



CDSS

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ARNOLD SCHWARZENEGGER
GOVERNOR

June 4, 2009

ALL COUNTY LETTER NO. 09-28

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
CHIEF PROBATION OFFICERS
CDSS ADOPTION DISTRICT OFFICES
LICENSED PUBLIC AND PRIVATE ADOPTION AGENCIES
ADOPTION SERVICE PROVIDERS (ASP)
TITLE IV-E AGREEMENT TRIBES
ACADEMY OF CALIFORNIA ADOPTION LAWYERS

SUBJECT: INDIAN CHILD WELFARE ACT AND ADOPTIONS - FORMS,
PROCESSES, AND STANDARDS

REFERENCE: All County Letter (ACL) No. 08-02 (Senate Bill (SB) 678, Chapter 838, Statutes of 2006 Indian Child Welfare Changes in State Law); All County Information Notice (ACIN) No. I-86-08 (Tribally Approved Foster Homes); California Rules of the Court, Rules 5.481-5.482; Family Code (FC) Sections 170, 177, 180, 185, 3041, 7892.5, 8606.5, 8616.5, 8620, 8801.3, 9208 and 9209; Probate Code 1459.5; Welfare & Institutions Code (W&IC) 224.2, 224.3, 300 et seq., and 16507.4; The Federal Indian Child Welfare Act of 1978 Codified at 25 U.S.C. Section 1901 et seq.

This letter rescinds ACL No. 06-05 (dated May 12, 2006) "Use of ADOPT-226, Notice of Voluntary Adoption Proceedings for an Indian Child" and ACIN No. I-87-04 (dated January 18, 2005), "Notice of Involuntary Child Custody Proceedings for an Indian Child (JV-135)." The Judicial Council has revoked the forms ADOPT-226 and JV-135.

This ACL clarifies how the Indian Child Welfare Act (ICWA) requirements and the new Judicial Council forms, ICWA-010(A), ICWA-020, ICWA-030, and ICWA-030(A), impact adoption proceedings.

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

Background

Senate Bill (SB) 678 sets forth explicit provisions on noticing and compliance with other requirements of ICWA. The goal of SB 678 is uniform application of ICWA in California. The focus of this ACL is to clarify how ICWA applies to adoption proceedings, and explain the use of Judicial Council rules and forms in the context of ICWA. An Indian child, the child's tribe, a parent, or Indian custodian from whose custody the child has been removed, may petition to have a proceeding for adoption, guardianship, or termination of parental rights (TPR), invalidated for failure to comply with ICWA requirements. These requirements include notice provisions, evidentiary standards, and filing mandated forms with the court. (25 U.S.C. 1914 and W&IC 224(e)).

The ICWA rules must be followed and forms must be used to document all available and relevant information regarding a child's Indian ancestry in cases of an agency or independent adoption. They must also be used exclusively to request confirmation of the child's Indian status from the child's tribe and to provide notice of a hearing or proceeding to the birth parent(s), any custodian of the child, and to the child's tribe. The recipients are thereby informed of the various rights they have under ICWA, including the right to formally intervene in the child custody proceeding.

Family Code (FC) Section 8620 (g) and (h) provide for civil penalties if a person other than a birth parent of a child knowingly and willfully falsifies, conceals or covers up whether the child or his parent is an Indian or assists another to do so.

Rules and Forms

As of January 1, 2008, there are new ICWA rules and mandatory Judicial Council forms for use in compliance with ICWA noticing requirements. Forms ADOPT-226 and JV-135, have been revoked and replaced with the ICWA-010(A), ICWA-020, and ICWA-030 (attached):

Old Form Number and Title	Current Form Number and Title	Description
ADOPT-226 Adoption Proceedings for a Possible Indian Child	ICWA-010(A) Indian Child Inquiry Attachment	This form is mandatory for ALL children in the adoption process and is used as part of the initial inquiry. The social worker, adoptions specialist, probation officer, and/or adoption service provider (ASP) completes this form after obtaining information from the child (when appropriate), parents (birth mother, presumed and alleged fathers), Indian custodian, grandparents, other extended family relatives, regarding the child's Indian ancestry. This form should be filled out with the assistance of the California Department of Social Services (CDSS), ASP or licensed adoption agency.

