reason to know that the child is an Indian child, then you (*or the court investigator if you are related to the child and you are asking the court to appoint you as the child's guardian*) must let the child’s tribe or tribes know about the case. (Italics added.)

The highlighted reference to the court investigator would be deleted. The investigator's duties under Probate Code section 1513(h) are not alternatives or substitutes for the petitioner's duty to give notice to parents or guardians, Indian custodians, and Indian tribes under ICWA. These duties apply to all guardianship investigators, whether supplied by the court or the county, depending on whether the proposed guardian is related to the child. (See Prob. Code, § 1513(a).) These duties are to consult with tribes and to include the information gained in those consultations in their reports to the court.

Investigators have no specific duty to give notice to tribes about a guardianship case. Rule 7.1015(c) says in its introductory sentence that the court has a continuing duty to give notice, but the specifics of that duty are defined in the following eleven paragraphs, which generally describe the details of preparation and mailing of form ICWA-030 by the petitioner and the court. The court or county investigator is not mentioned in these paragraphs. Moreover, the court may waive an investigation under section 1513(a); no court or county investigator will act in those cases.

- The opening paragraph after the heading for form ICWA-030 at the bottom of page 1 of form ICWA-005-INFO has been rewritten for clarity, including making an affirmative statement of the basic duty to send that form as the means of giving notice. That is a stronger and clearer statement than the current statement on page 2, just above the heading “Copy to the Secretary of the Interior, etc.”
- The first paragraph under “Tips on how to find the address for the child’s tribe or tribes” on page 2 of the form has been rewritten for clarity and to update the URL cited in the paragraph.

- The service and proof of service instructions at the bottom of page 2 of the form have been clarified. The correct paragraphs in form ICWA-030 for signatures are identified and a more explicit explanation is provided of what the court will and will not do to help the petitioner serve the notice in a probate guardianship.

Rule 7.1015(d)(2)

This rule would be modified in two respects. First, its direction to guardianship petitioners that the *Indian Child Inquiry Attachment* (form ICWA-010(A)) must be completed and attached to the petition would be replaced by a direction to complete items 1c and 8 of the *Child Information Attachment* and to attach that form to the petition. The second change would add a proposed ward's Indian custodian to the list of persons of whom the initial Indian child inquiry must be made. This change would make the rule consistent with rule 5.481(a)(1), quoted above, and the existing and revised *Information Sheet*. (See paragraphs 1 and 2 of the "Tips on how to fill out ICWA 010(A) or page 5 of form GC-210(CA)" on page 1 of that form.) These rule changes were not circulated for comment, but are proposed in response to comments received, described in the following discussion.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2011 public comment cycle. Ten individuals or organizations submitted comments. Four commentators approved the proposal without recommending changes. A chart summarizing the comments received and the committee's responses is attached at pages 20–40.

Five commentators approved of the proposal if modified. The most helpful comment was that of the Executive Committee of the Trusts and Estates Section of the California State Bar (TEXCOM). (See comment chart, comment no. 2, at pages 20–24.) TEXCOM's major recommendation is to greatly simplify the explanatory matter appearing in items 1c and 1c(2) on page 1 of the *Child Information Attachment* by referring readers to the *Information Sheet* for a detailed explanation, and deleting statutory citations in item 1c(2). The committee agreed with this recommendation. The modified instruction preceding the two questions in the item is quoted on page 4 above. The instruction following these questions was modified to read as follows:

(If you checked "Yes" to either item (1) or (2), you must file and serve a Notice of Child Custody Proceeding for Indian Child (form ICWA-030), in addition to service of any other notices required in this case. For information about what is "reason to know whether the child is or may be an Indian child" and the notice requirement, including who must be served, how to serve them, and how to prove to the court that you have done so, and how to fill out and file the Notice, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO).)

TEXCOM also recommended adoption of the "plain language" style, the style used in form GC-210(CA), for the *Information Sheet* and against division of the form into two separate

information forms: one concerning the duty of initial inquiry and completion of the Indian child inquiry attachments; the other concerning the duty to give notice and to prepare, serve, and file the *Notice* (form ICWA-030). These recommendations were in response to requests for specific comments on these points. The general consensus of most commentators who responded to these invitations was to recommend against the creation of two information forms, a recommendation accepted by the committee, and to rewrite the form in the “plain language” style. The committee will consult with the Family and Juvenile Law Advisory Committee and its staff, the original authors of the *Information Sheet*, concerning such a conversion in the future.⁷ However, the conversion could not be completed in time to be implemented effective in 2012.

Other commentators, including the Superior Courts of Los Angeles, Orange, and Sacramento Counties, made recommendations to modify the instructional material in item 1c of form GC-210(CA). The changes made in this material in response to TEXCOM’s comment mooted these other recommendations and resolved many of the issues raised in them.

The most critical comment was that of attorney Maureen Geary, who represents Indian tribes and other Indian organizations and was formerly a senior staff attorney with California Indian Legal Services. (See chart, comment no. 3, pages 25–32.) Her comment asserts that the revised form does not comply with ICWA because it does not address the requirement of that law that a guardianship appointment based on the consent of a parent or Indian custodian must be terminated and the child returned to the parent or custodian if that consent is withdrawn, which can be done at any time (see 25 U.S.C. § 1913(b)). The assumption behind this assertion is that the child must be returned to the parent or custodian immediately, without court supervision. The committee’s response to this comment is that there is nothing in the revised forms that address or conflict with the requirements of voluntary parental consent provided under ICWA and summarized in Probate Code section 1500.1.⁸ As a practical matter, ICWA precludes reliance on parental consent as a basis for an order appointing a general guardian for an Indian child subject to the law. Some courts do not enter orders appointing general guardians of Indian children in these cases based on parental consent because that consent may be withdrawn at any time. These courts may enter and periodically renew temporary guardianship appointments for periods of time instead, with the general appointment deferred until it becomes clear that the matter is not, or is no longer, subject to the requirements of ICWA or, if the case remains subject to those requirements, is transferred to a tribal court.

⁷ Staff to this advisory committee consulted with staff of the Family and Juvenile Law Advisory Committee, including experts on ICWA employed by the Center for Families Children and the Courts, throughout the development of this proposal. This consultation included joint staff review of drafts of the revised forms, discussions concerning them, and modifications made in response to suggestions received.

⁸ Section 1500.1(b) provides: “The parent of an Indian child may withdraw his or her consent to guardianship for any reason at any time *prior to the issuance of letters of guardianship* and the child shall be returned to the parent.” (Italics added.) This provision is not consistent with 25 U.S.C. § 1913(b), which does not terminate a parent’s right to withdraw consent to guardianship and have his or her child returned upon the appointment and qualification of the guardian. Supremacy principles suggest that section 1500.1’s limitation of the parent’s rights would not be upheld.

