



## Juvenile Courts

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

**I. Inquiry (at every hearing) (Welf. & Inst. Code, § 224.3; Cal. Rules of Court, rule 5.481(a))**

- A. The court finds that the agency and the court have inquired whether the child is or may be an Indian child; and
- B. The court finds that the ICWA-010(A) attachment has been completed and is in the court file; and
- C. The court finds that both parents and the Indian Custodian (if any) have completed the ICWA-020 and those documents are in the court file; and
- D. The court finds, after the agency has inquired and the court has inquired, that there is reason to believe the child may be an Indian child; or
- E. The court finds, after the agency has inquired and the court has inquired, that there is no reason to believe the child may be an Indian child; and
- D. If there is reason to know that the child is an Indian child, the court finds that the agency has interviewed the parents, Indian custodian, and extended family and has contacted the BIA to obtain information contained in Welfare and Institutions Code section 224.2(a)(5).
- E. If there is reason to believe that the child is an Indian child:
  - 1. The court finds that the agency has inquired whether the child may be resident or domiciled on a reserve.
  - 2. The court finds that the agency has inquired whether the child is the ward of a tribal court.

**II. Application (at any hearing) (ICWA § 1903(1) & (4); Welf. & Inst. Code, § 224.1(a) & (c); Cal. Rules of Court, rule 5.480)**

- A. The child may be an Indian child, and therefore the act may apply.
- B. The child is an Indian child, because the court has proof of tribal membership or the tribal determination received by the court indicates that the child is a member or is eligible for membership.
- C. The child is not an Indian child, because the tribal determination received by the court indicates that the child is not a member and is not eligible for membership.
- D. The court will proceed as if the act does not apply, because proper notice was sent to the tribe(s) with which the child is affiliated and/or to the Bureau of Indian Affairs (BIA), and 60 days have elapsed with no determinative response from the tribe(s) and/or BIA. However:
  - 1. If the court receives information on the child's Indian heritage, it will send the information to the tribe(s) and/or BIA.
  - 2. If the court later receives evidence of the applicability of the act, then the court will apply the act.

**III. Tribal Representative/Intervention (at every hearing) (ICWA § 1911(c); Welf. & Inst. Code, § 224.2(5)(G)(i); Cal. Rules of Court, rule 5.482(e))**

- A. The (*name of tribe*) \_\_\_\_\_ Tribe has acknowledged that the child is a member of or is eligible for membership in the tribe and will monitor the case.
- B. The (*name of tribe*) \_\_\_\_\_ Tribe has designated (*name of representative*) \_\_\_\_\_ to be the tribe's representative.
- C. The tribe's representative is entitled to the rights listed in Judicial Council form ICWA-040, *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child*.
- D. The (*name of tribe*) \_\_\_\_\_ Tribe has intervened in this case and will be treated as a party to the proceedings.

**IV. Continuances (all hearings except detention; the jurisdiction hearing in a delinquency case if it would conflict with speedy trial considerations; and the disposition in a delinquency case if there is good cause to deny the continuance) (ICWA § 1912(a); Welf. & Inst. Code, § 224.2(d); Cal. Rules of Court, rule 5.482(a))**

Upon request, this court grants the parent, Indian custodian, or tribe a continuance of up to 20 days to prepare for the hearing.

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

**V. Appointment of Counsel (at every hearing) (ICWA § 1912(b); Welf. & Inst. Code, § 317(a)(2))**

- A. The Court finds that the parent(s) and/or Indian custodian appear to be indigent; and
- B. The Court hereby appoints counsel to represent the parent(s) and/or Indian custodian; or
- C. The Court finds that the parent(s) and/or Indian custodian do not appear to be indigent.

**VI. Tribal Consultation (Dispositional Hearing and each review hearing) (Welf. & Inst. Code §§ 358.1(j) & 366.24, Cal. Rules of Court Rules 5.690(c), 5.708(g), 5.715(b)(5), 5.720(b)(4), 5.722(b)(3), & 5.785(c))**

- A. The Court finds that in developing the case plan the agency has:
  - 1. Solicited and integrated into the case plan the input of the child's identified Indian tribe; **or**
  - 2. Not solicited and integrated into the case plan input from the child's identified Indian tribe; **and**
    - a) the Court orders the agency to solicit and integrate into the case plan input from the child's identified Indian tribe, **or**
    - b) the Court finds that the child's identified Indian tribe was unable, unavailable or unwilling to participate in development of the case plan.
- B. The Court finds that the agency has:
  - 1. Considered in consultation with the child's tribe whether Tribal Customary Adoption is an appropriate permanent plan for the dependent child should reunification fail; **or**
  - 2. Not considered in consultation with the child's tribe whether tribal Customary Adoption is an appropriate permanent plan for the dependent child should reunification fail; **and**
    - a) the Court orders the agency to consult with the child's tribe as to whether Tribal Customary Adoption is an appropriate permanent plan for the child should reunification fail; **or**
    - b) the Court finds that the child's identified Indian tribe was unable, unavailable or unwilling to consult about whether Tribal Customary Adoption is an appropriate permanent plan for the child should reunification fail.