Old Form Number and Title	Current Form Number and Title	Description
		<p>If the case originated in the dependency court and there is proof that inquiry occurred, then inquiry does not need to occur again <u>unless</u> there is new information that provides a reason to know the child is or may be an Indian child.</p>
	<p>ICWA-020 Parental Notification of Indian Status</p>	<p>This form is mandatory for ALL children in the adoption process and is used as part of the initial inquiry. This is completed by the parents (birth mother, presumed and alleged fathers), Indian custodian, or legal guardian. This form should be filled out with the assistance of the CDSS, ASP or licensed adoption agency and is signed under penalty of perjury and filed with the court.</p> <p>If the case originated in the dependency court and there is proof that inquiry occurred, then inquiry does not need to occur again <u>unless</u> there is new information that provides a reason to know the child is or may be an Indian child.</p>
<p>ADOPT-226 Adoption Proceedings for a Possible Indian Child JV-135 Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)</p>	<p>ICWA-030 Notice of Child Custody Proceeding for Indian Child</p>	<p>This form is mandatory when the initial inquiry provides a reason to know that the child is or may be an Indian child. The social worker, adoptions specialist, probation officer, or ASP interviews the parents (birth mother, presumed and alleged fathers), Indian custodian, and extended family members to obtain information to complete this form.</p> <p>This form must also be used to continue to notify the birth parent, Indian custodians, Indian legal guardian, and tribe(s) of all hearings regarding the child.</p>
	<p>ICWA-030(A) Attachment to Notice of Child Custody Proceeding for Indian Child</p>	<p>This form provides extra space for the ICWA-030 (if needed) to show additional tribes or bands served with the notice.</p>
	<p>ICWA-040 Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child</p>	<p>This form is optional. It may be used by tribes when identifying a child as a tribe member or potential member. It is also used to designate an individual as the tribe's representative and notify the court that the tribe is intervening in the case. <i>Any questions regarding this form should be addressed to the Judicial Council.</i></p>

Old Form Number and Title	Current Form Number and Title	Description
	ICWA-050 Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction	This form is optional. It may be used by the tribe, parent, Indian custodian, or attorney to request the case be transferred to tribal jurisdiction. <i>Any questions regarding this form should be addressed to the Judicial Council.</i>
	ICWA-060 Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction	The court uses this form to order transfer of the case to tribal jurisdiction. <i>Any questions regarding this form should be addressed to the Judicial Council.</i>

These forms are available on the Internet at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>.

ICWA-010(A) - Indian Child Inquiry Attachment

*There is an **affirmative and continuing duty to inquire** whether a child, who is the subject of a child custody proceeding is or may be an Indian child. The inquiry is documented through the use of ICWA-010(A) and ICWA-020. These forms are mandatory for all children being adopted. Accordingly, before taking a relinquishment, executing a consent/adoptive placement agreement or witnessing a waiver of right to further notice of adoption planning, the CDSS, licensed adoption agency, or ASP must inquire whether the child is or may be an Indian child. This information is recorded on the ICWA-010(A), which must be attached to every adoption petition.*

In an independent adoption, the duty to inquire falls on the ASP, unless the petitioner(s) are relatives and an ASP is not needed, in which case the responsibility would fall on the CDSS or delegated county adoption agency. The ASP is also responsible for sending a copy of the ICWA-010(A) to the petitioners, their attorney, and the CDSS or delegated adoption agency.

Information may be obtained from the child, child's parents (birth mother, presumed and alleged fathers), Indian custodian, legal guardians, grandparents, great-grandparents, and any of the child's other relatives or extended family members. If during your inquiry you receive information suggesting that the child is a member of a tribe or eligible for membership in a tribe, or that any of the child's parents (birth mother, presumed and alleged fathers), grand-parents or great-grandparents are, or were members of a tribe you have "reason to know" that the child is, or may be an Indian child. Information obtained is documented on the ICWA-010(A). *Please note that other circumstances may provide reason to know the child is an Indian child, such as*

residence on tribal land, receipt of services from a tribe or receipt of Indian Health Service. This form must be signed by the person conducting the inquiry. This form is filed with the court and becomes part of the adoption case file, regardless of whether the child has Indian ancestry.

The *Indian Child Welfare Act Inquiry Interview* (attached) has suggested questions to assist in determining a child's Indian ancestry. This form is available on the Judicial Council Administrative Office of the Courts' website:

<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWA-JobAids.htm>.

ICWA-020 - Parental Notification of Indian Status

This form is mandatory for all children being adopted as part of the initial inquiry on Indian status.