There are no provisions of California law that would authorize the automatic termination of a guardianship based on the conduct of a third party outside the courtroom. If a guardian is appointed in a case subject to ICWA based on parental consent that is later withdrawn, the court would be required to schedule a hearing, enter an order terminating the guardianship, and supervise an orderly transfer of custody. Although this outcome may be required by ICWA, it cannot occur automatically without court supervision over the change of responsibility for the child.

Ms. Geary also objected to a statement in the Invitation to Comment that if an Indian custodian is the proposed guardian, the case is not subject to ICWA. She asserts that Probate Code section 1459.5(a)(1), which so provides, is “ill-crafted.” The committee’s response is that the provision remains California law, regardless of the quality of its craftsmanship; a rule of court could not be inconsistent with that law and a Judicial Council form could not contain a statement that is inconsistent with that law. (See item 8b(2) of the *Child Information Attachment*.)

Ms. Geary also makes the following assertion: “[W]hen an Indian custodian is a proposed guardian, an inquiry must be done in order to ascertain if the child is in fact an Indian child, if the petitioner is in fact an Indian custodian and if so, has the parent asked for the child to be returned: if the answer to that question is yes, and the parent has asked, the petitioner/Indian custodian must return the child. *Therefore, the guardianship is not required.* (Italics added.)

The committee’s response is that requiring an initial Indian child inquiry in the situation described does not resolve the problem posed. If an Indian custodian files for guardianship, it is likely because he or she is reacting to a threat to any voluntary arrangement made with the child’s parent. Depending on the seriousness of the facts demonstrating parental unfitness, the court’s immediate intervention may be necessary for the child’s protection. Temporary guardianship may stabilize the situation until the child’s tribe is notified and determines whether to intervene in the case or transfer the proceeding to a tribal court for final disposition. The fact that the child’s parent has threatened to or actually withdrawn informal consent to custody of the child with the Indian custodian, does not and cannot establish that the guardianship is not required for the child’s protection, at least in the short term.

Ms. Geary’s comment did cause the committee to revise the *Child Information Attachment* and rule 7.1015(d)(2) to add a child’s Indian custodian to the list of persons of whom the initial Indian child inquiry must be made. (See chart, comment no. 3, and response, at page 28.)

Implementation Requirements, Costs, and Operational Impacts

This proposal will incur the ordinary production and distribution costs associated with the revision of any Judicial Council form and the amendment of any rule of court. But placement of the Indian child inquiry material into a guardianship-specific form that must currently be filed in every case, and improvement of the instructions pertaining to ICWA in that form and in the information form that describes initial steps in an ICWA case should reduce the number of mistakes by petitioners in these difficult matters and the delays and continuances that would

otherwise be required to redress those mistakes. The net result of these changes should be a reduction in costs incurred by courts in handling guardianships involving Indian children.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal supports the case management policies underlying strategic Goal III, Modernization of Management and Administration (Goal III.B, Trial and Appellate Case Management) and Objective III.B.5⁹ of the Operational Plan, in that it will help ensure that statewide policies, rules of court, standards of judicial administration, and court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand.

Attachments

1. Cal. Rules of Court, rule 7.1015, at page 12
2. Form GC-210(CA), at pages 13–17
3. Form ICWA-005-INFO, at pages 18–19
4. Chart of comments, at pages 20–40

⁹ Objective 5 addresses the need to “[d]evelop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”

Rule 7.1015 of the California Rules of Court is amended, effective July 1, 2012, to read as follows:

1 **Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship**
2 **proceedings**

3
4 (a)–(c) * * *

5
6 (d) **Duty of inquiry**

7
8 (1) * * *

9
10 (2) Before filing his or her petition, the petitioner must ask the child involved in
11 the proceeding, if the child is old enough, and the parents, ~~or~~ any other legal
12 guardian, and any Indian custodian, whether the child is or may be an Indian
13 child, and must complete items 1c and 8 of the ~~Indian Child Inquiry~~
14 Attachment (form ICWA-010(A)) *Guardianship Petition—Child Information*
15 Attachment (form GC-210(CA)) and attach it to his or her petition.

16
17 (3)–(7) * * *

Guardianship of (all children’s names): _____

This child’s name: _____

Fill out a separate copy of this form for each child for whom you want the court to appoint a guardian.

This form is attached to the Petition, item 2 of form GC-210, or item 8 of form GC-210(P).

The Petition asks for the appointment of a guardian of this child’s (specify): person estate person and estate

1 Tell the court about this child

a. Child’s full legal name: _____ Date of birth: _____
First Middle Last Month/Day/Year

b. Child’s current address: _____

c. (If the Petition to which this form is attached asks for the appointment of a guardian of this child’s estate only, skip this item 1c, select item 8 a on page 5, and answer the rest of the items in this form. If the Petition asks for the appointment of a guardian of this child’s person or this child’s person and estate, complete the steps described here. Ask the child, if he or she is old enough, and the child’s parents or any other legal guardian, and any Indian custodian, whether the child is or may be an Indian (Native American) child. You may not rely merely on your own knowledge and belief about the child. If possible, ask these persons before you file your petition, including this form, so you can use the information you receive to answer questions (1) and (2) below. Answer those questions, item 8 on page 5, and the rest of the items in this form.)

(For more information about your duties concerning a child who is or may be an Indian child involved in a guardianship of the person under the Indian Child Welfare Act (“ICWA”) (25 U.S.C. § 1901 et seq.) and California law, including making the inquiry described above and completing this form, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO).)

(1) Is this child a member of, or eligible for membership in, one or more Indian tribes recognized by the federal government? No Not sure Yes (specify tribe or tribes): _____

(If you checked “Yes” to item (1), this guardianship case is subject to ICWA. If you checked “Not sure” or “No” to item (1), answer item (2).)

(2) Do you know or have reason to know (within the meaning of Prob. Code, §§ 1460.2(a), Welf. & Inst. Code, § 224.3(b), and Cal. Rules of Court, rule 7.1015), whether this child is or may be an Indian child? No Yes (If you checked “Yes” to either item (1) or (2), you must file and serve a Notice of Child Custody Proceeding for Indian Child (form ICWA-030), in addition to service of any other notices required in this case. For information about what is “reason to know whether the child is or may be an Indian child” and the notice requirement, including who must be served, how to serve them, and how to prove to the court that you have done so, and how to fill out and file the Notice, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO).)

d. Is this child married? Yes No Never married If you checked “No,” was this child formerly married but the marriage was dissolved or ended in divorce? Yes No
(The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

1 Tell the court about this child (continued)

e. Is this child receiving public assistance? Yes No Unknown (If you checked "Yes," fill out below.)

