

**MENDOCINO COUNTY
INDIAN CHILD WELFARE ACT
PROTOCOL**

UPDATED 6/23/11

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I. BACKGROUND

The Indian Child Welfare Act (ICWA) is a federal law that was passed in 1978 to protect and preserve Indian tribes and their most valuable resource, their children. ICWA was created to address the following issues:

- Large numbers of Indian children (an estimated 35%) were being removed from their families by state courts and county social services agencies;
- Most of these children ended up in non-Indian homes and institutions;
- Indian children who were cut off from their tribal communities and cultures often later developed behavioral and emotional problems; and
- State and county officials often did not understand, ignored, or rejected the cultural or social customs of the child's tribal community.

To help remedy the situation, the ICWA imposed minimum federal procedural protections for Indian children involved in the dependency system or otherwise facing removal from parental custody. The purpose of ICWA is to:

- Protect the best interests of Indian children;
- Promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families, and the placement of such children in foster or adoptive homes that reflect the unique values of Indian culture; and
- Provide assistance to Indian tribes in the operation of children and family services programs.

In 2006, legislation was passed in California (SB 678) that codified into state law various provisions of the federal Indian Child Welfare Act and the BIA Guidelines for State Courts, including changes to dependency, delinquency, probate, and family law codes. This protocol addresses only the dependency process. SB 678 re-affirmed California's interest in protecting Indian children. The proper implementation of the federal ICWA and state laws regarding Indian children is paramount in respecting Indian culture and heritage, preventing the breakup of Indian families and promoting tribal involvement on behalf of Indian children entering the child welfare system.

The ICWA contains procedures that help ensure that a child stays within an Indian community, encourages a team approach to improve outcomes, and increases both agency and tribal access to resources for at-risk Indian families. ICWA compliance also helps ensure that a dependency proceeding is not later invalidated by the juvenile court or overturned on appeal, possibly placing a child at greater risk and undermining permanency efforts.

This Protocol is the product of the Mendocino County ICWA Roundtable, a collaboration between the Mendocino County Health and Human Services Agency, Mendocino County Counsel and other dependency attorneys, tribal attorneys and Mendocino County tribes, including Hopland Band of Pomo Indians, Coyote Valley Band of Pomo Indians, Manchester/Point Arena Rancheria, Round Valley Indian Tribes, Redwood Valley Rancheria, Cahto Indian Tribe of the Laytonville Rancheria, Potter Valley Rancheria, Guidiville Rancheria, Sherwood Valley Rancheria, Pinoleville Pomo Nation, Yokayo Rancheria (not federally recognized), and Indian service providers, including Consolidated Tribal Health Project and the Indian Child & Family Preservation Program (ICFPP).

This Protocol was developed to recognize the great demands placed on tribal and county child welfare workers and to assist them in engaging in the collaboration necessary to meet both the Act's requirements and the child and family's needs. It is also recognition of the mutual concern for our communities' children and the benefit of coordinating resources and expertise to meet the needs of at-risk Indian families. In addition, this Protocol supports the Department's efforts and obligations under federal and state laws to ensure the safety of Indian children and the preservation of Indian families.

This Protocol is applicable to all new and existing referrals and cases that involve children who are of American Indian descent or may be of American Indian descent.

II. AUTHORITY

The ICWA governs all proceedings in which a court must determine the placement of an Indian child when that child is removed from the custody of his or her parent, guardian or Indian Custodian. The following is a list of the federal and California statutes, regulations, guidelines, court rules and Departmental directives that provide the legal framework of ICWA.

- **ICWA, 25 United States Code Section 1901-1963:** the act passed in 1978 to provide legal protections designed to prevent the breakup of Indian families.
- **ICWA, 25 CFR Part 23:** federal regulations promulgated to assist in the administration of tribal social services, to outline notice procedure and process for court-appointed counsel.
- **Indian Child Protection and Family Violence Prevention Act from 1990, 25 United States Code Section 3201-3210.** There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in referrals and cases where there is reason to believe that an Indian child is involved.
- **Bureau of Indian Affairs (BIA) Guidelines for State Courts:** although not intended to have binding legislative effect, Guidelines are the BIA's interpretations of the ICWA and are intended to be used by courts for guidance.
- **WIC Section 224.1:** definitions according to Section 1903 of the ICWA and Indian child membership in more than one tribe; includes factors that need to be considered when determining with which tribe the child has the more significant contact.
- **WIC Section 224.2:** sets forth the notice requirement for an Indian child custody proceeding, including notice to interested parties and proofs of service.
- **WIC Section 224.3:** provides that county welfare departments have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 is to be, or has been, filed is or may be an Indian child in all dependency proceedings if the child is at risk of entering foster care or is in foster care. It sets out circumstances that may provide reason to know that the child is an Indian child and makes clear that a social worker is required to make inquiry regarding the possible Indian status of the child by interviewing parents, Indian custodian, and extended family members to gather the information required to properly notice the tribe(s). This code section further states that if new information is obtained regarding the child's Indian heritage, the tribe(s) and BIA must be re-noticed with the new information, even if the court already found that ICWA does not apply. Notice must be provided according to WIC Section 224.2.

- **WIC Section 224.4:** states that the Indian child’s tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.
- **WIC Section 224.5:** provides that in an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.
- **WIC Section 224.6:** requires the testimony of a “qualified expert witness” in an Indian child custody proceeding when recommending foster care placement or termination of parental rights. Further explains who qualifies as a “qualified expert witness” and required content of testimony.
- **WIC Section 290.1:** notice requirement for when a child is to be retained in custody, initial petition hearing.
- **WIC Section 290.2:** notice requirement for initial hearing when petition filed.
- **WIC Section 291:** notice requirement for jurisdictional, pretrial, adjudication, or disposition hearing.
- **WIC Section 292:** notice requirement for cases where child(ren) is with parent or guardian.
- **WIC Section 293:** notice requirement for 366.21 or 366.22 hearings.
- **WIC Section 294:** notice requirement for 366.26 hearing.
- **WIC Section 295:** notice requirement for review of permanent plan hearing, 366.3.
- **WIC Section 305.5:** provides that a parent, Indian custodian, and Indian tribe may petition for the Indian child custody proceeding to be transferred to the jurisdiction of the child’s tribe, and explains what constitutes good cause to deny such a petition.
- **WIC Section 306.6:** states that the court may permit non-federally recognized tribes to participate in the proceeding upon request of the tribe.
- **WIC Section 361.31:** placement preferences for Indian children proposed to be in foster case, guardianship or adoptive placement.
- **WIC Section 361.4:** provides that the home of every prospective caregiver that is not a licensed or certified foster parent must be visited to assess its appropriateness prior to placing the child in the home and that a criminal records check must be done on all persons 18 and over in the home.
- **WIC Section 361.7:** notwithstanding provisions of section 361.5, discussion of active efforts that must be offered and unsuccessful before taking an Indian child into temporary custody (except to prevent imminent physical damage or harm to the child) and prior to termination of parental rights.
- **WIC Section 366.24:** section added effective July 1, 2010; requires the juvenile court and social workers to consider and offer or recommend tribal customary adoption as an additional permanent placement option, without termination of parental rights, for Indian children.
- **WIC Section 366.26:** procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court. Includes under subpart (c)(1)(B)(vi) the exception to termination of parental rights because the child is an Indian child and there is a compelling reason for determining that termination would not be in the best interest of the child.

