

Cal.Rules of Court, Rule 5.484

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 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

(a) Evidentiary burdens (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

In any child custody proceeding listed in rule 5.480, the court may not order placement of an Indian child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage and it considers evidence regarding prevailing social and cultural standards of the child's tribe, including that tribe's family organization and child-rearing practices.

(1) Testimony by a "qualified expert witness," as defined in Welfare and Institutions Code section 224.6, Family Code section 177(a), and Probate Code section 1459.5(b), is required before a court orders a child placed in foster care or terminates parental rights.

(2) Stipulation by the parent, Indian custodian, or tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe has been fully advised of the requirements of the **Indian Child Welfare Act** and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing.

(3) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of Welfare and Institutions Code section 361, will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(b) Standards and preferences in placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)

(1) Unless the court finds good cause to the contrary, all placements of Indian children in any proceeding listed in rule 5.480 must follow the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.

(2) The court may deviate from the preference order only for good cause, which may include the following considerations:

(A) The requests of the parent or Indian custodian;

(B) The requests of the Indian child, when of sufficient age;

(C) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or

(D) The unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria.

(3) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed.

(4) The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.

(5) The preferences and wishes of the Indian child, when of sufficient age, and the parent must be considered, and weight given to a consenting parent's request for anonymity.

(6) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial events of the child's tribe.

(c) Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.7)

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful.

(1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(2) Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