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

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

g. (Check this box and fill out below if the person the child lives with is not the person with legal custody.)
Name and address of the person this child lives with (has the care of the child): _____

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

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

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

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

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



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

2 Names and addresses of this child's relatives and other persons (continued):

Relationship	Name	Home Address (Street, City, State, Zip)
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____
Brother/Sister	_____	_____

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

Spouse
(Guardianship of the estate only) _____

Person nominated as guardian of this child
(Other than a proposed guardian listed in 3) _____

3 Information about the proposed guardian:

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

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

Relative (specify relationships of all proposed guardians to the child): _____

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



Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

4 Explain why appointing the person in 3 guardian would be best for this child: _____

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

5 Do one or both of this child's parents agree that the person in 3 can be the child's guardian?
a. Father: Yes No Not known at this time.
b. Mother: Yes No Not known at this time.
(You may file a filled-out Consent to Appointment of Guardian and Waiver of Notice (form GC-211, item 4) signed by the child's parent or parents (or any adult relative listed in 2) who agree. The court may excuse you from having to give notice of the court hearing on your request for appointment of a guardian to a parent or other relative who signs that form.)

6 Suitability for guardianship of this child
a. Does this child live with the person in 3 now? Yes No
b. If the court approves the guardianship, will this child live with the person in 3? Yes No
c. Does the person in 3 plan to adopt this child now? Yes No

7 Check this box if you (the petitioner) are not the person in 3, and fill in below.
Your relationship to this child:
 Relative (specify): _____
 Not a relative (explain your interest in or connection to this child): _____

Guardianship of (all children's names): _____

Case Number: _____

This child's name: _____

8 An Indian child inquiry concerning the child named above:

- a. is not required; this is a guardianship of the estate only. (If you check this box, skip the rest of item **8**.)
- b. has not been made or completed for the following reasons (check all that apply):
 - (1) Petitioner knows the child is an Indian child and has identified the child's tribe or tribes in item **1**.
 - (2) Petitioner (or the proposed guardian if he or she is not the petitioner) is the child's Indian custodian.
 - (3) Petitioner has been unable to communicate with the child's parents, other legal guardian, or Indian custodian for the following reasons and despite the following efforts to do so (describe):

(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 8b(3)—Indian Child Inquiry" at the top of the paper and attach it to this form.)

- c. has been made and the following information was obtained (check all that apply):
 - (1) The names, relationships to the child named above, addresses, and telephone numbers, of the persons interviewed by Petitioner to collect or confirm the information given below, and the date or dates the interviews took place, are provided on one or more separate sheets of paper attached to this form. (Write "Form GC-210(CA)," the name of this child, and "Attachment 8c(1)—Indian Child Inquiry" at the top of each page of paper you attach to this form to complete this item.)
 - (2) The child is or may be a member of or eligible for membership in a tribe.
Tribe or tribes: _____
Band (if applicable): _____
 - (3) The child's parents, grandparents, or great-grandparents are or were members of a tribe or tribes.
Tribe or tribes: _____
Band (if applicable): _____
 - (4) The residence or domicile of the child, the child's parents, or the child's Indian custodian is in a predominantly Indian community.
 - (5) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).
 - (6) The child may have Indian ancestry.
 - (7) Other reason or reasons to know the child is or may be an Indian child: _____

 - (8) The child has no known Indian ancestry.

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

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

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship, page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*; and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

ICWA-010(A), *Indian Child Inquiry Attachment* or page 5 of form GC-210(CA), *Guardianship Petition—Child Information Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment* or on page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment*. This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out ICWA-010(A), *Indian Child Inquiry Attachment* or
page 5 of GC-210(CA), *Guardianship Petition—Child Information Attachment*

1. Try to find contact information for the child's parents or other legal guardian, the child's Indian custodian (if the child is living with an Indian person other than a parent), and the child's grandparents and great-grandparents.
2. Contact the child's parents or other legal guardian, and the child's Indian custodian, and ask them (and the child, if he or she is old enough) these questions:
 - a. Is the child a member of a tribe, and if they think he or she might be, then which tribe or tribes?
 - b. Are they members of a tribe, and if they think they might be, which tribes?
 - c. Does the child or the child's parents live in Indian country?
 - d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
 - e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?
3. If you are in touch with any of the child's relatives, ask them the same questions.

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

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

After taking the steps listed above to find out whether the child is an Indian child, if you know or have reason to know that the child is an Indian child, you must notify the tribe or tribes that may have a connection with the child about your court case. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction. You give notice to the child's tribe or tribes and the other persons and the organization listed at the top of the second page of this form by sending them filled-out copies of ICWA-030, *Notice of Child Custody Proceeding for Indian Child* (the "Notice"), together with the other documents listed at the bottom of that page.

Some tips to help you figure out if you have a reason to know the child is an Indian child

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
3. If the child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

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

Who do you need to notify?

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

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

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

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. 23.12), a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can link to the Federal Register list, another list of tribes maintained by the California Department of Social Services, and other resources related to ICWA, on the California Department of Social Services website at <http://www.childsworld.ca.gov/PG2070.htm>. The list of tribes maintained by the Department of Social Services is very helpful but it is not official, nor is there any authority to use the addresses in that list over different agents for service listed in the Federal Register. If the official list and the state's list differ on a tribal address, it is a good idea to send copies of the Notice and the other documents to both addresses.

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

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

Copy to the Area Director of the Bureau of Indian Affairs

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

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

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

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
 - a. Your petition;
 - b. Form ICWA-010(A), *Indian Child Inquiry Attachment* or, in a probate guardianship case, form GC-210(CA), *Guardianship Petition—Child Information Attachment*; and
 - c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of ICWA-030, *Notice of Child Custody Proceeding for Indian Child*. Your proof must consist of the following:
 - a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A) or form GC-210(CA));
 - b. All return receipts given to you by the post office and returned from the mailing; and
 - c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or counsel a party to do so. (Welf. & Inst. Code, § 224.2(e).)