- **WIC Section 16507.4 (b)**: explains voluntary family reunification services and procedure to follow for Indian children.
- **Family Code 7907.3**: the Interstate Compact on the Placement of Children (ICPC) shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the ICWA.
- **Probate Code 1449, 1459, 1459.5**: cross-reference to the Welf. & Inst. Code sections for compliance with the ICWA.
- **California Rules of the Court Rules 5.480 – 5.487**: rules apply to all proceedings involving Indian children, applicable in juvenile, probate and family law matters.
- **California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31-515-520**: sets forth ICWA provisions and policies regarding placement of Indian children.
- **CDSS All County Letter 08-02 (January 30, 2008)**: provides information and CDSS analysis of changes in state law as a result of the passage of SB 678, implementing the ICWA into California law.
- **CDSS All County Information Notice I-86-08 (November 20, 2008)**: provides information regarding the use of tribally-approved homes as placement options for Indian children.
- **CDSS All County Letter 09-28 (June 4, 2009)**: clarifies how ICWA requirements and Judicial Council forms impact adoption proceedings.
- **CDSS All County Letter 10-47 (October 27, 2010)**: provides information regarding the implementation of tribal customary adoption.
- **AB 12 and AB 2418** which become effective January 1, 2012 will extend the age range of dependents.

III. ICWA OVERVIEW

One of the keys to ICWA compliance is the timely identification of Indian children and families. Early identification of an Indian child is the best assurance that the Department can meet ICWA's objectives and that families are offered culturally-appropriate services that will maximize their chances of staying together. The ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally-recognized tribe. The Department must treat a matter as an "ICWA case" if the social worker "knows or has reason to know the child may be Indian." (25 U.S.C. §1912; Welf. & Inst. Code § 224.3 (e).)

A. **Who Is An Indian Child?**

The ICWA and California law define an "Indian child" as an unmarried person under the age of 18 who:

- is a member of a federally-recognized Indian tribe; or
- is eligible for membership in a federally-recognized Indian tribe **and** he or she is the biological child of a member of a federally-recognized Indian tribe. (25 U.S.C. §1903; Welf. & Inst. Code § 224.1 (a).)

Information received that the child is not enrolled nor eligible for enrollment is not determinative of a child's status unless and until the tribe confirms in writing that enrollment is a prerequisite for membership. (Welf. & Inst. Code § 224.3 (e) (1).) It is important to keep in mind that children may be enrolled or eligible for enrollment in a tribe, even if their parents are not a member. A child should be identified, at least provisionally, as an "Indian child" whenever a parent identifies him or herself or the minor as a member of a tribe or when other factors indicate such membership or eligibility for membership.

It is in the best interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, **regardless of any of the following:**

- whether or not the Indian child was in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding;
- whether or not parental rights have been terminated;
- whether or not the Indian child has lived on an Indian reservation; or,
- whether or not any party objects to involvement and connection with the child's tribal community.

B. When Does ICWA Apply?

- An Indian child may be placed in foster care as a result of removing the child from his or her parent or Indian custodian and the parent or Indian custodian cannot have the child returned upon demand;
- the Indian child may be adopted and parental rights would be terminated;
- parental rights have been terminated;
- an Indian child may have a legal guardian appointed by the order of the court;
- it is recommended that an Indian child be placed in a pre-adoptive or adoptive placement; or
- an Indian child is involved in an involuntary child custody proceeding.

When handling an ICWA case, caseworkers must do many things, including but not limited to:

- notify the child's tribe(s), parents, and the Indian Custodian(s) of the child custody proceeding;
- provide active efforts to the family;
- identify a placement consistent with ICWA preference provisions; and
- work actively to involve the child's tribe(s) and the child's parents or Indian Custodian in the proceedings.

IV. INQUIRY AND IDENTIFICATION OF INDIAN CHILDREN

Inquiry for American Indian heritage should be done for every family served by Mendocino County Child Welfare Services (CWS) during initial and on-going contact with all families, particularly when placement is imminent. A child should be identified, at least provisionally, as an "Indian Child" whenever a parent identifies him or herself or the minor as a member of a tribe or when other factors indicate such membership or eligibility for membership. This approach does not require that the ICWA procedures be applied simply because there is a statement that the child may have Indian ancestry. As stated under the Act, "Indian child" status requires that the minor have membership, or eligibility for membership, in an Indian tribe and a biological parent who is a member. The fact that the

child may have a distant Indian ancestor, in and of itself, is not sufficient to meet this standard or to give the court a reason to know the child is Indian.

All agency social workers have an affirmative and ongoing duty to inquire if a child is an Indian child.

A. Role of the Social Worker in Identifying an Indian Child

1. Inquiry to Family Members

The only way to determine Indian heritage is to ask and investigate. The circumstances that may provide reason to know 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 officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe, or eligible for membership in a tribe, or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe;
- b. The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community;
- c. The child or 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 Sonoma County Indian Health Project (SCIHP), Consolidated Tribal Health Project (CTHP), Round Valley Indian Health Center, Tribal TANF Programs, or Indian Child & Family Preservation Program (ICFPP).

If there is reason to believe the child is Indian, investigation should include interviews of parents, extended family members, and tribal representatives regarding a child's Indian status in order to gather the lineal and other information required in ICWA Form 030. (Appendix, p. v-xvii) Probable cause to believe the child may be Indian includes statements regarding Indian heritage from a tribe or Indian organizations, as well as whether the child and/or family received services from Indian service providers. (CRC, Rule 5.481(a)(5).)

