

January 6, 2025

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 25-03

The purpose of this All County Letter is to engage, support, and assist county child welfare services and probation agencies with the Indian Child Welfare Act (25 United States Code section 1901 et seq.) implementation of the amendments to the California Welfare and Institutions Code provisions made under Assembly Bill 3176 (Chapter 833, Statutes of 2018) as a follow-up to All County Letter No. 20-38, which indicated the California Department of Social Services would release further policy and best practice guidance and additional support. This letter is the fourth in a series devoted to this topic and will focus on child custody proceedings.



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January 6, 2025

ALL COUNTY LETTER NO. 25-03

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS
ALL COUNTY ER PROGRAM MANAGERS
ALL CDSS REGIONAL OFFICES

SUBJECT: **INDIAN CHILD WELFARE ACT VOLUNTARY PROCEEDINGS
AND INVOLUNTARY PROCEEDINGS REQUIREMENTS**

REFERENCE: [ASSEMBLY BILL \(AB\) 3176 \(CHAPTER 833, STATUTES OF 2018\)](#); [AB 2944 \(CHAPTER 104, STATUTES OF 2020\)](#); [ALL COUNTY LETTER \(ACL\) NO. 20-38](#); [ACL NO. 23-46](#); [ACL NO. 23-64](#); [ACL NO. 24-18](#); [ALL COUNTY INFORMATION NOTICE NO. I-40-10](#); [TITLE 25 UNITED STATES CODE CHAPTER 21 1901 ET SEQ.](#); [25 CODE OF FEDERAL REGULATIONS SECTION 23.2](#); [81 FEDERAL REGISTER 38796](#); [WELFARE AND INSTITUTIONS CODE SECTIONS 224.1, 224.2, 224.6, 319, 361, 361.31, 361.7, 366.26, AND 16507.4](#); [CHILD WELFARE SERVICES MANUAL OF POLICIES AND PROCEDURES \(MPP\) DIVISION 31 REGULATIONS](#); [BUREAU OF INDIAN AFFAIRS \(2016\) FINAL RULE](#); [CALIFORNIA RULES OF COURT, RULE 5.484](#)

The purpose of this All County Letter (ACL) is to engage, support, and assist county child welfare services (CWS) and probation agencies with the Indian Child Welfare Act (ICWA) ([25 USC section 1901 et seq.](#)) implementation related to the amendments to the California Welfare and Institutions Code (WIC) provisions made under [Assembly Bill \(AB\) 3176 \(Chapter 833, Statutes of 2018\)](#) as a follow-up to [ACL No. 20-38](#), which indicated the California Department of Social Services (CDSS) would release further policy and best practice guidance and additional support. This letter is the fourth in a series devoted to this topic and will focus on child custody proceedings.

BACKGROUND

ICWA was enacted in 1978 to prevent the breakup of Indian families and to protect the best interests of Indian children, their families, and tribes. However, the implementation and interpretation of ICWA has been inconsistent across states; creating significant gaps in protection and increasing the number of Indian children in care. As a result, the Bureau of Indian Affairs (BIA) promulgated regulations to address the need for consistent interpretation and implementation of the minimum federal standards ICWA provides to ensure all Indian children and their families receive the same rights and protections across all states. ICWA establishes minimum standards for state court proceedings including dependency, juvenile justice, probate guardianship, and adoption proceedings involving Indian children when the proceeding may result in a voluntary or involuntary placement or adoption of the Indian child. California has since enacted its own Indian child welfare laws, which incorporate and expand upon the minimum federal standards contained in ICWA, adopted and clarified by BIA in 2016 into the statute with the passage of [AB 3176 \(Chapter 833, Statutes of 2018\)](#), effective January 1, 2019, and [AB 2944 \(Chapter 104, Statutes of 2020\)](#), effective January 1, 2021. Thus, California statutes dictate that county agencies have a responsibility to understand and meet ICWA standards to ensure the safety of California's Indian children and help Indian children remain safely in, or return to, their homes whenever possible.