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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

	Commentator	Position	Comment	Committee Response
1.	Cindy Crabtree, Court Services Assistant IV, Superior Court of Shasta County Redding	A	Item 4 on page 4 of form GC-210(CA), insert “as” before “guardian.”	Item 4 of the form was not revised in this proposal. This change appears unnecessary.
2.	Executive Committee of the Trusts and Estates Section, State Bar of California (TEXCOM) by Barry K. Matulich and Saul Bercovitch San Francisco	AM	<p>The Executive Committee of the Trusts & Estates Section of the State Bar (TEXCOM) agrees with the proposed changes if modified.</p> <p>TEXCOM agrees with the need to clarify the forms in question, forms GC-210(CA) and ICWA-005-INFO, but recommends additional proposed changes to simplify language of GC-210(CA) and to transfer more of the instructional language included in the proposed new GC-210(CA) to ICWA-005-INFO.</p> <p>In response to a specific request for a comment on the point, TEXCOM does not support the restatement of form ICWA-005-INFO as two separate information forms, one to address the initial Indian child inquiry and forms ICWA-010(A) and GC-210(CA), and the other to discuss notice requirements and form ICWA-030. TEXCOM does support the restatement of ICWA-010(A) in the simplest possible language and would welcome an opportunity to comment on the restatement of that important form.</p> <p>1. <u>TEXCOM Supports Incorporating ICWA-010 into GC-210(CA).</u></p> <p>TEXCOM supports the proposal to incorporate</p>	<p>The advisory committee has determined not to proceed with separation of the material in the instruction form into two separate forms at this time. The committee will consult with the Family and Juvenile Law Advisory Committee on a conversion of form ICWA-005-INFO into the plain-language format at a later time.</p> <p>1. No response required.</p>

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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

	Commentator	Position	Comment	Committee Response
			<p>the contents of form ICWA-010(A) into form GC-210(CA), as a new page 5 of the latter form. That incorporation serves its stated purpose of simplifying the guardianship application process for self-represented persons. Also, the language of GC-210(CA) at page 5 is clearer than the corresponding language of existing ICWA-010(A).</p> <p>2. <u>TEXCOM generally supports “plain language” style.</u> To that end, we make the following comments:</p> <ul style="list-style-type: none"> Proposed language of GC-210(CA), item 1(c). We recommend simplifying the new (highlighted) paragraph at 1(c) to read as follows: <p>(Complete the steps described here and answer questions (1) and (2) below if the Petition to which this form is attached seeks appointment of a guardian of the person or of the person and estate. Before you file your Petition, you must ask the child, if the child is old enough, and the parents or any other legal guardian, whether the child is or may be an Indian (Native American). You may not rely merely on your own knowledge and belief about the child. After you make this inquiry, answer questions (1) and (2) below and item 9 on page 5, then fill out the rest of this form. For more</p>	<ul style="list-style-type: none"> The advisory committee agrees with this recommendation and has modified item 1c of the form to read as follows: <p><i>(If the Petition to which this form is attached asks for the appointment of a guardian of this child’s estate only, skip this item 1c, select item 8a on page 5, and answer the rest of the items in this form. If the Petition asks for the appointment of a guardian of this child’s person or this child’s person and estate, complete the steps described here. Ask the child, if he or she is old enough, and the child’s parents or any other legal guardian, and any Indian custodian, whether the child is or</i></p>

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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

Commentator	Position	Comment	Committee Response
		<p>information about your duties concerning an Indian child involved in a guardianship under the Indian child Welfare Act (“ICWA”) (25 U.S.C. § 1901 et seq.) and California law, see the Information Sheet on Indian Child Inquiry and Notice of Child Custody Proceeding For the Indian child (form ICWA-005-INFO).)</p> <p>This modification eliminates some information that is included on the proposed revised form GC-210(CA), but refers the petitioner directly to ICWA-005-INFO for the critical information. We generally believe that GC-210 (CA) and ICWA-005-INFO are both made more usable if the former is more clearly designed to collect information while referring the petitioner to ICWA-005-INFO for instructions and if ICWA-005-INFO includes the single, succinct statement of the essential instructions for completing the form and relevant legal citations.</p> <ul style="list-style-type: none"> Proposed language of GC-210(CA), item 1(c)(2). For the same reasons TEXCOM proposes that the second new (highlighted) paragraph at 1(c)(2) be simplified to read as follows: <p>(If you checked “Yes” to either item (1) or (2), you must file and serve a Notice of</p>	<p><i>may be an Indian (Native American) child. You may not rely merely on your own knowledge and belief about the child. If possible, ask these persons before you file your petition, including this form, so you can use the information you receive to answer questions (1) and (2) below. Answer those questions, item 8 on page 5, and the rest of the items in this form.)</i></p> <p>(For more information about your duties concerning a child who is or may be an Indian child involved in a guardianship of the person under the Indian Child Welfare Act (“ICWA”) (25 U.S.C. § 1901 et seq.) and California law, including making the inquiry described above and completing this form, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO).)</p> <ul style="list-style-type: none"> The committee accepts this recommendation. It has revised the instructions for item 1c(2) to read as follows: <p><i>(If you checked “Yes” to either item (1) or (2), you must file and serve a Notice of Child Custody Proceeding for Indian Child (form ICWA-030), in</i></p>

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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		<p>Child Custody Proceeding for Indian Child (form ICWA-030) in addition to service of any other notices required in this case. For information about this notice requirement, see the Information Sheet on Indian Child Inquiry and Notice of Child Custody Proceeding For the Indian Child (form ICWA-005-INFO.)</p> <ul style="list-style-type: none"> Proposed language of GC-210(CA), Item 8. <p>TEXCOM suggests that the incorporation of ICWA-010 under Item 8 on page 5 of GC-210(CA) could be still clearer, usable, comply better with legal requirements, and save paper if revised as follows:</p> <ul style="list-style-type: none"> After the existing text at 8a, add: (If you check this box, skip all other questions under item 8.) Modify 8b(3) to incorporate “the child” and so to read as follows: Petitioner has been unable to communicate with the child, the child’s parents, ... Modify 8c(1) to include spaces such as at 9b(3) and 8c(7) for the persons contacted and so eliminate the need in every case for 	<p><i>addition to service of any other notices required in this case. For information about what is “reason to know whether the child is or may be an Indian child” and the notice requirement, including who must be served, how to serve them, and how to prove to the court that you have done so, and how to fill out and file the Notice, see the Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding For Indian Child (form ICWA-005-INFO.)</i></p> <ul style="list-style-type: none"> The committee has added the following instruction following item 8a: <i>(If you check this box, skip the rest of item 8.)</i> The committee does not agree with this recommendation. Most guardianship petitioners will have access to the child (they are usually care givers). Moreover, not all children must be consulted. Inquiries are required only of those children of sufficient age. The committee does not support this recommendation. It would require an additional