Because there have been social and historical disincentives for Indian people to self-identify or actively participate in their tribal communities, a client's tribal connection may not be readily apparent or forthcoming. Each parent should be asked about Indian ancestry. When talking with relatives or caretakers, the child's Indian ancestry should also be a standard question.

Questions can be placed in the context that such a background may make the family eligible for special services and provide procedural protections to which they otherwise might not be entitled. The worker should also be alert for other clues regarding Indian ancestry that would prompt further inquiry, e.g., involvement with an Indian health program or other Indian service providers. Detaining or Emergency Response social workers must complete ICWA Form 010(A) (Appendix, p. ii) which shall include identification of all person(s) questioned, with every petition that is filed in dependency court.

If Indian background is disclosed, further investigation may be necessary to establish the specific tribal affiliation, if any. For example, if the child is Pomo or Miwok, the child's tribe

may be from any of several Rancherias, each of which is a separate political entity. The worker's objective is specifically to identify the tribe and the relatives' membership and/or enrollment information. However, if the specific tribe cannot be identified, the Agency will notice all the applicable tribes. For example, if the parent identifies Cherokee and is unable to identify the specific tribe, the Agency will notice: the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Juvenile Court parties should be aware that any person who knowingly falsifies or conceals facts regarding a child's Indian status shall be subject to court sanctions. (Welf. & Inst. Code § 224.3 (e).)

In all cases, the court representative will bring the form ICWA Form 020 (Parental Notification of Indian Status) to court and provided the form to parents' attorneys to complete with the parent during court. Parents' attorneys shall return the completed ICWA Form 020 to the court representative for filing with the court. (Appendix p. iii-iv)

When Indian ancestry is identified, the Family Outreach Specialist will complete the ICWA Form ICWA 030 (Notice of Child Custody Proceedings for Indian Child) and the ICWA-Parent History Chart (Appendix p. xviii) with the assistance of the parents, other relatives and tribes. ICWA Form 030 is then to be used to confirm Indian status with the tribe and/or Bureau of Indian Affairs ("BIA") and to document the Family Outreach Specialist's efforts in obtaining background information from the family. (Appendix p. v-xvii)

Once a minor is identified as an Indian child, or the social worker has reason to know* that the child may be Indian, the obligations will be different depending upon whether a child is or may be removed from his/her family.

- For voluntary services and emergency response workers: it means early inquiry into possible tribal affiliation, contacting and communicating with the tribal representatives, and making and documenting referrals to Indian providers to try to prevent the breakup of the Indian family. (See pages 9-10, "Inquiry to Family Members".) There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in cases where there is reason to believe that an Indian child is involved. In fact, **such communication is required** in cases involving Indian children. (25. U.S.C. § 3205)
- For voluntary out of home placements of an Indian Child, it requires the participation of the child's tribe and signature of the parent(s) on the Voluntary Placement Agreement Parent/Agency (Indian Child) (SOC 155C) in front of the judge and certified by the court (25 US Code 1913 (a) and (b)). (Appendix p. xix-xx)
- If a child is removed, it has implications for Court Unit, Continuing Services, and Permanency Planning workers for notice, collaboration with tribes, services, and placement.

To understand the overall implications of identifying a minor as an Indian child, a chart of the ICWA requirements is included in Appendix, p. xxxv-xxxvi.

* See page 9, section IV.A.1.
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2. Social Worker's Continuing Duty to Identify Indian Children

Inquiry into a child's tribal status is not limited to the beginning of a case. A court finding that ICWA is not applicable does not fully relieve the social worker's ICWA concerns. Social workers have **"an affirmative and continuing duty to inquire"** whether a child for whom a petition has been filed is or may be an Indian child. (Welf. & Inst. Code § 224.3 (a).) If the social worker subsequently receives information that provides a "reason to know" that an Indian child is involved in the proceedings, the worker has a continuing duty to investigate and provide notice to the tribe(s) and court. (Welf. & Inst. Code § 224.3 (f).) The designated Program Specialist must interview the parents, relatives and tribes to complete the ICWA-030 and provide it to the legal clerks for noticing and filing with the court.

If new information is obtained regarding the child's Indian heritage, the tribe, BIA and Secretary of the Interior must be re-noticed with the new information. **This must be done even if the court already found that ICWA does not apply.**

B. Importance of Identifying Indian Children

1. Access to Appropriate Prevention and Intervention Services

Identification of Indian children is not only a legal obligation but may be critical in providing effective child abuse prevention or intervention services to a family. Discovery of a family's Indian background may result in access to free or low-cost culturally-appropriate resources and help create a support network that can truly prevent the breakup of the Indian family. For example, Indian identification may lead to finding an extended support system that can be used as a basis for family group conferencing or help ensure the child's continued safety. It may also provide important support and self-esteem building opportunities for court dependents and provide a foundation for providing "active efforts" to meet the legal requirement.

2. Placement with an "Indian Custodian"

One important resource under the ICWA is that, in lieu of filing a petition, a child may be placed with an Indian Custodian. An Indian Custodian is an Indian person designated by a tribe or parent who is appropriate for assuming temporary physical care or custody over an Indian child. (25 U.S.C. §1903(6).) The Department may work with a tribe or parent to identify such a person for possible pre-filing or pre-disposition placement to protect an Indian child at high risk of abuse or neglect and such communication is encouraged in cases involving Indian children. This may be particularly useful in situations where a baby otherwise would be detained following birth at a hospital or for children where there are limited placement options. In exploring this avenue, the worker may seek a formal resolution from the tribe recognizing the person as the child's Indian Custodian and as the preferred placement.

3. Inter-Dependence of Department Units to Protect Child

The work (and its documentation) by social workers in each Department unit builds a critical foundation for workers in other units, particularly in the event a child must be removed. For example, a child cannot be placed out of home as a dependent if "active efforts" to provide services designed to prevent the breakup of the Indian family were

not made. These efforts must include collaboration with the child's tribe and utilization of available resources, including the child's extended family, tribal and other Indian social service agencies, and individual Indian caregiver service providers. (Welf. & Inst. Code § 361.7 (a)-(b).) This may require Court Unit social workers to produce evidence to the court for the disposition hearing that, in prior contacts with the Department, culturally-relevant service referrals were made by county Emergency Response (ER) or Voluntary Services workers and efforts were made to contact and work with the child's tribe(s).

