

Cal.Rules of Court, Rule 5.664

California Codes

California Rules of Court

Title 5. Family and Juvenile Rules

Division 3. Juvenile Rules

Chapter 12. Indian Child Welfare Act

Rule 5.664. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)

(a) Definitions; 25 U.S.C. § 1903

As used in this rule, unless the context or subject matter otherwise requires:

(1) "Indian child" means an unmarried person under the age of 18 who:

(A) Is a member of an Indian tribe; or

(B) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(2) "Indian child's tribe" means:

(A) The Indian tribe in which the child is a member or is eligible for membership; or

(B) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

(3) "Indian custodian" means any Indian person who has:

(A) Legal custody of an Indian child under tribal law or custom, or under state law; or

(B) Temporary physical care, custody, and control of an Indian child whose parent or parents have transferred custody to that person.

(4) "Parent of an Indian child" means the biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. (This definition does not include a non-Indian adoptive parent or an unwed alleged father where paternity has not been determined or acknowledged.)

(5) "Custody" means legal or physical custody or both as provided under state law or tribal law or custom.

(6) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.

(7) "Extended family" means those persons defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, an adult grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-law, niece, nephew, first or second cousin, or stepparent of the Indian child.

(8) "Child custody proceeding" means and includes a proceeding at which the court considers foster care placement, appointment of a guardian, termination of parental rights, preadoptive placement, or adoptive placement.

(9) "Foster care placement" means any temporary placement from which a child may not be removed by the parent or Indian custodian on demand, including a shelter care home, a foster home, or an institution or the home of a guardian or conservator.

(10) "Qualified expert witness" means a person qualified to address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious physical or emotional damage to the child. Persons most likely to be considered such experts are:

(A) A member of a tribe with knowledge of Indian family organization and child rearing;

(B) A lay expert with substantial experience in Indian child and family services and extensive knowledge of the social and cultural standards and child-rearing practices of Indian tribes, specifically the child's tribe, if possible;

(C) A professional person with substantial education and experience in Indian child and family services and in the social and cultural standards of Indian tribes, specifically the child's tribe, if possible; or

(D) A professional person having substantial education and experience in the area of his or her specialty.

(11) "Act" means the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(12) "Tribal court" means a court with jurisdiction over child custody proceedings, identified as 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 that is vested with authority over child custody proceedings. If applicable, the tribal court has met the requirements for resumption of jurisdiction over child custody proceedings as approved by the Department of the Interior.

(b) Applicability of rule; 25 U.S.C. §§ 1911, 1912

This rule applies to all proceedings under section 300 et seq. and to proceedings under section 601 and section 602 et seq. in which the child is at risk of entering foster care or is in foster care, including detention hearings, jurisdiction hearings, disposition hearings, reviews, hearings under section 366.26, and subsequent hearings affecting the status of the Indian child.

(c) Jurisdiction; 25 U.S.C. § 1911

(1) If the Indian child resides or is domiciled on an Indian reservation that exercises exclusive jurisdiction under the act over child custody proceedings, the petition under section 300 must be dismissed.

(A) If the Indian child is temporarily off a reservation that exercises exclusive jurisdiction, the juvenile court must exercise temporary jurisdiction if there is an immediate threat of serious physical harm to the child.

(B) Absent extraordinary circumstances, temporary emergency custody must terminate within 90 days, unless the court determines by clear and convincing evidence, including the testimony of at least one qualified expert witness, that return of the child is likely to cause serious damage to the child.

(C) The child must be returned immediately to the parent or Indian custodian when the emergency placement is no longer necessary to prevent serious harm to the child.

(2) If the Indian child is not domiciled or residing on a reservation that exercises exclusive jurisdiction, the tribe, parent, or Indian custodian may petition the court to transfer the proceedings to the tribal jurisdiction, and the juvenile court must transfer the proceedings to tribal jurisdiction unless there is good cause not to do so.

(A) Either parent may object to the transfer.

(B) The tribe may decline the transfer of the proceedings.

(3) If the tribe does not intervene or the tribal court does not request transfer to tribal jurisdiction, the court should proceed to exercise its jurisdiction regarding the Indian child under section 300 et seq., in accordance with the procedures and standards of proof as required by both juvenile court law and the act.

(d) Inquiry

The court, the county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child.

(1) In juvenile wardship proceedings, if the probation officer believes that the child is at risk of entering foster care or is in foster care, he or she must ask the child, if the child is old enough, and the parents or legal guardians whether the child may be an Indian child or may have Indian ancestors.

(2) In dependency cases, the social worker must ask the child, if the child is old enough, and the parents or legal guardians whether the child may be an Indian child or may have Indian ancestors.