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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			<p>an attachment, but include the option, as after 8b(3), to check the box and add an attachment if needed.</p> <p>Note: If paragraph 1(c) is shortened as suggested above, there should be room for these extra lines.</p> <p><u>Specific Comments on ICWA-005-INFO</u></p> <p>With respect to the request for specific comments, TEXCOM does not support restating ICWA-005-INFO as two separate information forms, one to address the initial Indian child inquiry and forms ICWA-010(A) and GC-210(CA), and the other to discuss notice requirements and form ICWA-030. We believe that adding forms complicates the application process. TEXCOM does agree that ICWA-010(A) should be restated in the simplest possible language and would welcome an opportunity to comment on the specifics of the restatement of that important form.</p>	<p>page in the form, even with the shortened item 1c, and an additional attachment page would still be required in most cases.</p> <p>The advisory committee agrees with this recommendation. It will not propose separation of the information sheet form into two forms.</p>
3.	Maureen H. Geary Maier, Pfeffer, Kim & Geary, LLP Attorneys at Law Santa Rosa	AM	I am an attorney and partner in Maier, Pfeffer, Kim & Geary, LLP. Our firm has a combined attorney experience of over 70 years in the practice of federal Indian law and we serve as general counsel to many tribes and Indian organizations. We work closely with tribal	

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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	Commentator	Position	Comment	Committee Response
			<p>councils and committees on development and updating of tribal constitutional and statutory laws, Indian Child Welfare Act cases, trainings and legislation, housing law and policy, tribal court development, and state and federal legislative advocacy. Our firm has represented and co-counseled California Indian tribes in gaming-related issues since the early 1980's. We have extensive economic and gaming-related expertise.</p> <p>Prior to joining Maier, Pfeffer, Kim & Geary, LLP, I was a senior staff attorney and the Director of the ICWA Project at California Indian Legal Services (CILS). During my eighteen years at CILS I handled Indian Child Welfare Act cases for many of the northern California tribes and have appeared in juvenile dependency and probate courts throughout California. I have authored several articles on SB 678 and was responsible for the passage of SB 678 in California which codified the Indian Child Welfare Act in the California Family, Probate, and Welfare and Institutions Codes.</p> <p>These comments are submitted on behalf of our firm and generally speaking we are in agreement with the goals of the proposed form revisions. One of the goals of SB 678 was to create uniform applicability of the ICWA in California. Revision of GC-210(CA) and ICWA-005-INFO to instruct petitioners of the requirement of inquiry of an Indian child is in</p>	

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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

	Commentator	Position	Comment	Committee Response
			<p>line with the goal of SB 678. However, the Invitation to Comment and the new page 5 to Form GC-210(CA) may present some confusion to the bench and bar. As noted above, due to time constraints I have listed our concerns below:</p> <ol style="list-style-type: none"> 1. An Indian child inquiry should be made in each and every probate guardianship case and the GC-210(CA) should be fully completed and filed with the court. Proper inquiry and notice are the touchstones to ICWA compliance. 2. Page 3 of the Invitation to Comment states that “If the proposed guardian is the child’s Indian custodian...the case is not subject to ICWA requirements including the Indian child inquiry.” Unfortunately, Probate Code §1459.5(a)(1) is ill-crafted. An Indian custodian is often times a relative or tribal member who has temporary custody of an Indian child. 	<ol style="list-style-type: none"> 1. A form GC-210(CA) for each proposed ward must be completed and filed with the appointment petition in every guardianship case, whether or not the proposed ward is or may be an Indian child. Placing the initial Indian inquiry items in that form should provide greater assurance that the inquiry has been or will be made in every guardianship case or has not been made because (1) the child’s status as an Indian child and his or her tribal affiliation are known so further initial inquiry is unnecessary; (2) communication with the child’s parents or other legal guardian has not been made despite described efforts to do so; or (3) petitioner or the proposed guardian is the child’s Indian custodian. 2. The Invitation to Comment correctly states California law. If the commentator is correct that Probate Code section 1459.5(a)(1) is “ill-crafted,” it remains current California law. Neither California Rules of Court nor Judicial Council forms may be inconsistent with that law. If the law is changed, the forms would be revised accordingly.

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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

	Commentator	Position	Comment	Committee Response
			<p>Once a petition for guardianship is filed by either a third party or even by the Indian custodian, the parent cannot have his/her child returned upon demand. The usual scenario is that a petition for guardianship is filed along with a temporary guardianship order. Once that temporary guardianship order is granted the parent can not have the child returned upon demand.</p> <p>Rather than state no Indian child inquiry is required if the proposed guardian is an Indian custodian, the best practice is to require such an inquiry in all cases. It should be noted that many Indian custodianships are voluntary and created due to a parent’s inability to care for his/her child. By their nature they are to be freely dissolved and the child is to be returned immediately. Unfortunately this is not always the case. Therefore, when an Indian custodian is a proposed guardian, an inquiry must be done in order to ascertain if the child is in fact an Indian child, if the petitioner is in fact an Indian custodian and if so, has the parent asked for the child to be returned: if the answer to that question is yes, and the parent has asked, the petitioner/Indian custodian must return the child. Therefore, the guardianship is not required. Without knowing if the child is an Indian child, the court can never get to the questions: Is the petitioner an Indian custodian; have the parents asked for the child to be returned; does the Indian Child Welfare Act</p>	<p>Requiring an initial Indian child inquiry in the situation described does not resolve the problem posed. If an Indian custodian files for guardianship, it is likely because he or she is reacting to a threat to any voluntary arrangement made with the child’s parent. Depending on the seriousness of the facts demonstrating parental unfitness, the court’s immediate intervention may be necessary for the child’s protection. Temporary guardianship may stabilize the situation until the child’s tribe is notified and determines whether to intervene in the case or transfer the proceeding to a tribal court for final disposition. The fact that the child’s parent has threatened to or actually withdrawn informal consent to custody of the child with the Indian custodian, does not and cannot establish that the guardianship is not required for the child’s protection, at least in the short term.</p> <p>Moreover, an initial Indian child inquiry is less rather than more likely to be necessary in a case involving an Indian custodian petitioner or</p>

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Instructions concerning the Indian Child Welfare Act in probate guardianship proceedings (revise forms GC-210(CA) and ICWA-005-INFO)