All efforts to confirm tribal affiliation should be documented in case notes and, where a petition is filed, in court reports. In particular, the court report should detail efforts made to obtain tribal background from family members, the parents' efforts (or failure) to help provide essential familial contacts, and information inquiries to other sources. In cases where the ICWA may apply, the objective is to obtain a **written** response from each potential tribe and/or the BIA which confirms or rejects a child's Indian tribal membership status or eligibility.

The court report should include the date when notices were sent and, if applicable, the substance of the court determination of whether ICWA applies and, if so, which is the Indian child's tribe(s). Where more than one tribe has an interest in a child, the court report should provide necessary background information for the court to determine with which tribe the child has the most significant contacts. (See below at Section VI.D; (Welf. & Inst. Code § 224.1 (d) (2).)

If a child was not properly identified as Indian, or if ICWA requirements were not followed, the entire dependency proceedings may be invalidated -- no matter where the case is in the dependency process. (25 US Code Section 1914; WIC 224(e), See section XIV on p.36)

4. Enrollment of Child with Tribe

The worker should pursue with tribal representatives, ICWA advocates^{*}, the minor's attorney, and parents whether a child should become enrolled as a member while a dependent. CA Rule of Court 5.484(c)(2) regarding active efforts specifies, "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..." It is in the child's best interest to complete the tribal enrollment process as early as possible. The worker should help identify, and document in the case plan, who will take primary responsibility for complying with tribal membership procedures on the child's behalf. The worker should provide coordination and assistance as needed to ensure that the child's interests in tribal membership are pursued. Each tribe may handle these issues differently, so the social worker should inquire about each tribe's enrollment process and work with the tribal representative(s). Social workers should ensure that, where possible, tribal enrollment is completed at the earliest possible time and that the court is appraised of the child's progress toward membership status.

C. Identification Checklist

* In this protocol, the term "ICWA advocate" is used to refer to a tribe's representative; some tribes may use a different title.

- Asked parents, child, and relatives regarding Indian background;
- Inquired about Indian status and compensated for the possible social disincentives for self-identifying by letting the person know of potential service benefits and procedural protections;
- Noted Indian ethnicity in CWS/CMS and on petition;
- Worked with parents and relatives to obtain information for the Social Worker to complete the ICWA Form 010 (see Appendix p. xv)
- Obtain completed ICWA Form 020 from each parent (see Appendix p. iii-iv);
- Checked CWS/CMS and/or Appendix, p. xxxv-xxxvi for local tribal addresses and/or the Federal Register website (see Appendix, p. xli) for non-local tribal and BIA addresses;
- Sent completed form ICWA 030 (Appendix, p. v-xvii) to appropriate tribes and/or BIA for confirmation of Indian status;
- Contacted tribe, service and/or ICWA representatives, if known, to obtain information on membership status;
- Documented all efforts to determine Indian status in case notes;
- Obtained letter confirming or rejecting tribal membership status from each identified tribe and/or the BIA; and
- ICWA Form 030, proofs of service, and all tribal/BIA/Secretary of Interior responses filed with the court.
- Obtained copy of child's birth certificate **or state birth certificate, as required.**

V. NOTICE

A. **Proper and Timely Notice is Required**

Proper notice is a critical step to ensure ICWA compliance and often is a source of error identified by appellate courts. **Lack of appropriate ICWA notice is the most common reason that dependency cases are overturned or remanded on appeal.**

The filing of a dependency petition for a minor whom the Department has "reason to know may be an Indian child" triggers the ICWA notice requirements. Notice of the proceedings and of each subsequent hearing must be made to the parents, Indian Custodian(s), and tribe.

Notice, beginning with the ICWA Form 030, must be initiated **every** time a new original dependency petition is filed and Native American heritage is alleged, even if notice was completed in a prior dependency case.

1. Specific Notice Requirements

To meet the ICWA notice requirements, ICWA Form 030 (Appendix, p. v-xvii) must be sent to the relevant tribe(s), the BIA and the Secretary of the Interior for every hearing until the Court makes a determination as to whether ICWA applies. For confirmed ICWA cases, notice will be by certified mail using the regular Judicial

Council notice forms (ie: JV-280- Notice of Review Hearings; JV-300- Notice of Hearing on Selection of a Permanent Plan) for subsequent hearings.

Notice shall be by personal service or **registered or certified mail, return receipt requested** to the parent, Indian Custodian, and the tribe(s) as follows: (25 U.S.C. §1912; CRC Rule 5.481(b)(1); Welf. & Inst. Code § 224.2(a).)

- a) Addressed to the tribal chairperson unless another agent is designated for service (see CWS/CMS and/or Appendix, p. xxxvii-xl for local tribal addresses and/or the Federal Register website (see Appendix, p. xli) for non-local tribal and BIA addresses; [NOTE: be aware that the Federal Register list of tribal contacts and the State website becomes outdated quickly. If the social worker knows of a different address/contact person, notice must be sent to both addresses and worker should call tribe to confirm.);
- b) To all tribes to which the child may be a member;
- c) To the BIA in Sacramento (see Appendix, p. xxxvii-xl, for address);
- d) To Secretary of the Interior; and
- e) To all counsel by courthouse box or 1st class mail if out of the area.

(25 U.S.C. §1912; CRC Rule 5.481(b)(1); Welf. & Inst. Code § 224.2(a)).

The notice provided and responses obtained from tribes must be submitted to the court and all parties and discussed in a separate ICWA section in the court report until the court has made an ICWA determination. A copy of the petition along with the child's birth certificate, if available, must accompany the notice. (25 C.F.R. §23.11; (Welf. & Inst. Code § 224.2 (a) (5).) A **sample** completed notice form is attached at Appendix, pp. v-xvii.

Although it is sometimes cumbersome, the forms must be complete. The ICWA Form 030 includes listing all relatives on both sides even if non-Indian. If the family history is not available, this should be clearly stated on the ICWA Form 030. Each relevant tribe must be appropriately served. This is a critical step in the process as, without effective ICWA notice, the Act's requirements and purposes cannot be satisfied. County Counsel should be consulted if there is any question regarding notice issues.