CDSS is releasing a series of ACLs as a follow-up to [ACL No. 20-38](#), which indicated CDSS would release further policy and best practice guidance to provide additional support for implementing [AB 3176 \(2018\)](#). The series of ACLs provide additional details and guidance to expand upon the policies outlined in [ACL No. 20-38](#), which include:

- Inquiry/Further Inquiry/Reason to Believe/Reason to Know/Notice ([ACL No. 23-46](#))
- Emergency Removals/Emergency Placement/Placement Preferences ([ACL No. 23-64](#))
- Active Efforts ([ACL No. 24-18](#))
- Voluntary/Involuntary Proceedings
- Qualified Expert Witness – To be addressed in a future ACL.
- Jurisdiction – To be addressed in a future ACL.

This ACL will be focused on voluntary and involuntary Indian child custody proceedings.

PROCEEDINGS

From the moment an allegation of abuse or neglect comes into the child protection hotline, counties have an affirmative and continuing duty to inquire whether a child is or may be an Indian child. Additionally, from the time a report is made to the hotline, counties must make active efforts to provide remedial services and rehabilitative programs. These efforts must include safety evaluation and planning, designed to prevent the breakup of Indian families. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural standards, and way of life of the Indian child's Tribe,

and should be conducted in partnership with the Indian child and the Indian child's parent(s), guardian(s), Indian custodian(s), extended family members, and Tribe. If it is not the family's first encounter with CWS and/or probation, counties are expected to continue active efforts that were previously occurring, prior to the most recent report of neglect or abuse. Active efforts are a higher standard and of a different nature than reasonable efforts, which is discussed in more detail in the [Active Efforts ACL No. 24-18](#). Tribal customary adoption (TCA) and guardianship should also be discussed in all concurrent planning and at the dispositional hearing if they are the preferred permanency options of the Tribe. However, the Tribe must indicate that TCA is an option, and that they participate in TCA.

In child welfare matters, social workers must conduct an assessment of maltreatment allegations within the required statutory timeframes and using the [Structured Decision Making Safety and Risk Assessments](#). According to [ACL 23-101](#), the investigating social worker must complete these assessments and make determinations in partnership with the tribal social worker or tribal representative, depending on the Tribe's preference. This also aligns with competencies set forth in the [Integrated Core Practice Model \(ICPM\) Resource Guide](#), pertaining to the engagement and collaboration with Native American families and tribal communities, and aligns with ICPM practice principles of collaboration, persistence, integration, and being community-based and culturally respectful. Additionally, even if the Tribe is not able or available to participate in these assessments, counties must contact the child's Tribe, through the Tribe's prescribed protocols or by using the Bureau of Indian Affairs Designated ICWA representatives list, regarding the investigation and share relevant information, as determined by the Tribe ([ICWA Designated Agents Listing](#); [WIC § 224.2\(e\)\(2\)\(c\)](#)). Refer to [ACL No. 24-18](#) for additional guidance about sharing information with Tribes as part of active efforts requirements.

VOLUNTARY PROCEEDINGS

In California, the application of ICWA is inclusive of voluntary proceedings. A voluntary proceeding includes "a proceeding for foster care, pre-adoptive or adoptive placement that either parent, both parents, or the Indian custodian has, of their free will, without a threat of removal by a state agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights" ([WIC § 224.1, subd. \(q\)](#)).

In voluntary proceedings with county agencies, the county agency remains involved, but the parent(s) or Indian custodian(s) retain the right to revoke the county's custody of the child at any time "upon demand." Upon demand means that "a parent or Indian custodian can regain physical custody during a voluntary proceeding simply upon verbal request, without any delay, formalities or contingencies" ([WIC § 224.1, subd. \(p\)](#); [Manual of Policies and Procedures \(MPP\) § 31-002\(u\)\(2\)](#)). Any action by the agency that restricts access between the Indian child and their parent, guardian, or Indian custodian, cannot be considered "voluntary" by itself. Per [ACL 20-38](#), voluntary proceedings must be presented in court and the following requirements must be met for any parent, guardian, or Indian custodian of an Indian child:

- Consent must be in writing and recorded before a judge.