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	Commentator	Position	Comment	Committee Response
			<p>apply; has proper notice been given, has the Indian child’s tribe intervened, who will serve as the qualified expert witness, have active efforts been provided to prevent the breakup of the Indian family and has the court applied the correct evidentiary standards? Congress made it clear that an Indian custodian has the rights and protections of the ICWA. See 25 USC §§1901, et. seq. Moreover, whether the petitioner is an Indian custodian or a third party does not trump the Indian child’s tribe’s rights under the Act.</p>	<p>proposed guardian. The child’s status as an Indian in that situation is much less likely to be unknown or doubtful and the child’s actual tribal connections much more likely to be known than in other cases. Discovery of those facts is the purpose of the duty to make an initial inquiry before filing a guardianship petition.</p> <p>This commentator’s concern about form GC-210(CA)’s compliance with ICWA and the effect on a guardianship of the existence of an Indian custodian did cause the advisory committee to make an additional change, not only in form GC-210(CA) but also in rule 7.1015(d)(2). First, the instructional material for item 1c of the form would add the Indian custodian to the list of persons to whom the initial inquiry must be directed. Second, rule 7.1015(d)(2) requires the initial Indian child inquiry to be made of the child (of suitable age), and the child’s parents or other legal guardian. No mention is made of the Indian custodian. But rule 5.481(a), by its terms applicable to all child custody proceedings subject to ICWA, including probate guardianships, requires the inquiry to be made also of any Indian custodian. The latter rule is consistent with ICWA. Rule 7.1015(d)(2) would therefore be amended to require the initial inquiry also to be made of any Indian custodian. The rule would then be consistent with rule 5.481(a) and also with the advice about the initial duty of inquiry given in the <i>Information Sheet</i> (form ICWA-005-INFO). Rule 7.1015(d)(2) would also be amended to</p>

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			<p>3. Page 5 of revised Form GC-210(CA): We recommend that Item 8b(2) be removed from the proposed form. It is misleading as written. If the parents can no longer have the child returned to them upon demand, the case is automatically an ICWA case. To include subsection 2 simply draws out the case wasting court resources and those of the parties. Eventually the court will need to ascertain the child’s status and order that proper notice be given to the Indian child’s tribe and apply the Act. The better course is to require the Indian child inquiry in every case and the court can determine if the Act applies after proper inquiry and notice have been done. The court should</p>	<p>require completion of the ICWA-specific portions of the revised <i>Child Information Attachment</i> (form GC-210(CA)) to be completed instead of the form it replaces in guardianships, the <i>Indian Child Inquiry Attachment</i> (form ICWA-010(A)).</p> <p>In this comment, the commentator sometimes appears to have conflated the initial duty of inquiry as to the child’s Indian status, which is the event described in form GC-210(CA), with the subsequent duty to give notice to the child’s tribe and to proceed to a determination of the child’s Indian status in a manner consistent with the requirements of ICWA, which arises if the initial inquiry demonstrates that the court and parties know or have reason to know the child is or may be an Indian child.</p> <p>3. The advisory committee disagreed with this recommendation for the reasons stated above. Item 8b(2) of form GC-210(CA) indicates only that an initial Indian child inquiry has not been made before filing the petition because the petitioner or the proposed guardian is the child’s Indian custodian. Selection of the item does not mean that a duty to give notice and satisfy other obligations imposed by ICWA will not be present or, if present, will not be satisfied. If the court believes the initial inquiry must be made despite selection of item 9b(2), it can always instruct the petitioner to proceed with that inquiry.</p>

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			<p>also inquire whether the proposed guardian is an Indian custodian and if so whether the parents have asked for the child to be returned. If they have asked for the child to be returned and the request has been denied, ICWA applies.</p> <p>4. The proposed form change conflicts with the voluntary consent of the parents pursuant to 25 USC §1913 and California Probate Code §1500.1. Unless and until the court can obtain the parent’s consent in writing and recorded before the judge with the judge’s certification that terms and consequences were fully explained in detail and fully understood by the parent and in a language the parent understood, any prior consent is not valid. Further, the parent can withdraw his/her consent any time prior to the issuance of the letters of guardianship. Without an Indian child inquiry none of the above can be accomplished. In addition, depending on the county in California, a temporary guardianship order is routinely issued pending the outcome of the guardianship proceeding – at what point does the court determine if the parents can seek return of the child?</p>	<p>4. There is nothing in the revised forms that address or conflict with the requirements of voluntary parental consent provided under ICWA, at 25 U.S.C. § 1913, and summarized in Probate Code section 1500.1. As a practical matter, ICWA precludes reliance on parental consent as a basis for an order appointing a general guardian for an Indian child subject to ICWA. Some courts do not enter orders appointing general guardians of Indian children in these cases based on parental consent because that consent may be withdrawn at any time. These courts may enter and periodically renew temporary guardianship appointments for periods of time instead, with the general appointment deferred until it becomes clear that the matter is not, or is no longer, subject to the requirements of ICWA or, if the case remains subject to those requirements, is transferred to a tribal court.</p> <p>There are no provisions of California law that would authorize the automatic termination of a guardianship based on the conduct of a third party outside the courtroom. If a guardian is appointed in a case subject to ICWA based on parental consent that is later withdrawn, the court would be required to schedule a hearing, enter an order</p>

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			<p>5. The proposed form change may lead to more individuals identifying as an Indian custodian who do not meet the definition in an effort to avoid application of the ICWA. Welfare & Institutions Code §224.2(e) provides that a person who “knowingly and willfully falsifies or conceals a material fact concerning whether a child is an Indian child, or counsels a party to do so” is subject to court sanctions. The need to conduct an Indian child inquiry in every case is critical to the preservation of, existence and integrity of Indian tribes. We are concerned that with a lack of inquiry, the courts and parties will fail to apply ICWA when required which will simply reverse the 33 years of ongoing work toward ICWA compliance.</p> <p>Thank you for extending the time to respond and for your interest in the application of the Indian Child Welfare Act in California. As a side note, while at CILS I submitted a memorandum, dated April 17, 2008, to [certain present and former CFCC staff members] regarding the lack of ICWA compliance in the Judicial Council Probate guardianship forms overall. As an example, all the temporary guardianship forms (GC-110P, GC-110, and</p>	<p>terminating the guardianship, and supervise an orderly transfer of custody. Although this outcome may be required by ICWA, it cannot occur automatically without court supervision over the change of responsibility for the child.</p> <p>5. The advisory committee disagreed with this analysis. Any petitioner identifying himself or herself as an Indian child’s Indian custodian in a form GC-210(CA) would be expected to be able also to identify the child’s Indian tribal connections and to give the tribe or tribes notice of the guardianship proceeding. If he or she fails to do that, the court could readily inquire into the petitioner’s claim to be an Indian custodian under ICWA.</p> <p>The advisory committee will continue to review guardianship forms to determine whether additional changes to conform to ICWA are necessary or advisable.</p>