2. Notice Requirements if Tribe is Unknown

If the tribal affiliation is unknown, the ICWA Form 030 should be sent to the BIA Sacramento Area Social Services Director and the Secretary of Interior. Tribe, BIA and Secretary of Interior contact information is contained in Appendix, pp. xxxvii-xl for local tribal addresses and/or the Federal Register website (see Appendix, p. xli) for non-local tribal and BIA addresses; (but note that the Federal Register and State contact lists become outdated quickly; it is always advisable to check with the tribe to confirm address/contact person.). If notice from a tribe has been returned, the Social Worker will need to call the tribe to obtain a correct mailing address. If tribe(s) request additional information, the Social Worker will need to contact the tribe to determination what additional information is needed.

If a dependency petition is filed, the notice of proceedings requirements that must be followed are discussed below. A determination by a tribe that a child is, or is not a member, or eligible for membership is conclusive. (Welf. & Inst. Code § 224.3 (e).)

3. Notice Requirements if There May Be More Than One Tribal Affiliation

If a child is or may be eligible for membership in more than one tribe, the “ICWA tribe” will be the tribe with which the child has the most “significant contacts.” (25 U.S.C. §1903(5).) In determining which tribe has the most significant contacts, the court will consider, among other things, a) residency on the reservation; b) frequency of contact with each tribe; c) the interests asserted by the respective tribes to the court; and d) the child’s self-identification. (Welf. & Inst. Code § 224.1 (d) (2).) Information on these points should be included in the court report. The worker should pursue identification (and notice) of all tribes with which the child is or may be affiliated until the court determines which will be the ICWA tribe for purposes of the dependency proceedings. Generally, the tribes will resolve these issues among themselves outside of the courtroom.

4. Notice Requirements Once A Tribe Has Been Identified

After a tribe acknowledges that a child is a member of or eligible for membership in that tribe, or after a tribe intervenes in the court proceeding, the Agency shall continue to notice that tribe with regular notice (not the ICWA-030) by registered or certified mail, return receipt requested. Notice shall be sent for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted (WIC 224.2(b)).

The findings and orders will continue to note that notice has been given by certified mail, return receipt requested, to the identified tribe.

B. Role of Workers in Providing Notice

1. **Voluntary Services/Emergency Response Responsibilities** - The units working with families and responding to reports of child abuse and neglect prior to the filing of a petition generally will not be required to provide notice unless a worker is assisting in filing a petition and performing the initial removal investigation. The ER worker will telephonically contact the known tribe(s) to inform the tribe(s) of the detention hearing. Contact all relevant tribes to determine the minor's (and parents') membership status and what services may be available to the Indian child or family. **However, social workers must contact any known tribes and active efforts to prevent removal are essential and must be documented. The work that a Voluntary Services or ER worker performed in trying to identify a child's Indian heritage is critical in assuring that effective notice is made. Awareness of a child’s potential tribal membership allows for collaboration with the ICWA worker for the tribe to see what tribal resources may be utilized, ensures that the family is referred to culturally-appropriate services, and that timely tribal notice is provided if there is a later removal. This is essential to ICWA compliance and providing active efforts.** (See below, Section IX.)

- 2. Court Unit Responsibilities** - The notice requirement will usually be the responsibility of the Court Unit that drafts the petition, performs the initial investigation and prepares for jurisdiction and disposition hearings. **ICWA Form 030 completed by the Family Outreach Specialist** (Appendix, p. v-xvii) **must be used to ensure the notice requirements are met and should be sent within 10 days of the filing of the petition.** (Welf. & Inst. Code § 224.2 (d).) In addition, the Juvenile Dependency Petition must be attached (and the child's birth certificate when available) to the notice with the appropriate ICWA petition sections marked. On the ICWA 030, do not leave any spaces blank and do not put N/A if the information is unknown. Rather, if unknown, write in the applicable space, "No Information Available" or "See Additional Information Below." In the Additional Information box state, "See attached ICWA-Parent History Chart." The ICWA 030 notifies the child's tribe of child welfare involvement in the life of an Indian child. It also requests the tribe's determination of membership by the tribal representative. See Notice to Tribes letter (Appendix, p. xvii). **The Family Outreach Specialist shall prepare the ICWA Parent History Chart which shall accompany the ICWA Form 030 and if necessary, shall prepare and attach supplemental information to the ICWA Form 030.** If the Family Outreach Specialist is the person completing the ICWA Parent History Chart, the Family Outreach Specialist must indicate who provided the information. The court cannot proceed in a case until 10 days after receipt of notice by the tribe(s) and BIA, so it is critical that the notice be sent out as soon after the detention hearing as possible. The court unit social worker must interview all known extended family members and contact the Tribe(s) or ICWA worker of the tribe(s) as soon as it is known that the child is or may be an Indian child to engage in joint case planning and make appropriate referrals for the family. At detention, consider asking the court to order that "The Department shall have permission to share case information with a qualified expert witness and the ICWA representative designated by the tribe(s). The parent shall comply with providing the Department all known information on relatives." If any responses are outstanding at the time of the disposition hearing, the Court Unit Social Worker shall request an ICWA review in the disposition findings and orders 60-90 days following the disposition hearing.
- 3. Continuing Services Responsibilities** - When the possibility of Indian ancestry is raised following the disposition hearing, the Continuing Services worker will be responsible for investigating tribal affiliation and ensuring that the proper tribal contact is located and notified of proceedings. As the tribe is required to be properly noticed of each hearing, the Continuing Services worker will be responsible for ensuring that notices are timely sent throughout the reunification process even if the initial contacts were made by a Court Unit worker. It generally will be the responsibility of the Continuing Services worker to follow-up and ensure that written confirmation is received from each contacted tribe (and/or BIA) to confirm or deny a child or parent's membership status and to ensure court determination of ICWA status. If proper ICWA notice was provided by the Department, and neither a tribe nor the BIA has provided a determinative response within 60 days after receiving the notice, the Department should ask the court to determine whether ICWA applies. (Welf. & Inst. Code § 224.3 (e)(3).)

4. **Permanency Planning Responsibilities** - When the possibility of Indian ancestry is raised following termination of reunification services, the PP worker will be responsible to complete the form ICWA 030, with the assistance of the Family Outreach Specialist, locate the appropriate tribal representative(s), and provide notice of the proceedings, documenting all efforts and contacts made regarding ICWA compliance. If the court determines that the ICWA applies, the PP worker will be responsible for ensuring that timely notices are sent to a designated tribe throughout the life of the dependency, even if the initial contacts were made by another unit.

