

Cal.Rules of Court, Rule 5.481

WEST'S ANNOTATED CALIFORNIA CODES

CALIFORNIA RULES OF COURT

TITLE 5. FAMILY AND JUVENILE RULES

DIVISION 2. RULES APPLICABLE IN FAMILY AND JUVENILE PROCEEDINGS

CHAPTER 2. INDIAN CHILD WELFARE ACT

Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)

(a) Inquiry (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3)

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

(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption 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.

(2) At the first appearance by a parent, Indian custodian, or guardian in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, or adoption proceeding; the court must order the parent, Indian custodian, or guardian if available, to complete *Parental Notification of Indian Status* (form **ICWA-020**).

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

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

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form **ICWA-030**);

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

(C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.

(5) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator;

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or

(C) 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 U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

(b) Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)

(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send *Notice of Child Custody Proceeding for Indian Child* (form **ICWA-030**) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2.

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., and the probation officer has assessed that it is probable the child will be entering foster care, or if the child is already in foster care, the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form **ICWA-030**) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (a)(5).

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

Current with amendments received through 7/1/2010