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			<p>GC-140) are silent as to the ICWA. The GC-240 – Order Appointing Guardian of the Minor is also silent as the ICWA. It would be beneficial if all the Probate guardianship forms could be revised to comply with the Indian Child Welfare Act.</p> <p>Again, thank you for the opportunity to comment and please feel free to contact me if you have any questions.</p>	
4.	Orange County Bar Association by John Hueston, President Newport Beach	A	No specific comments made.	No response required.
5.	Superior Court of Los Angeles County Los Angeles	AM	<p>It appears changes to the forms are necessary to stress to petitioners the importance of determining if a child is an Indian child and to identify the appropriate Indian tribe for notice purposes. An Indian child’s affiliation with a particular tribe will determine his or her entitlement to resources and services.</p> <p>Therefore it is suggested that the last three sentences of the second paragraph on the first page of the Information Sheet (form ICWA-005-INFO) (restated below) should be modified.</p> <p>“These are important responsibilities because if the child is an Indian child, you</p>	

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			<p>and the court need to take specific steps to prevent the breakup of the child’s Indian family. Also, if the child is an Indian child, he or she has a right to receive resources and services that are culturally specific to the Indian child’s family. The court will check to make sure that the child is receiving these services.”</p> <p>The language could be modified by including language similar to the following:</p> <p>“If the child is an Indian child, specific steps must be taken to prevent the breakup of the child’s Indian family and to obtain, for the child, resources and services that are culturally specific to Indian child’s family.”</p> <p>Proposed <i>Guardianship Petition Child Information Attachment</i>, (form GC-210(CA)), page one, item 1c(2), the third sentence, should require that unrepresented parties must submit to the court a completed <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030).</p>	<p>The committee has modified the phrase, the second sentence of the paragraph at the top of page 1 of the form, under the heading “ICWA-010(A), Indian Child Inquiry Attachment or page 5 of form GC-210(CA), Guardianship Petition—Child Information Attachment,” to read:</p> <p>“This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child’s Indian family and to obtain for the child resources and services that are culturally specific to the child’s family. The court will check to make sure that the child receives these resources and services.”</p> <p>The form, as modified by the committee in response to the recommendations of the Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM), comment no. 2 above, refers the form’s user to the <i>Information Sheet</i> (form ICWA-005-INFO) for information about requirements for preparation,</p>

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			This form contains information, including names and addresses of family members and tribal ancestry, which the court must have to complete the mailing required in section 1c(2).	service, and filing of the notice form (form ICWA-030).
6.	Superior Court of Monterey County by Minnie Monarque, Director, Civil & Family Law Division Monterey	A	Agree with proposed changes. Recommend that the Information Sheet (form ICWA -005-INFO) be retained as a single form, but that it be restated in the “plain language” style used in form GC-210(CA).	No response necessary. The advisory committee will not separate out the instructions concerning forms GC-210(CA) and ICWA-010(A) on the one hand and ICWA-030 on the other, and will not at this time propose conversion of the form to the “plain language” style.
7.	Superior Court of Orange County by Lilly Grannis Calendar Coordinator Santa Ana	AM	Recommend that: • GC-210(CA), pg. 1, item 1c be clarified by changing the last sentence to read: “You must file either ICWA-010(A) or page 5 of this form, but you do not need to file both.” • GC-210(CA), pg. 1, item1c(2) be clarified by adding: “If you have an attorney, he or she” before “[Your attorney] must....”	In response to the comment of TEXCOM, comment no. 2 above, item 1c has been completely rewritten to delete all references to which form attachment must be filed. The petitioner is instead referred to the <i>Information Sheet</i> (form ICWA-005-INFO), which advises of the choices between the use of the ICWA child inquiry form (form ICWA-010(A)) or form GC-210(CA).
8.	Superior Court of Riverside County Staff, by Michael Cappelli, General Counsel Riverside	AM	At 9a of the proposed revised GC-210(CA) the comma should be a semi-colon. The Information Sheet (form ICWA-005-INFO) should remain one form; the style of the	The committee agrees with this comment and has made this change. The committee agrees with the recommendation concerning the single form <i>Information Sheet</i> . It

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			Information Sheet is fine in its present form and need not be restated in the “plain language” format.	will study further the possibility of modifying that form to the “plain-language” style.
9.	Superior Court of Sacramento County by Robert Turner, ASO II, Finance	NI	<p>The <i>Information Sheet</i> (form ICWA-005-INFO) should be offered in the plain language style. This is a very busy form, poorly formatted and worded.</p> <p>The <i>Information Sheet</i> (form ICWA-005-INFO) may continue to combine information and instructions for both forms ICWA-010A and ICWA-030.</p> <p>Item 1c on page 1 of form GC-210(CA) contains too much information crammed into one page. Much of the language is difficult to follow because the sentences are too long.</p> <p>Items 1c(1) and (2) on page 1 of form GC-210(CA) should be moved to the end of the form with the other ICWA information. It is confusing to put this information at the beginning of the form.</p>	<p>The advisory committee will consider changing the format of the <i>Information Sheet</i> (form ICWA-005-INFO) to the plain language format at a later time, but will not undertake to make the conversion now.</p> <p>The advisory committee will not place in separate forms instructions concerning forms GC-210(CA) and ICWA-010(A) on the one hand and form ICWA-030 on the other.</p> <p>Item 1c has been completely restated in response to the recommendations of TEXCOM, comment no. 2 above. The changes should reduce the complexity of the instructions and satisfy the concerns of this commentator, which the committee agrees are well-taken.</p> <p>The information about a guardianship petitioner’s duty to make the initial inquiry required by the Indian Child Welfare Act (ICWA) and California law concerning a proposed ward’s possible Indian connections contained in item 1c is too critical to be buried on page 5 of the form. A guardianship petitioner should see this information when he or she is beginning to collect the basic information for each child involved in a guardianship that is necessary to fill out the rest of the form.</p>