C. Notice Checklist

- Notice provided to tribe(s), BIA and Secretary of Interior and parent and/or Indian Custodian(s) when petition filed by using ICWA Form 030;
- Petition with appropriate sections marked, birth certificate, if available, parent history chart and Mendocino County notice to tribes attached to ICWA Form 030 (see sample at Appendix, p. v-xvii);
- Notice provided by **certified mail, with return receipt requested**;
- Notice sent to tribal representative(s), BIA, and Secretary of Interior as designated in Federal Register/State website and/or CWS/CMS;
- Notice efforts and responses documented in file and in court reports;
- Notice requirements met for each hearing;
- Notices (including ICWA Form 030), along with proofs of service and tribal responses, are filed with the court; and
- Court makes appropriate ICWA notice findings.

VI. RIGHTS OF TRIBES

A. Determination of Eligibility

It is the exclusive determination of the tribe whether a child is or is not eligible to be a tribal member. (See section IV.B.4 above) Depending on the tribe's membership laws, enrollment may or may not be necessary for the child to be considered a member.

There is no single way to determine Indian heritage by race, physical characteristics, surname, or residence, although these factors might contribute to triggering ICWA procedures by leading the worker to have a reason to know the child may be Indian. Whether a child is Indian is not a racial determination but a question of political status. Indian tribes are recognized as sovereign entities existing within the United States. Tribes and the U.S. government have a "political" relationship as between two nations, not a relationship based upon racial classification. Within tribes, membership is determined in a variety of ways, with specific requirements varying from tribe to tribe. Ultimately, only the tribe can decide who is a member and that determination is binding. (Welf. & Inst. Code § 224.3 (e)(1).)

B. Rights of Federally-Recognized Tribes

The ICWA states, "In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have the right to intervene at any point in the proceeding." (25 U.S.C. §1911(c).) An intervening tribe may fully participate as a party to a proceeding. The Indian tribe has the following rights:

- the Indian child’s tribe and Indian custodian have the right to intervene (orally or in writing) at any point in an Indian child custody proceeding;
- exercise tribal jurisdiction by asking that the case be moved to tribal court as defined by the tribe;
- be notified about the Indian child custody proceeding;
- ask for up to 20 extra days to get ready for a hearing except the detention hearing;
- deny a parent or Indian custodian’s request for the case to be moved to tribal court as defined by the tribe;
- receive documents about the case that the court has on file;
- examine records regarding the placement of tribal children;
- assert certain tribal laws or customs to the Indian child custody proceeding, e.g. definition of “extended family”;
- assert a different order of placement between the categories of placement preferences;
- submit written reports and/or provide recommendations to the court;
- exercise option of tribal customary adoption as the permanent plan for an Indian child;
- perform other duties as requested or approved by the court.

Telephonic appearances for out-of-state/out-of-area ICWA workers at court hearings:

If an out-of-state or out-of-area ICWA worker/ tribal representative informs the social worker he/she wishes to appear by phone at any dependency hearing, the social worker must promptly inform County Counsel and provide the assigned Deputy County Counsel with the ICWA worker/tribal representative’s telephone number and if available, e-mail address. The social worker must also request the ICWA worker/ tribal representative inform the Deputy County Counsel assigned to the case and provide the ICWA worker/ tribal representative with the contact information for the assigned County Counsel. The assigned Deputy County Counsel will complete form MJV-150, Request for Telephone Appearance (Juvenile Dependency) and file it with the court along with the form MJV-151, Order re: Request For Telephone Appearance (Juvenile Dependency). (Appendix, p. xxi-xxiii).

The Interstate Compact on the Placement of Children (ICPC) does not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court.

C. Rights of Non-Federally-Recognized Tribes

Unless permitted to participate by the court pursuant to WIC Section 306.6, ICWA **may not** apply to a child custody proceeding when a child is a member of or eligible for membership in a non-federally recognized tribe. Active efforts, placement preference, and the testimony of a qualified expert witness are not required for these cases. However, the court shall make this determination, not the social worker.

Non-federally-recognized tribes are not entitled to notice of the proceedings. However, under current state law, the court may permit the child’s non-federally recognized Indian tribe to participate in the child custody proceeding upon request of the tribe. The court may limit participation to the tribe with which the child has the most significant contact.

There is limited information on non-federally-recognized tribes. Below are some web sites that may be of assistance. It is recommended that the phone number and address of the non-federally-recognized tribe be obtained from the parents.

A list of non-federally-recognized tribes can be located at: <http://www.csulb.edu/~gcampus/libarts/am-indian/tribes/> Click on the state for a list of non-federally-recognized tribes. This is not an official list and a tribe can be federally recognized and not placed on the Federal Register list until the following year so it is important to ask the tribe about their status.

To obtain the address or phone number of the non-federally-recognized tribe, contact the individual State Indian Affairs Offices at: http://w1.paulbunyan.net/~giic/pages/office_directory.html

If the court permits a non-federally-recognized tribe to participate in the child custody proceeding, the tribe may do the following with the permission of the court:

- Be present at the hearing;
- Address the court;
- Request and receive notice of hearings;
- Request to examine court documents relating to the proceeding;
- Present information to the court that is relevant to the proceeding;
- Submit written reports and recommendations to the court; and
- Perform other duties as requested or approved by the court.

If the court orders that a non-federally-recognized tribe is to receive notice of hearings, mail the regular notice forms by 1st Class mail. The **ICWA Form 030** is **not** to be used to notice non-federally-recognized tribes.

D. Other Eligibility Issues

1. If an Indian child is a member of more than one federally-recognized tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe for purposes of the Indian child custody proceeding. (Welf. & Inst. Code § 224.1(d).) The tribe with which the child has more significant contact should be designated as the Indian child's tribe. The social worker shall inform the court of the following factors in the court report:
 - a) Length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;
 - b) Child's participation in activities of each tribe;
 - c) Child's fluency in the language of each tribe;
 - d) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes;
 - e) Residence on or near one of the tribes' reservation by the child's relatives;
 - f) Tribal membership of custodial parent or Indian custodian;
 - g) Interest asserted by each tribe in response to the notice sent; and
 - h) The child's self-identification.Generally, the tribes will resolve these issues among themselves outside of the courtroom.

2. If the child is a member of or becomes a member of only one tribe, that tribe should be designated the Indian child's tribe even though the child is eligible for membership in another tribe.