- The presiding judge must certify that the terms and consequences were fully explained in detail and were fully understood in English, or that it was interpreted into a language that was understood.
- The placement must comply with the placement preferences set forth in WIC § 361.31.
- Consent given before or within ten (10) days after birth of the Indian child shall not be valid.

Even if a parent, guardian, or Indian custodian consents to a voluntary placement agreement, child custody proceedings are still initiated as this type of agreement requires court oversight. For example, consent must be executed in writing and recorded before a court, which must certify that the terms and consequences of consent were explained on the record in detail and fully understood by the parent, guardian, or Indian custodian ([WIC § 16507.4, subd. \(b\)\(3\)\(B\)](#)). Further, the Indian child's Tribe has the right to intervene at any point in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child ([WIC § 224.4; 25 U.S.C. § 1911\(c\)](#)).

Voluntary proceedings may be initiated by the parent, guardian, Indian custodian, or a social services agency, and are often encountered when a parent(s) consents to giving temporary custody to another person, perhaps while receiving supportive services. Although the term "Indian child custody proceeding" does not include proceedings involving voluntary foster care or guardianship placements where the parent, guardian, or Indian custodian retains the right to have the child returned upon demand ([WIC § 224.1, subd. \(d\)\(2\)](#)), all provisions of ICWA still apply to voluntary proceedings.

Additionally, though the proceeding may be voluntary for the parent(s) or Indian custodian(s), the proceeding may not be voluntary for the child. The child may not want to participate in the voluntary proceeding and/or the accompanying case plan, due to government oversight, increased absence of the parent(s), guardian(s), or Indian custodian(s) change in regular routine, and a myriad of other reasons. The social worker will make efforts to ensure the child's voice is heard, and that efforts are made to address any reasonable objections the child may have to the voluntary proceeding, placement, and case plan. The social worker will speak with the child, in addition to their parents, guardian or Indian custodians and the Tribe, to also determine their willingness to engage in voluntary proceedings and collaborate with them in mitigating any potential harm or adverse impacts on the child.

While an Indian child custody proceeding may be voluntary at the beginning, custody proceedings that were originally voluntary could become involuntary proceedings if the situation becomes unsafe for the child. An example of this could be that a parent entered a voluntary custody arrangement, to allow that parent to work on safety concerns or other parenting issues. However, at the end of the voluntary placement period, the CWS agency believes the parent has not made enough progress and the identified safety threats have not been mitigated, requiring the child to be removed, and thereby changing the proceedings to involuntary. Additionally, voluntary proceedings may be voluntary for one parent/guardian/Indian Custodian and involuntary for another parent/guardian/Indian custodian. If one consents to the placement of an Indian child and the other does not, the

proceeding is treated as an involuntary proceeding as it relates to the non-consenting parent. In all Indian child custody proceedings, even voluntary proceedings, active efforts must be provided.

Best practice is to ensure parents, guardians, and Indian custodians are made aware of the possibility that voluntary proceedings could become involuntary in certain situations. In the situation where the placement may no longer be voluntary, in that there is a determination the child must be removed from the parent(s), guardian(s), or Indian custodian(s), the social worker must comply with the requirement to engage in active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to comply with the ICWA placement preferences ([ACL 24-18](#); [WIC §§ 224.1, subd. \(f\); WIC § 361.31](#)). Placement preferences are requirements of statute and not optional. For more information regarding emergency placement and placement preferences, please refer to [ACL No. 23-64](#).

INVOLUNTARY PROCEEDINGS

Voluntary proceedings could look like involuntary proceedings. However, any proceeding where the parent(s), guardian(s), or Indian custodian(s) cannot have the child returned upon demand is an involuntary proceeding ([MPP § 31-135.111](#)). An "involuntary proceeding" is defined as "an Indian child custody proceeding in which the parent does not consent of their free will to the foster care, pre-adoptive, or adoptive placement, or termination of parental rights. 'Involuntary proceeding' also means an Indian child custody proceeding in which the parent consents to the foster care, pre-adoptive, or adoptive placement, under threat of removal of the child by a state court or agency." ([WIC § 224.1\(n\)](#); [CWS Manual of Policies and Procedures \(MPP\) section 31-002\(i\)\(5\); 31-002\(i\)\(19\)](#)). There are four common outcomes that result from involuntary proceedings: the child returns home, emergency involuntary removals, involuntary foster care placement and involuntary termination of parental rights. Each of these involuntary proceedings' outcomes have different requirements.