The form must be signed by the parent, Indian custodian, or guardian who completes the form. This form is filed with the court and becomes part of the adoption case file in all cases, regardless of whether the child has Indian ancestry.

Situation	Party Responsible for Completing the ICWA-020
Dependency Cases	The court orders the parent, Indian custodian, or guardian to complete the form at the first hearing. If the parent, Indian custodian or guardian is not present at the hearing, then the Court must order the agency, to use reasonable diligence to find and inform the parent, Indian custodian or guardian that the court has ordered them to complete the form.
Relinquishments (Non-dependent Cases)	The licensed adoption agency or CDSS will assist the parent, Indian custodian or guardian in completing this form prior to accepting a relinquishment or a waiver of right to further notice.
Independent Adoptions	The CDSS, delegated county adoption agency, or ASP will assist the parent, Indian custodian, or guardian in completing this form prior to accepting the adoptive placement agreement, waiver of right to further notice and/or any consent.

ICWA-030 - Notice of Child Custody Proceeding for Indian Child

The ICWA-010(A) and the ICWA-020 are assessed by the CDSS, licensed adoption agency, or ASP along with any other relevant information, to determine whether there is "reason to know" the child is or may be an Indian child. This determination includes an alleged father's Indian ancestry. If yes, then completion of the ICWA-030 is required. The CDSS, licensed adoption agency or ASP must:

- Interview the parents (birth mother, presumed and alleged fathers), Indian custodian, extended family members and any other person reasonably expected to have information regarding the child's membership status or eligibility, to gather the information required to complete ICWA-030. (The ICWA-030(A) is used in addition to the ICWA-030, if additional space is needed.)

Questions 5 through 8 from this form should be used to interview the birth parents, extended family members, and/or other sources.

- Obtain the names and mailing addresses of the federally-recognized tribe or tribes with which the child may be associated:
 - The ICWA provides that notice is to be sent to the tribal chairperson unless the tribe has designated another agent for service of ICWA notices. If the notice is going to be sent to the Tribal Chair, it is recommended the notice be addressed to "Tribal Chairperson, _____ Tribe". The Designated Tribal Agent for Service of ICWA Notices, if there is one, can be found on the Bureau of Indian Affairs (BIA) Internet website at: <http://www.doi.gov/bia/TLD-Final.pdf>. **Always notice the name of the designated agent on the BIA list, if there is one identified on the list.** Private licensed adoption agencies and ASPs should address the notice exactly as indicated on the BIA Internet website.
 - You should also notice the contact for the tribe identified in the California CDSS of Social Services (CDSS) Tribal Government Listing located on the CDSS ICWA information page. The CDSS list is more current and can help the tribe receive quicker notice of the proceeding. This list is also located in Child Welfare Services/Case Management System (CWS/CMS). Do not use **the CDSS Tribal Government Listing in lieu of the official BIA List** of ICWA Designated Agents for Noticing, **but in conjunction with the BIA list**. By sending to both addresses, if they differ, you secure meeting legal noticing requirements as well as making effective contact with the tribe.
 - The CDSS and public licensed agencies shall address the notices as listed in CWS/CMS, if available. If not listed, refer to the instructions above for private licensed agencies and ASPs. You may look up the tribal list on the (CWS/CMS), which contains both the BIA designated agent for ICWA service, as well as more current contact information.¹

¹ For county adoption offices only.

- The *Declaration* on page 8 should be signed by the ASP, CDSS representative or licensed adoption agency completing the form.
- The *Declaration of Mailing – Adoption, Family Law, and Probate Proceedings* should be signed by the ASP, CDSS representative or licensed adoption agency mailing the form.
- Send the ICWA-030 to the child's parents, legal guardian, Indian custodian, and tribe(s) with which the child may be affiliated as soon as there is reason to know that the child is an Indian child.
- The ICWA expressly excludes from the definition of "parent" an "unwed father where paternity has not been acknowledged or established." *Accordingly, alleged fathers do not fall within the ICWA definition of a parent entitled to ICWA noticing.* However, establishment of paternity will trigger ICWA noticing to the alleged father because paternity would change the status of an alleged father to that of a parent as defined under ICWA.
- In addition, where the child's parents or legal guardian, Indian custodian, and child's tribe is known, a copy of the ICWA-030 must be sent to the Secretary of the Interior at the following address:

The Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Note that the inclusion of contact information provided on the ICWA-030 is not required if any person listed on the ICWA-030 is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking. In this situation, redact the information from copies sent to the child's parents, Indian custodian and/or legal guardian. (W&IC 224.2(f))

If the identity or location of the parents, Indian custodian, or child's tribe cannot be determined or located, send the ICWA-030 to the Secretary of the Interior's designated agency, the BIA, Sacramento Area Director at:

Sacramento Area Director, BIA
2800 Cottage Way
Sacramento, CA 95825

- Send the ICWA-030(s) and attachments by registered or certified mail with return receipt requested.