(3) At the first appearance by a parent 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, the parent or guardian must be ordered to complete *Parental Notification of Indian Status (Juvenile Court)* (form JV-130).

(4) The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following:

(A) A person having an interest in the child, including the child, an Indian tribe, an Indian organization, an officer of the court, or a public or private agency, informs the court or the county welfare agency or the probation department or provides information suggesting that the child is an Indian child;

(B) The residence of the child, the child's parents, or an Indian custodian is 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 Indian Health Service.

(e) Petition

(1) Section 1(l) or 1(m) on either the initial or an amended *Juvenile Dependency Petition (Version One)* (form JV-100) or section 1(i) or 1(j) of the initial or an amended *Juvenile Dependency Petition (Version Two)* (form JV-110) must be checked if the county welfare department knows or has reason to know that the child may be a member of or eligible for membership in a federally recognized Indian tribe or if there is reason to believe the child may be of Indian ancestry, as appropriate.

(2) Section 1(m) or 1(n) on either the initial or an amended *Juvenile Wardship Petition* (form JV-600) must be checked if the county probation department knows or has reason to know that the child may be a member of or eligible for membership in a federally recognized Indian tribe or if there is reason to believe the child may be of Indian ancestry, as appropriate.

(3) If section 1(l) of the *Juvenile Dependency Petition (Version One)* (form JV-100) or section 1(i) of the *Juvenile Dependency Petition (Version Two)* (form JV-110) or section 1(m) of the *Juvenile Wardship Petition* (form JV-600) is checked, or if, on inquiry, or based on other information, the court has reason to know the child may be an Indian child, the court must proceed as if the child were an Indian child and must proceed with all dependency and wardship hearings, observing the Welfare and Institutions Code timelines while complying with the act and this rule.

(A) A determination by the identified tribe or tribes that the child is or is not an Indian child is definitive.

(B) If no particular tribe can be reasonably identified, a determination by the Bureau of Indian Affairs (BIA) that the child is not an Indian child is definitive.

(4) If section 1(m) of the *Juvenile Dependency Petition (Version One)* (form JV-100) is checked and section 1(l) is not, or section 1(j) of the *Juvenile Dependency Petition (Version Two)* (form JV-110) is checked and section 1(i) is not, or if section 1(n) of the *Juvenile Wardship Petition* (form JV-600) is checked and section 1(m) is not, notice of the proceedings to the Bureau of Indian Affairs and further inquiry regarding the possible Indian status of the child are the only requirements.

(f) Notice; 25 U.S.C. § 1912

If there is reason to know that an Indian child is involved, the social worker or probation officer must send *Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)* (form JV-135) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in accordance with Welfare and Institutions Code section 224.2.

(g) Determination of status; 25 U.S.C. § 1911 (Welf. & Inst. Code, § 360.6(c))

Determination of tribal membership or eligibility for membership is made exclusively by the tribe.

(1) A tribe's determination that the child is or is not a member of or eligible for membership in the tribe is conclusive.

(2) Information that the child is not enrolled in the tribe is not determinative of Indian child status.

(3) The tribe must be a federally recognized tribe, group, or community as defined by the Bureau of Indian Affairs of the Department of the Interior as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States

Code.

(4) Absent a contrary determination by the tribe, a determination by the BIA that a child is or is not an Indian is conclusive.

(5) The Indian Child Welfare Act applies when a tribe determines that an unmarried minor is:

(A) A member of an Indian tribe; or

(B) Eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe.

(h) Proceedings after notice; 25 U.S.C. § 1911

If it is determined that the act applies, the juvenile court hearing must not proceed until at least 10 days after those entitled to notice under the act have received notice. If requested, the parent, Indian custodian, or tribe must be granted a continuance of up to 20 days to prepare for the proceeding. The tribe may intervene at any point in the proceeding.

(1) An indigent parent and an indigent Indian custodian have a right to court-appointed counsel.

(2) All parties, including the parent, Indian child, Indian custodian, and tribe, and their respective attorneys, have the right to examine all court documents related to the dependency case.

(i) Required procedures, findings, and orders for foster care placement and guardianships; 25 U.S.C. § 1912

The court may not order foster care placement of an Indian child, or establish a guardianship of an Indian child, unless the court 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.

(1) Testimony by a qualified expert witness is required.

(2) Stipulation by the parent or Indian custodian 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 party has been fully advised of the requirements of the act and has knowingly, intelligently, and voluntarily waived them.

(3) Failure to meet non-Indian family and community child-rearing standards, or the existence of other behavior or conditions that meet the removal standards of 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.