EMERGENCY INVOLUNTARY REMOVAL

ICWA allows for the emergency removal of Indian children when removal is necessary "to prevent imminent physical damage or harm." ([WIC section 306, subd. \(c\), citing 25 U.S.C. Sec. 1922](#)). In such cases, the child may be immediately removed from the physical custody of their parent(s), guardian(s), or Indian custodian(s), even though important ICWA provisions have not yet been applied due to exigency (please refer to [ACL No. 23-64](#) for more information). At the detention hearing, the social worker must report to the court why the child was removed from their parent's, guardian's, or Indian custodian's custody, if there is a need for continued detention, if there are available services and referrals made that could facilitate the return of the child to their parent's, guardian's, or Indian custodian's custody, and whether there are any relatives, including extended family members, who are able and willing to take temporary physical custody of the child ([WIC § 319](#)). The court shall also determine whether less disruptive alternatives to removal were considered by the agency.

According to WIC § 319, if it is known or there is reason to know the child is an Indian child, the report shall also include all the following:

- A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child.
- The steps taken to provide notice to the child's parents, guardians, Indian custodians, and Tribe about the hearing pursuant to this section.
- If the child's parents, guardians, and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director.
- The residence and the domicile of the Indian child.
- If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village.
- The tribal affiliation of the child and of the parents, guardians, or Indian custodians.
- A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody.
- If the child is believed to reside or be domiciled on a reservation in which the Tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction.
- A statement of the efforts that have been taken to assist the parents, guardians, or Indian custodians so the Indian child may safely be returned to their custody.
- The steps taken to consult and collaborate with the Tribe, and the outcome of that consultation and collaboration.

If there is reason to know the child is an Indian child, the court may only detain the Indian child if it also finds that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and the court must state on the record the facts supporting this finding ([WIC § 319 \(f\)\(2\)](#)). If active efforts are unsuccessful and the Indian child must be removed from their home for their safety, the child may be involuntarily removed from their parent, guardian, or Indian custodian. These decisions should be made jointly with the child's Tribe or tribal representative, and the emergency placement must comply with preferences, unless the court finds good cause to not follow the placement preferences ([WIC § 361.31](#)).

According to the [California Rules of Court, 5.484 \(c\)](#), an emergency removal of an Indian child must not continue for more than 30 days, unless the court makes the following determinations:

- Restoring the child to the parent, guardian, or Indian custodian would subject the child to imminent physical damage or harm.
- The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

- It has not been possible to have a hearing that complies with the substantive requirements of the Indian Child Welfare Act for a foster care placement proceeding.

Whenever there is reason to know the child is an Indian child, and there has been an emergency removal of the child from their parent, guardian, or Indian custodian, any party who maintains that there is new information indicating that the emergency situation has ended may request an ex-parte hearing through submitting an ICWA-070 form, to determine whether the emergency situation has ended ([California Rules of Court, 5.484 \(b\)](#)). If the request provides evidence of new information indicating that the emergency placement is no longer necessary, a hearing must be scheduled promptly by the Court. At this hearing, the court must determine whether the child's removal and placement are still necessary to prevent imminent physical injury or harm to the child. If the court determines that removal and placement are no longer necessary to prevent imminent physical damage or harm to the child, the court must order the child returned to the physical custody of the parents, guardians, or Indian custodians.

INVOLUNTARY FOSTER CARE PLACEMENT

Involuntary foster care placements, where there is reason to know that a child is or may be an Indian child, require clear and convincing evidence and must be supported by the testimony of a Qualified Expert Witness (QEW) for the Judge to order placement of the Indian child in foster care ([WIC § 361, subd. \(c\)\(6\)](#)). Further guidance on QEW's will be released in a future ACL, as outlined above.