- Attach to the ICWA-030 a copy of the child's birth certificate, if available, and a copy of the petition by which the proceeding was initiated.
- Ensure the ICWA-030 lists the location, mailing address, and telephone number of the court and all parties notified pursuant to this section.
- If the addresses for the same tribe/band on the various lists are different, send the ICWA-030 to all the listed addresses. Notice must be sent to all bands within a tribe even if the parent or information gathered shows a specific tribe.

Note: Once a tribe has acknowledged a child or intervened, subsequent notices do not need to include the ancestral information, a copy of the petition in the proceeding, a copy of the child's birth certificate, or the statement of rights.

Executing a Consent, Relinquishment or Adoptive Placement Agreement

A relinquishment, adoptive placement agreement, waiver of right to further notice of adoption planning, and/or consent may not be signed until all tribes noticed have responded to the notice or until 60 days have passed and the court determines that ICWA does not apply.

In cases where an Indian child has an alleged father, the alleged father does not need to sign in the presence of a Superior Court Judge even if the Indian ancestry is inherited from the alleged father, unless the alleged father establishes his paternity. However, the birth mother and/or any presumed father would be required to sign in the presence of a Superior Court judge.

In an independent adoption where an Adoption Placement Agreement must be attached to the petition and there is reason to believe the child may fall under ICWA, either of the following processes may be followed:

- Have the birth parent(s) sign the Adoption Placement Agreement for an Indian child in front of a Superior Court Judge. If it is later determined the child falls under ICWA, the form is valid with no further delay in process.
- Have the birth parent(s) sign the regular Adoption Placement Agreement. However, if it is later determined that the child falls under ICWA the form will be invalid and the Adoption Placement Agreement will need to be signed in front of a Superior Court Judge.

The parent of an Indian child may consent to adoption as long as the following requirements are met:

- Consent is given at least 10 days after birth of the child;
- Consent is given in writing;
- Consent is recorded before a court of competent jurisdiction;
- The judge certifies that the terms and consequences of consent were fully explained in detail; and
- The judge certifies that the parent or Indian custodian fully understood the explanation in English or that it was interpreted in a language the parent or Indian custodian understood. (FC 8606.5)

The parent may withdraw consent at any time before the final decree of adoption has been entered in court. The Indian child must be returned to the parent or Indian custodian when consent has been withdrawn. After the final decree is entered in a state court, consent may only be withdrawn if there is evidence that consent was obtained through fraud or duress. (25 U.S.C. 1913; W&IC 16507.4; FC 8606.5 and 8620(b))

Filing the Relinquishment with the CDSS

The CDSS will not accept a relinquishment for filing until initial inquiry has been made. Therefore, all relinquishment documents must be accompanied with the ICWA-010(A) and ICWA-020 to document that the initial inquiry was made. If the initial inquiry shows that the child may have Indian ancestry or may be eligible for membership in a tribe, the CDSS will not accept a relinquishment until the following occurs:

- All recipients have responded that the child is not a member of a tribe or eligible for membership and a biological child of a member of the tribe. Attach all ICWA forms and the responses from the tribes.
- Sixty (60) days have lapsed and the court has determined that ICWA does not apply. Attach all ICWA forms, copy of mailing certification and court determination to the relinquishment.
- Sixty (60) days have lapsed, not all recipients have responded, and the court has not made a determination that ICWA does not apply, then:
 - Continue to obtain all clearances; or
 - Sign all necessary relinquishment documents in front of a Judge and continue sending notices; or

- File a motion requesting the court make a determination that ICWA does not apply.
- All parties have responded and the child has been identified as a member of a tribe or eligible for membership. Attach all ICWA forms and the response from the tribe to the ICWA relinquishment.

The licensed adoption agency filing the relinquishment with the CDSS must submit a copy of the ICWA-010(A), ICWA-020 and ICWA-030 (if applicable), and a copy of all letters of confirmation received from any of the Indian tribes listed on the ICWA-030.