VII. COORDINATED INVESTIGATIONS AND EMERGENCY REMOVALS OF CHILDREN FROM LOCAL TRIBES

A. Investigations and Emergency Removals ON Tribal Land:

1. CWS will attempt to notify the Tribe (ICW Department, Tribal Police or Tribal Administration office) prior to entering tribal land and investigating the referral and will engage in best efforts to coordinate the investigation with the ICWA representative and/or tribal police if available.
2. CWS will provide as much advance notice as possible and will document efforts to coordinate its response with the Tribe in the file, including any response from the Tribe.
3. For immediate referrals, the Social Worker must still respond immediately, even if the Social Worker hasn't been able to make contact with the Tribe (ICW Department, Tribal Police or Tribal Administration office).
4. CWS may place an Indian child who is living on tribal land in emergency foster care when necessary to prevent imminent physical injury or harm to the child.
5. Prior to the emergency removal of an Indian child from tribal land, CWS must notify the Tribe (ICW Department, Tribal Police or Tribal Administration office) unless notification is inappropriate due to the serious risk that the child may be further endangered by the notification. Determination must be documented in writing.
6. When notified of need for emergency removal of child from tribal land, the Tribe's ICW department may determine whether a relative or Indian foster home is available and may inform CWS if an emergency Tribal-CWS approved placement is available for the child.

B. Investigations and Emergency Removals OFF Tribal Land:

1. If Social Worker has reason to know child is a member/eligible for a local tribe, CWS will notify the Tribe (ICW Department, Tribal Police or Tribal Administration office) prior to investigating the referral and will engage in best efforts to coordinate the investigation with the ICWA representative.
2. CWS will provide as much advance notice as possible and will document efforts to coordinate its response with the Tribe in the file, including any response from the Tribe.
3. For immediate referrals, the Social Worker must still respond immediately, even if the Social Worker hasn't been able to make contact with the Tribe (ICW Department, Tribal Police or Tribal Administration office).

4. If Social Worker has reason to know child is a member/eligible for a local tribe, Social Worker must attempt to coordinate removal with the Tribe (ICW Department, Tribal Police or Tribal Administration office) if possible, but remember delays may affect “exigency” and safety of child.
5. If child is removed, Social Worker must provide the Tribe ((ICW Department, Tribal Police or Tribal Administration office) with notice as soon as possible so Tribe may determine whether relative, Tribal or emergency Tribal-CWS approved foster placement is available.

VIII. RELEASE OF INFORMATION

- A. Upon investigating or emergency removal, CWS will promptly provide a release of information form to Native American families authorizing the disclosure of confidential information to the Tribe. Social Workers may still provide information to the ICWA worker pursuant to Indian Child Protection and Family Violence Prevention Act even if a release of information form is not signed.
- B. If Tribe’s representative is **NOT** present, CWS will make best efforts to inform the family of ICWA protections, specifically the tribe’s right to notice and participation and the social worker will encourage the family to call the ICWA worker.
- C. If Tribe’s representative **IS** present, representative may describe the benefits of ICWA services and Tribal assistance and discuss confidentiality requirements, unless the family objects to the tribal representative providing the information or being present during the investigation.

IX. ACTIVE EFFORTS

As noted below, active efforts are applicable during investigations, voluntary services, court ordered family maintenance and court ordered family reunification. A cornerstone in the application of active efforts is active and early participation and consultation with the child’s tribe in all case-planning decisions. Active efforts shall be delivered in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall be assessed on a case-by-case basis. For examples of how “active efforts” differ from “reasonable efforts” see chart “Active Efforts vs. Reasonable Efforts.”(Appendix, p. xxxiv)

Any party seeking to effect a foster care placement has the burden to demonstrate 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 have been unsuccessful." (25 U.S.C. §1912(d).) Actions to provide active efforts "must include... attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian care givers." (Cal. Rules of Court, Rule 5.484(c)(2); Welf. & Inst. Code § 361.7 (a)-(b).)

A. Active Efforts Defined

On a practical level, what "active efforts" means is that any time a worker has reason to know that a minor may be an Indian child, every effort must be made to refer the family to culturally-appropriate services. See chart (Active Efforts vs. Reasonable Efforts) for

examples of how active efforts differ from reasonable services. (Appendix, p. xxxiv). Services are available through Indian service providers. In addition, coordination by the social worker of efforts by extended family members and the tribe to assist the family (e.g., facilitate visitation or assist in housing) also constitute active efforts. Identifying appropriate services will often be accomplished by collaboration between the social worker and the tribe's ICWA advocate, who should be a primary contact involved and consulted at each stage of the proceedings.

It is critical that the parents, Indian custodian(s), tribal ICWA advocate, and child if appropriate, are actively involved in the development of the case plan, including Personal Village Conferencing and/or Agency case conferencing. In addition, resources of family members, tribal programs, and traditional Indian services such as healing circles should be explored with agency and/or tribal representatives. Indian service referrals should be made **and documented** for the children and both parents, even if one is non-Indian, or if they do not have any connection to their tribe or Indian heritage. Alternatively, non-Indian referrals should be provided if requested by the parent. The child should also be provided opportunities to engage in Indian programs, services, and events as part of the Department's active efforts and child's case plan. See Appendix p. xxxvii-xl for some helpful resources in locating culturally-appropriate services. The Tribal List/Resource Guide (see Appendix p. xxxvii-xl) should be helpful in making referrals and identifying programs operated by Sonoma County Indian Health (SCHIP), Consolidated Tribal Health Project (CTHP), Round Valley Indian Health, Indian Child and Family Preservation Program and tribes and should always be considered.

B. Role of Workers in Providing Active Efforts

- 1. Emergency Response/Voluntary Services Responsibilities** - If the worker has reason to know^{*} an Indian child may be involved, the parents and children should be referred to tribal and local Indian service providers prior to any potential removal of the child. A tribe should be identified by the steps outlined above (Inquiry, Section IV) but, at a minimum, the worker should attempt to identify tribal resources through a tribe's ICWA advocate and families should be directed to appropriate services through the Sonoma County Indian Health Project (SCIHP), Consolidated Tribal Health Project (CTHP), Round Valley Indian Health and Indian Child and Family Preservation Program, and various other tribal services. **All referrals and active efforts must be documented in the case file. The work that a Voluntary Services or ER worker performed in trying to identify a child's Indian heritage is critical in assuring that effective notice is made. Awareness of a child's potential tribal membership allows for collaboration with the ICWA worker for the tribe to see what tribal resources may be utilized, ensures that the family is referred to culturally-appropriate services, and that timely tribal notice is provided if there is a later removal. This is essential to ICWA compliance and providing active efforts.**
- 2. Court Unit Responsibilities** - Immediately upon filing the petition, the parents and children should be referred or re-referred to Indian service providers. The court report should contain ICWA and Active Efforts sections and include all referrals that were provided to the parents by **Court Unit, Voluntary Services** or **ER**, including help