At the disposition hearing an Indian child may not be taken from the custody of their parent(s), guardian(s), or Indian custodian(s), unless clear and convincing evidence exists, of any of the following circumstances:

- “There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s, guardian’s, or Indian custodian’s physical custody” ([WIC § 361\(c\)\(1\)](#)).
- “The parent, guardian, or Indian custodian of the minor is unwilling to have physical custody of the minor, and the parent, guardian, or Indian custodian has been notified that if the minor remains out of their physical custody for the period specified in [WIC section 366.26](#), the minor may be declared permanently free from their custody and control” ([WIC § 361\(c\)\(2\)](#)).
- “The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor’s emotional health may be protected without removing the minor from the physical custody of his or her parent, guardian, or Indian custodian” ([WIC § 361\(c\)\(3\)](#)).
- “The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, Indian custodian, or

member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent, guardian, or Indian custodian, or the minor does not wish to return to his or her parent, guardian, or Indian custodian" ([WIC § 361, subd. \(c\)\(4\)](#)).

- "The minor has been left without any provision for his or her support, or a parent, guardian, or Indian custodian who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent, guardian, or Indian custodian is unwilling or unable to provide care or support for the child and the whereabouts of the parent, guardian, or Indian custodian is unknown and reasonable efforts to locate him or her have been unsuccessful" ([WIC § 361, subd. \(c\)\(5\)](#)).

"In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a 'Qualified Expert Witness', as described in WIC 224.6" ([WIC § 361, subd. \(c\)\(6\)](#)). [WIC § 224.1, subd. \(d\)\(1\)\(A\)](#) outlines that an Indian child custody proceeding may result in a "foster care placement, which includes removal of an Indian child from their parent, parents, or Indian custodian for placement in a foster home, institution, or the home of a guardian or conservator in which the parent or Indian custodian may not have the child returned upon demand, but in which parental rights have not been terminated. Foster care placement does not include an emergency placement of an Indian child pursuant to Section 309, if the emergency proceeding requirements set forth in Section 319 are met."

The child's Tribe must be also consulted when the child is being removed from a foster care placement and not returning to their parent(s), guardian(s), or Indian custodian(s), even when it is a situation that does not require employment of placement preservation strategies, as outlined in [WIC §16010.7](#).

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

A third outcome of involuntary proceedings may be involuntary termination of parental rights which occurs, in "any action" that severs the legal and physical relationship between the child and parent(s), guardian(s), or Indian custodian(s). Termination of the parental rights of an Indian child is defined by [WIC § 224.1, subd. \(d\)\(1\)\(B\)](#) as "any action involving an Indian child resulting in the termination of the parent-child relationship." Involuntary termination of parental rights for Indian children requires proof beyond a reasonable doubt, supported by a QEW testimony, that the continued custody of the child by the parent, guardian, or Indian custodian is likely to result in serious emotional or physical damage to the child ([WIC 366.26 \(c\)\(2\)\(B\)\(2\)](#)). The Court shall also consider the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices ([WIC § 224.6, subd. \(b\)\(1\) and \(2\)](#)). The county must show that the conduct of the parent(s), guardian(s), or Indian custodian(s) is likely to result in serious emotional or physical damage to the child, to consider termination of rights.

Conclusion

Voluntary proceedings are an important process that should be considered for Indian families, and are a possible method of increasing county, Tribe, and family collaboration. CDSS has included an attachment to this letter which serves as an informational aid related to tribal participation in proceedings. This informational aid is not meant to be exhaustive but may be used to remind social workers and probation officers of the Tribes' right to intervene.