Proceeding With a Case 60 Days After the Date the Notice was Received By All Notice Recipients

If proper and adequate notice has been provided pursuant to W&IC 224.2, and neither the tribe nor the BIA provides a determinative response on the child, the court may determine that ICWA no longer applies to the case. A motion to the court triggers this determination.

Unless and until the court determines ICWA no longer applies, notices (ICWA-030) of each hearing shall continue to be sent and necessary relinquishments, waivers and consents executed in front of a judge in compliance with ICWA.

If the court determines that ICWA no longer applies to the proceeding, then notices are no longer required, unless new information is received based on the petition or other information. Where a court has determined that ICWA does not apply to the proceeding, it shall reverse itself if a tribe or the BIA subsequently confirms the child is an Indian child as defined by ICWA (a member or eligible for membership and biological child of a member). At that point, the court will apply ICWA prospectively.

The court must receive copies of all notices, responses from the tribes or BIA, certified mail receipts and return cards. In cases where an ASP is involved in an independent adoption, the ASP should also send copies of notices to the CDSS or delegated county adoption agency.

No hearing shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, or the tribe. The parents, Indian custodian (if any), and tribe are entitled to an additional 20 days to prepare for the hearing on request.

If more than one tribe determines that an Indian child is a member or eligible for membership as defined in ICWA, the court is to make a determination in writing, with its reasons, as to which tribe is the child's tribe for purposes of the child custody proceeding. Until that determination is made, notices must be sent to all tribes of which the child is affiliated or potentially affiliated.

Duties After Tribe Has Confirmed a Child Is a Tribal Member or Eligible for Membership

The ICWA obligations do not end with noticing. Where a child has been recognized by its tribe, as a member or eligible for membership and biological child of a member, ICWA provides standards applicable only to such Indian children. The following are applicable regardless of whether or not a tribe formally intervenes in the proceeding:

- **Placement preferences** - Placement must be made in accordance with the ICWA designated preferences, unless there is good cause to deviate from the order. The standards to be applied in meeting the preference requirements of the ICWA are the prevailing social and cultural standards of the Indian community in which the child's parent or extended family resides, or with which the parent or extended family maintains social and cultural ties. Thus, the ICWA requires that states defer to Indian social and cultural standards in placement and treatment assessments. The tribe's prevailing social and cultural standards can be established through the use of a qualified expert. (25 U.S.C. 1915(d))

Adoptive placement preferences are: (1) with a member of the child's extended family; (2) with other members of the Indian child's tribe; (3) with other Indian families. (25 U.S.C. 1915; W&IC 361.31; and FC 177(a))

A different order of placement may be established by the child's tribe and the court or agency effecting the placement shall follow the order so long as it is in the least restrictive setting appropriate for the child. It is also appropriate to consider the parent's preference or the child's preference where the child is of sufficient age to express the preference.

- **Qualified Expert Witness Testimony** - The removal of an Indian child may only occur if there is **clear and convincing evidence** that is supported by the testimony of an expert witness that continued custody by the parent is likely to result in serious emotional or physical damage. The purpose for the use of the qualified expert witness is to provide testimony on the issue of detriment to the child. Qualified expert witness testimony is required before a court orders the child be placed out of the custody of his or her parents or terminates parental rights. (25 U.S.C. 1912(e); W&IC 361.7(c); and FC 7892.5(b))
- *Parental rights may not be terminated* in the absence of a determination, supported by evidence "**beyond a reasonable doubt**" including testimony of a qualified expert witness that the continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (25 U.S.C. 1912(f); W&IC 366.26(c)(2)(B)(ii); and FC 7892.5(b))

- **Active efforts** are required to prevent breakup of the Indian family. Evidence of the active efforts must be provided to the court. What constitutes active efforts is assessed on a *case by case basis*. However, active efforts are to be conducted in a manner that takes into account the “*prevailing social and cultural values and way of life of the Indian child’s tribe.*” Active efforts must use the available resources of extended family, the tribe, tribal and other Indian social service agencies and individual Indian caregiver service providers. (W&IC 361.7; FC 177(a), and 3041(e))

For further discussion on these standards, refer back to ACL 08-02 (January 28, 2008). In addition, there are many resources available from the Judicial Council Administrative Office of the Courts.

Waiver of Right to Further Notice of Adoption Planning

If a presumed father of an Indian child chooses to sign the Waiver of Right to Further Notice of Adoption Planning form (AD 590A), he must sign this form in front of a judge. Once a waiver is signed no further noticing is required.