(4) In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the act and has knowingly, intelligently, and voluntarily waived them.

(A) The court must consider all available information regarding the prevailing social and cultural conditions of the Indian child's tribe.

(B) Efforts to provide services must include attempts to use the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.

(j) Placement of an Indian child in a foster care placement; 25 U.S.C. § 1912

If it is determined that the act applies, the court may not order foster care placement of an Indian child unless the court 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.

(1) Testimony by a qualified expert witness is required.

(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 party has been fully advised of the requirements of the act and has knowingly, intelligently, and voluntarily waived them.

(3) If it is determined that the act applies, 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 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.

(k) Standards and preferences in placement of an Indian child; 25 U.S.C. § 1915

Foster and adoptive placements of Indian children must follow a specified order in the absence of good cause to the contrary. Placement standards must be the prevailing social and cultural standards of the Indian community in which the parent or extended family member resides, or with which the parent or extended family member maintains social and cultural contacts. The foster or preadoptive placement must be in the least restrictive setting, within reasonable proximity to the Indian child's home, and capable of meeting any special needs of the Indian child.

(1) In a foster or preadoptive placement, preference must be given in the following order:

(A) To a member of the Indian child's extended family;

(B) To a foster home licensed or approved by the Indian child's tribe;

(C) To a state- or county-licensed or certified Indian foster home; or

(D) To a children's institution approved by the tribe or operated by an Indian organization and offering a program to meet the Indian child's needs.

(2) In an adoptive placement, preference must be given in the following order:

(A) To a member of the Indian child's extended family;

(B) To other members of the Indian child's tribe; or

(C) To other Indian families.

(3) An Indian child may be placed in a non-Indian home only if the court finds that a diligent search has failed to locate a suitable Indian home.

(4) The court may modify 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;

(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 diligent effort to identify families meeting the preference criteria.

(5) The burden of establishing good cause for the court to alter the preference order is on the party requesting that a different order be considered.

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

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

(l) Active efforts; 25 U.S.C. § 1912

In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, or to issue orders under section 366.26, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful.

(1) The court must consider the prevailing social and cultural conditions of the Indian child's tribe.

(2) Efforts to provide services must include attempts to use the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.

(m) Termination of parental rights; 25 U.S.C., § 1912

The court may not terminate parental rights to an Indian child unless there is proof beyond a reasonable doubt that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(1) The evidence must be supported by the testimony of a qualified expert witness.

(2) Stipulation by the parent or Indian custodian 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 party has been fully advised of the requirements of the act and has knowingly, intelligently, and voluntarily waived them.

(3) Consent to a voluntary termination of parental rights, relinquishment of parental rights, or consent to adoption must be executed in writing and recorded before a judicial officer of competent jurisdiction. The court must certify that the terms and consequences of the consent were explained in detail, in the language of the parent or Indian custodian, and fully understood by the parent or Indian custodian. If confidentiality is requested or appropriate, the consent may be executed in chambers.

(4) In order to terminate parental rights to an Indian child, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the act and has knowingly, intelligently, and voluntarily waived them.

(n) Petition to invalidate orders of removal or termination of parental rights; 25 U.S.C., § 1914

If it is determined that the act applies, the Indian child, a parent, an Indian custodian, or the child's tribe may petition any court of competent jurisdiction to invalidate a foster placement or termination of parental rights.

(1) If the Indian child is a dependent child of the juvenile court or the subject of a pending petition, the juvenile court is the only court of competent jurisdiction with the authority to hear the petition to invalidate the foster placement or termination of parental rights.

(2) If a final decree of adoption is set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may petition for a return of custody of the Indian child.

(A) The court must grant the petition for return unless there is a showing that return is contrary to the best interest of the Indian child.

(B) The hearing on the petition to return must be conducted in accordance with the act and the relevant sections of this rule.

(o) Post-hearing actions; 25 U.S.C., § 1916

Whenever an Indian child is removed from a foster home or institution for placement in a different foster home, institution, or preadoptive or adoptive home, the placement must be in accordance with the act and the relevant sections of this rule.

(p) Record keeping; 25 U.S.C., § 1951

(1) After granting a decree of adoption of an Indian child, the court must provide the Secretary of the Interior with a copy of the decree and other information needed to show:

(A) The name and tribal affiliation of the Indian child;

(B) The names and addresses of the biological parents;

(C) The names and addresses of the adoptive parents; and

(D) The agency maintaining files and records regarding the adoptive placement.

(2) If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court must provide the affidavit to the Secretary of the Interior, who must ensure the confidentiality of the information.

CREDIT(S)

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