If you have any questions or need additional guidance regarding the information in this letter, contact the Safety and Early Intervention Bureau at childprotection@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division

Attachment

cc: All Federally Recognized Tribes
County Welfare Director's Association
Chief Probation Officers of California



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

ICWA Information Sheet: Tribal participation in State court proceedings governed by ICWA.¹

Under ICWA and corresponding state law, an Indian child's Tribe must receive notice of any state court proceedings governed by ICWA involving an Indian child. These proceedings include dependency proceedings, some delinquency proceedings, some family code proceedings and probate guardianship proceedings concerning an Indian child (see [25 U.S.C. § 1903](#); [Family Code § 170, 177, 3041](#); [Probate Code § 1459.5, WIC § 224, 224.1](#); [California Rules of Court \(CRC\) 5.480 & 7.1015](#)). Federal and state law mandate and acknowledge a number of substantive and procedural rights of an Indian child's Tribe in such state court proceedings, including a right to participate in various ways and an absolute right to intervene in such proceedings "at any point".

Rights if a Tribe Chooses Not to Intervene

An Indian child's Tribe is not required to formally intervene in proceedings. If the Tribe acknowledges the child, all of ICWA's substantive requirements apply even if the Tribe does not intervene. A non-intervening Tribe must continue to receive notice of all court hearings involving the child. The Tribe must be consulted with respect to the placement of the child ([CRC 5.482\(g\)](#)). The Tribe must be consulted with respect to case planning for both the Indian parents and the Indian child and those case plans must use the available resources of the Tribe, extended family members, other Indian service agencies and individual Indian caregivers ([CRC 5.484 \(c\)](#); [CRC 5.690\(c\)](#); [WIC § 361.7](#)).

Whether or not the Tribe intervenes, a representative of the Indian child's Tribe is entitled to be present at all court proceedings involving the Indian child ([CRC 5.530 \(B\)\(7\)](#)) and may address the court, receive notice of hearings, examine all court documents relating to the dependency case, submit written reports and recommendations to the court, and perform other duties and responsibilities as requested or approved by the court ([CRC 5.534\(i\)](#)).

¹ Judicial Council of California: [ICWA Tribal Participation Fact Sheet](#)

Right of Intervention

An Indian child's Tribe may intervene, orally or in writing, at any point in the proceedings and may, but is not required to, file with the court the Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child (form [ICWA-040](#)) to give notice of their intent to intervene ([CRC 5.482\(e\)](#); [WIC § 224.4](#); [25 U.S.C. § 1911\(c\)](#)). The juvenile court has no discretion to deny a Tribe's request to intervene ([In re Desiree F. \(2000\) 99 Cal.Rptr.2d 688, 83 Cal.App.4th 460](#)).

Rights of the Intervening Tribe

A Tribe, as an intervening party, is entitled to all rights afforded to any party in a proceeding, including the right to sit at counsel table, the right to examine witnesses, and the right to be given copies of documents. See [California Code of Civil Procedure Sections \(CCP\) § 387](#); see also [CRC 5.482\(e\)](#) and Judicial Council form [ICWA-040](#).

Who May Appear on Behalf of the Tribe

The Tribe may choose to be represented by an attorney, but the Tribe may also designate any person to represent them in court, and this representative must be given the same rights and courtesies as the attorneys involved ([ICWA Bench Handbook, 2023 page 36](#)).

The court may not limit the Tribe's ability to participate effectively in the case if the Tribe chooses to be represented by a non-attorney.² States' laws regulating attorneys and the practice of law cannot interfere with or burden the federally protected right of the Tribe to participate in the proceedings.³

California Rule of Court, [rule 5.534](#) specifically addresses this issue:

(e) Tribal representatives ([25 U.S.C. §§ 1911, 1931-1934](#))

The Tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The Tribe may appear by counsel or by a representative of the Tribe designated by the Tribe to intervene on its behalf.

The California Rules of the Court, [Rule 5.534\(i\)\(1\)](#) permits intervention by an attorney or by a representative and makes no distinction between the rights granted to each respectively.

² *State v. Jennifer M.*, 277 Neb. 1023, 1024 (2009)

³ *State ex rel Juvenile Department of Lane County v. Shuey*, 119 Ore.App. 185 (1993); *In the Interest of N.N.E.*, 752 N.W.2d 1 (2008)