Independent Adoptions – Finalization Hearings

In an independent adoption, the petitioners or their attorney have the responsibility to notice the tribes, child’s parents, legal guardian or legal custodian. Notice must be given at least 10 days prior to the hearing unless an additional 20 days has been requested by the tribe, child’s parents, legal guardian or legal custodian. Notice shall be sent by registered or certified mail, with copies to the CDSS or delegated county adoption agency and the court.

The final court report filed by the CDSS or delegated county adoption agency should notify the court of ICWA compliance in the proposed adoption and report to the court any missing ICWA forms, notices or any facts disclosed during the course of the investigation that may be relevant to the court’s determination of the best interest of the child.

Agency Adoptions – Finalization Hearings

In an agency adoption, the CDSS or licensed adoption agency has the responsibility to notice the tribes, child’s parents, legal guardian or legal custodian. Notice must be given by registered or certified mail at least 10 days prior to the hearing unless an additional 20 days has been requested by the tribe, child’s parents, legal guardian or legal custodian.

Post Adoption Contact Agreements

Prior to issuance of a decree of adoption, the court may require mediation for the purpose of reaching a post-adoption contact agreement when the child is an Indian child and the adoptive parent agrees to negotiate post adoption contact. If the court finds lack of good faith, it may modify existing orders or issue new orders to ensure the best interest of the Indian child including ordering further mediation initiating guardianship in lieu of adoption, or authorizing a change of the adoptive placement. Failure to reach an agreement does not in and of itself constitute evidence of lack of good faith. (FC 8616.5 and 8620(f))

Terms of a post-adoption agreement may include the following:

- Visitation between child and birth parent, birth relatives, and the child's tribe;
- Future contact between birth parents, birth relatives, and the child, and/or child's adoptive parent, and the tribe;
- Future sharing of information about the child. (FC 8616.5 and 8620(f))

Final Orders of Adoption

Upon entering the final order of adoption, the clerk will provide a copy to the Secretary of the Interior within 30 days of the date of the order, including any of the following information:

- The name and tribal affiliation of the child;
- The names and addresses of the biological parents;
- The names and addresses of the adoptive parents;
- The identity of any agency having files or information relating to that adoptive placement and
- If the court records contain an affidavit of the biological parent(s) that their identity remains confidential, the court shall include that affidavit with the other information.

Upon reaching the age of 18, the adopted Indian child may petition the court for information about his/her biological parents, tribal membership rights, eligibility for federal or tribal programs or services available to Indians. (FC 9208 and 9209)

Right of Intervention

The Indian child's tribe, parents, and Indian custodian have the right to intervene at any point in the adoption proceedings until finalization. They may intervene orally, in writing, or by submitting an ICWA-040 to the court. Once a tribe has formally intervened, it is a "party" to the proceedings. Status as a party gives the tribe more participatory rights in the proceedings, including the right to the record of the proceedings.

A tribe need not intervene to be entitled to participate in an Indian child custody proceeding. Tribal participation is relevant to determine placement or adoptive preferences, including tribally approving a home (See ACIN I-86-08 (November 20, 2008)). Tribes may also help identify qualified expert witnesses, Indian services and programs.

Transfer Issues

A tribe, parent, or Indian custodian may petition the court to transfer an Indian child's adoption proceeding to tribal jurisdiction. The court must transfer the case unless there is good cause not to do so. The court shall dismiss the proceeding, or terminate jurisdiction, only after receiving proof that the tribal court has accepted the transfer of jurisdiction. Please refer back to ACL 08-02 (January 28, 2008) for further discussion.

If you have any questions regarding this ACL please contact the Permanency Policy Bureau for questions pertaining to agency adoptions at (916) 657-1858 or the Adoptions Services Bureau for questions pertaining to independent adoptions at (916) 651-8089. For general ICWA questions, contact the ICWA Specialist in the Office of Child Abuse Prevention at (916) 651-6960.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachments

ATTACHMENT A: INDIAN CHILD INQUIRY
ICWA 010 <http://www.courtinfo.ca.gov/forms/documents/icwa010a.pdf>

ATTACHMENT B: PARENTAL NOTIFICATION OF INDIAN STATUS
ICWA 020 <http://www.courtinfo.ca.gov/forms/documents/icwa020.pdf>

ATTACHMENT C: NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD
ICWA 030 <http://www.courtinfo.ca.gov/forms/documents/icwa030.pdf>