**VII. Notice (at every hearing) (ICWA § 1912(a); Welf. & Inst. Code, § 224.2; Cal. Rules of Court, rule 5.481(b))**

- A. The court finds that notice has been provided by certified mail with return receipt requested to all tribes of which the child may be a member or eligible for membership and to the BIA. Notice to the tribe(s) was addressed to the tribal chairperson unless the tribe has designated another agent for service of ICWA notice.
- B. The court finds that proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's Indian status.
- C. The court finds *either* that the identity or location of the parent or Indian custodian or tribe cannot be determined *or* that the child has Indian ancestry but is not a member of an identified tribe or eligible for membership in an identified tribe; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt have been filed with the court.
- D. The court finds that notice has been provided by sending Judicial Council form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, by registered or certified mail with return receipt requested, and additional notice by first-class mail, to the parent, tribe, Indian custodian, and Bureau of Indian Affairs (BIA).

**VIII. Detriment and Standard of Proof (at disposition and termination of parental rights hearings) (ICWA § 1912(e) & (f); Welf. & Inst. Code, §§ 361(a)(6), 361.7, 366.26(c)(2)(B); Cal. Rules of Court, rules 5.484(a), 5.484(a))**

- A. For a foster-care placement, the court finds by *clear and convincing* evidence, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical danger to the child.
- B. For termination of parental rights, the court finds by evidence *beyond a reasonable doubt*, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- C. If the parties have waived the requirement for live testimony of a Qualified Expert Witness, the court finds:
  - a) That all parties have stipulated in writing that the evidence of the Qualified Expert Witness may be presented by written declaration;
  - b) This stipulation has been knowingly, intelligently and voluntarily made.

**IX. Active Efforts (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1912(d); Welf. & Inst. Code, §§ 361(d), 361.7; Cal. Rules of Court, rules 5.484(c), 5.485(a)(1))**

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

**X. Placement Preferences (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1915; Welf. & Inst. Code, § 361.31; Cal. Rules of Court, rule 5.484(b))**

- A. The court finds that the agency adhered to the placement preferences under the act when placing the child.
- B. The court detains the child in a placement that adheres to the placement preferences under the act.
- C. The court finds that the agency has consulted with the child's tribe and Indian organizations concerning the appropriate placement of the child.
- D. The court finds good cause to deviate from the placement preferences under the act on the grounds that \_\_\_\_\_ (Good cause may include the following considerations: the request of the parent or Indian custodian, the request of the Indian child when of sufficient age, the extraordinary physical or emotional needs of the Indian child as established by a QEW, or the unavailability of suitable families based on a documented diligent effort. The burden of establishing good cause to deviate is on the party requesting the deviation.) \_\_\_\_\_.

**XI. Jurisdiction and Transfer (at any hearing) (ICWA § 1911; Welf. & Inst. Code, § 305.5; Cal. Rules of Court, rule 5.483)**

- A. The court finds that the child resides or is domiciled on the reservation of the \_\_\_\_\_ Tribe or that the child is the ward of the \_\_\_\_\_ Tribe, and, accordingly, the \_\_\_\_\_ Tribe has exclusive jurisdiction.
- B. The court finds that this juvenile court and the court of the child's tribe have concurrent jurisdiction.
- C. The (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and finding no good cause not to transfer, this court transfers the case to the tribal court of (*name of tribe*) \_\_\_\_\_ Tribe.
- D. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following reason is good cause not to transfer the case to the tribal court:
  - 1. The child's parent objects to the transfer;
  - 2. The child's tribe does not have a tribal court or any other administrative body as defined in section 1903 of the act; or
  - 3. The tribal court of the child's tribe declined the transfer.
- E. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following circumstances in the case constitute in the court's discretion good cause not to transfer the case to the tribal court:
  - 1. The evidence necessary to decide the case cannot be presented in tribal court without undue hardship to the parties;
  - 2. This proceeding is at an advanced stage, and petitioner did not make the request within a reasonable time after receiving notice of this proceeding;
  - 3. The child is over 12 and objects to the transfer; or
  - 4. The child is over 5 and has had little or no contact with his or her tribe or members of the child's tribe, and the child's parents are not available.