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			<p>The opening sentence of item 1c on page 1 of form GC-210(CA) is difficult to follow. Moving the entire item to the end of the form will eliminate this sentence.</p> <p>“You must ask the child, if he or she is old enough, . . .” in item 1c on page 1 of form GC-210(CA): This phrase is open to interpretation and confusion. How old is old enough? Recommend that this phrase be deleted.</p> <p>Delete the sentence in item 1c on page 1 of form GC-210(CA) beginning with “After you make this inquiry . . .”</p> <p>The sentence in item 1c on page 1 of form GC-210(CA) beginning with “For more information . . .” should stand alone and not be buried in the content of this paragraph.</p>	<p>Item 1c has been completely restated in response to the recommendations of TEXCOM, comment no. 2 above. The changes should reduce the complexity of the instructions and satisfy the concerns of this commentator, which the committee agrees are well-taken.</p> <p>Cal. Rules of Court, rule 7.1015(d)(2) requires the petitioner, before filing his or her petition for the appointment of a guardian, to ask the child <i>if he or she is old enough</i>, and the others persons identified in the sentence, whether the child is or may be an Indian child. No specific minimum age for the child is identified. (See the response to the comment of Maureen Geary, comment no. 3 above concerning a proposed change in that rule.) The statement in the form properly follows the rule. The context suggests that the child must be old enough to be able to give helpful information in response to the inquiry. Greater precision is not possible and seems unnecessary.</p> <p>The inquiry described in the form should be made before the petitioner answers the questions identified in the sentence, which seek the information learned in the inquiry.</p> <p>This recommendation has been accepted and its adoption reflected in the revised form. See the committee’s response to the recommendations of TEXCOM, comment no. 2 above.</p>

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			<p>Form GC-210(CA) is a plain language form designed for use by self-represented litigants. Why start the second sentence of the instructions to item 1c(2) on page 1 of that form with “Your attorney?” Such litigants will not read beyond this point. Change the sentence and delete the reference to “your attorney,” and delete the opening phrase of the next sentence, “[i]f you do not have an attorney in this case, . . .”</p> <p>Change the instructions throughout the rest of form GC-210(CA) concerning the making of additional statements in separate attached pages from “Write” to “Print.”</p> <p>Add the word “because” after “required,” in item 8a on page 5 of form GC-210(CA).</p> <p>Item 8b(3) on page 5 of form GC-210(CA) asks too much in one question. It should be broken up into multiple questions. More space for a written response should also be provided.</p> <p>Item 8c(1) on page 5 of form GC-210(CA) is much too complicated for self-represented persons to comprehend. The referenced attachment will never be provided.</p>	<p>The instructions to item 1c(2) have been revised to eliminate references to attorneys or the lack of attorneys. See the committee’s response to the recommendations of TEXCOM, comment no. 2 above.</p> <p>The use of “write” rather than “print” is standard in plain-language style forms in instructions for placing additional statements in attachments.</p> <p>This recommendation appears unnecessary to improve the meaning or clarity of the sentence. But a semicolon has been substituted for the comma after “required,” so the sentence is more grammatically correct without adding “because.”</p> <p>It is true that two facts are requested: reasons why communications were not made and the efforts to make them. But these facts are closely related. Additional space for a reply would be welcome but would require an additional page in the form.</p> <p>As pointed out in the <i>Information Sheet</i> (form ICWA-005-INFO), the inquiry must be made only of the child (of suitable age), the child’s parents or other legal guardian, and any Indian custodian of</p>

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			<p>Item 8c(8) on page 5 of form GC-210(CA), a statement that the child has no known Indian ancestry, should be the first, not the last, statement in the form.</p> <p>Form ICWA-005-INFO’s first page is crammed with information. The font size looks small and there's no white space. This makes for difficult reading.</p> <p>The introduction to the “Tips on how to fill out form ICWA-010A or page 5 of form GC-210(CA)” on page 1 of form ICWA-005-INFO implies that the party completing the guardianship form does not have to fill out pages 1–4 of the form.</p> <p>“You must ask the child, if he or she is old enough, . . .” in paragraph 2 of the ‘Tips on how to fill out form ICWA-010A or page 5 of GC-210(CA)’ on page 1 of form ICWA-005-INFO: This phrase is open to interpretation and confusion. How old is old enough? Recommend that this phrase be deleted.</p>	<p>the child. This should not be too difficult.</p> <p>The committee does not support this recommendation. An Indian connection should be considered and affirmatively ruled out based on inquiry and investigation, not because the absence of an Indian connection is the first and easiest alternative chosen in the form.</p> <p>This statement is certainly true, but the committee believes the changes made in the form have improved it. The basic text is Arial 10 point font, one point larger than the standard text of regular style Judicial Council forms, and has considerably more white space than the existing form.</p> <p>The committee does not believe that a tip on how to fill out page 5 of a form implies that the other pages do not also need to be filled out. Form GC-210(CA) itself advises twice in revised item 1c that all portions of the form must be completed.</p> <p>Cal. Rules of Court, rule 7.1015(d)(2) requires the petitioner, before filing his or her petition for the appointment of a guardian, to ask the child <i>if he or she is old enough</i>, and the others persons identified in the sentence, whether the child is or may be an Indian child. No specific age is identified. The statement in the form properly follows the rule. The context suggests that the child must be old enough to be able to give helpful information in response to the inquiry.</p>

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			<p>The instructions on page 2 of form ICWA-005-INFO concerning lists of tribal addresses and agents for service advise of an alternative list that is helpful but not official. If this site is not reliable and there is no authority to use it, then why list it. Delete this information.</p> <p>Instructions on sending the Notice (form ICWA-030) on page 2 of form ICWA-005-INFO include a sentence that begins “[i]f you have an attorney . . .” Self-represented persons will not continue to read the sentence. Delete it.</p> <p>Concerning the instructions on page 2 of form ICWA-005-INFO that courts will mail copies of the Notice (form ICWA-030) for petitioners not represented by counsel: It should be the responsibility of the parties to complete the paperwork. It's not the court's responsibility to complete and serve these documents. This is overreaching.</p> <p>Paragraph 3 of “How do you send the Notice and show the court that you have done so” at the bottom of page 2 of form ICWA-005-INFO would be clearer if it reads: “Go to the court and file with the clerk page 10 of ICWA-030, proof to the court that you have given notice.”</p>	<p>Greater precision is not possible and seems unnecessary.</p> <p>The alternative site is not necessarily more unreliable than the official site, but it is unofficial. To ensure the greatest likelihood of giving possibly interested tribes actual notice, use of both official and alternative addresses is recommended.</p> <p>Not all persons involved with Indian children in custody matters are unrepresented, so mention of the role of attorneys is appropriate in an instruction form. The committee believes also that unrepresented persons will read the instructions to the point where the discussion of what such persons should do is reached.</p> <p>The instructions concerning mailing of the Notice clearly indicate that the petitioner must prepare the forms ready for mailing. The duty of the court to mail the notices for unrepresented guardianship petitioners is imposed by Cal. Rules of Court, rule 7.1015(c)(4).</p> <p>The entire original form ICWA-030 must be filed, not merely the page showing its service.</p>

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10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No specific comment.	No response necessary.

