

Cal.Rules of Court, Rule 5.483

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 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)**

**(a) Mandatory transfer of case to tribal court with exclusive jurisdiction**

The court must order transfer of a case to the tribal court of the child's tribe if:

(1) The Indian child is a ward of the tribal court; or

(2) The Indian child is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under section 1911 or 1918 of title 25 of the United States Code.

**(b) Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction**

Unless the court finds good cause under subdivision (d), the court must order transfer of a case to the tribal court of the child's tribe if the parent, the Indian custodian, or the child's tribe requests.

**(c) Documentation of request to transfer a case to tribal court**

The parent, the Indian custodian, or the child's tribe may request transfer of the case, either orally or in writing or by filing *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form **ICWA-050**).

If the request is made orally, the court must document the request and make it part of the record.

**(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction under subdivision**

**(b)**

(1) One or more of the following circumstances constitutes mandatory good cause to deny a request to transfer:

(A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record;

(B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the **Indian Child Welfare Act**: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or

(C) The tribal court of the child's tribe declines the transfer.

(2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer:

(A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery;

(B) The proceeding was at an advanced stage when the request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;

(C) The Indian child is over 12 years of age and objects to the transfer; or

(D) The parents of a child over five years of age are not available and the child has had little or no contact with his or her tribe or members of the child's tribe.

(3) If it appears that there is good cause to deny a transfer, the court must hold an evidentiary hearing on the transfer and make its findings on the record.

**(e) Evidentiary considerations under subdivision (b)**

The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.

**(f) Evidentiary burdens under subdivision (b)**

(1) The burden of establishing good cause to deny a request to transfer is on the party opposing the transfer.

(2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

**(g) Order on request to transfer**

The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form **ICWA-060**).

**(h) Proceeding after transfer**

When, under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), the court transfers any proceeding listed in rule 5.480, the court must proceed as follows:

(1) Dismiss the proceeding or terminate jurisdiction if the court has received proof that the tribal court has accepted the transfer of jurisdiction;

(2) Make an order transferring the physical custody of the child to a designated representative of the tribal court (not necessarily the same "designated representative" identified in the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form **ICWA-040**)); and

(3) Include in the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form **ICWA-060**) all contact information for the designated tribal court representative.

Current with amendments received through 7/1/2010