^{*} See page 9, Section IV.A.1.
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solicited from extended family members. **Where applicable, the report should clearly state when the case involves an emergency removal and the facts supporting the potential imminent harm to the child if left with the parents.** In addition, the service plan (and court report) should specifically state that, whenever possible, services shall be provided by Indian programs and describe what contact and involvement has been solicited from the tribe's ICWA worker. Sometimes it may be beneficial to make joint referrals, e.g., for parenting classes both to the Agency's parenting classes and Indian service providers and tribes, so parents can choose what schedule and program best meets their needs. **Attach the Agency's case conference notes and if applicable, PVC (Personal Village Conference) Action Plan and Agreements to the court reports.**

- 3. Family Reunification and Court-Ordered Family Maintenance Responsibilities -** The worker should continue making referrals and active efforts for the parents and the child and following up with Indian service providers and tribal representatives throughout the reunification/maintenance period. Child welfare workers have a continuing duty to determine if a dependent has Indian heritage. **If it is discovered for the first time during reunification that there is reason to know that an Indian Child may be involved, appropriate notice must be given and the service plan should be modified to state expressly that Indian service providers shall be utilized whenever possible and to make new referrals to Indian service programs.** Sometimes it may be beneficial to make joint referrals, e.g., for parenting classes both to the Agency's parenting classes and Indian service providers and tribes so parents can choose what schedule and program best meets their needs. **Attach the Agency's case conference notes and if applicable, PVC (Personal Village Conference) Action Plan and Agreements to the court reports.**

Indian resources may be available to assist with transportation for and supervision of visits. Culturally-sensitive programs also should be investigated and accessed in local or state correctional facilities whenever a parent becomes incarcerated. The child's case plan should also ensure that the minor is provided opportunities to participate in Indian-based programs and tribal/Indian community events while in placement. **All referrals, Indian services utilized, child's involvement in Indian programs, and work with extended family members and ICWA advocates should be documented in the case file and court report.** Attach notes from Personal Village Conference and/or Agency case conference notes to the court reports.

- 4. Permanency Planning Responsibilities -** Workers should be in contact with tribal representatives and ensure that the child is being offered the opportunity to engage in relevant Indian-based programs and tribal/Indian community events. If a parent is offered additional reunification services after a permanent plan is established, referrals should be provided to Indian-based programs and resources. **All Indian-related activities and referrals should be documented in court reports.** Attach notes from Personal Village Conference and/or Agency case conference notes to the court reports.

If active efforts have not been provided either by the Voluntary Services or ER worker prior to removal or, at a minimum, by the Court Unit worker immediately following removal, an out-of-home disposition may not be possible regardless of the severity of the

circumstances that led to the filing of a petition. Similarly, if active efforts were not made by the **FR/FM** worker, parental rights cannot be terminated.

The following are **suggested** best practice guidelines for providing active efforts including but not limited to:

- Identification and participation of tribally-designated representatives in the case at the earliest point. Call the ICWA worker to set up a meeting to discuss the referral or case at the earliest possible time.
- Assist the family in following enrollment procedures for the child and family;
- Providing access to both tribal and non-tribal services, including but not limited to financial assistance, food, housing, health care, and transportation. Services should be on-going throughout the case to assist families in accessing and engaging services;
- A request to the Indian child's tribe to convene traditional and customary support, provide appropriate tribal resolutions and determine what services are available through the tribe;
- Request that the ICWA advocate evaluate the family's circumstances and assist in developing a case plan that utilizes tribal and Indian resources;
- Consultation with extended family members to identify family structure and family support that can be provided by extended family members;
- Providing assistance to extended family members to remediate any concerns within reason (ie: physical condition of home, training to handle child's special needs) to allow them to be considered for placement if out-of-home placement becomes necessary;
- Arranging visitation, including transportation and/or supervision.

Social workers shall provide active efforts to families that may be of American Indian descent until eligibility/membership is determined in writing by the tribal representative. If eligibility/membership is determined, active efforts must continue. If eligibility/membership is denied, active efforts are no longer necessary after the court has ordered that ICWA does not apply.

C. Active Efforts Checklist

- Service plan specifically states that services are to be provided by Indian programs whenever possible and worker has provided culturally-appropriate referrals;
- Worker is in regular contact with tribe's ICWA advocate or tribal contact;
- Invite tribe's ICWA advocate or tribal contact to the Agency's case conferences and if applicable, Personal Village conferences.
- Worker investigated what extended family members, Indian services or tribal resources are available to assist a particular family. (see Tribal List/Resource Guide, Appendix p. xxxvii-xl) Child's case plan specifies efforts made to provide the minor opportunities to be involved in Indian-based programs and tribal/Indian community events while in placement;
- Specific referrals have been made to Indian resources for both the parents and child (even if some members of family are not Indian or connected to a specific tribe);
- If parent/Indian custodian is incarcerated or institutionalized, **Court Unit** and/or **FR** worker investigated what Indian groups are operating in the institution and made appropriate referrals for the inmate;
- All referrals, assistance by tribe and family members, and participation in Indian programs are documented in the case file and court report, if applicable.

- Attach Agency case conference notes and if applicable, Personal Village Conference “PVC Action Plan and Agreements” to the court reports.

X. PLACEMENT PREFERENCES

To accomplish the ICWA's goal of maintaining Indian children within the tribal community, the Act relies upon the statutory placement preferences. Separate placement preferences exist depending on whether the placement is for foster care or adoption. (Welf. & Inst. Code § 361.31.) Every time an Indian child is removed from a parent or Indian Custodian or moved from one placement to another, the ICWA foster care placement preferences listed below must be followed. (25 U.S.C. §1915(b); Welf. & Inst. Code § 361.31.) Diligent active efforts must be demonstrated to show that the highest preference possible is utilized, in reasonable proximity to the child's home, in the least restrictive setting possible, and consistent with the tribe's prevailing social and cultural standards.

In addition, the law compels collaborative work with the tribe to find an appropriate placement by requiring that child welfare workers use tribes and tribal services and agencies, when available, to fulfill the placement priorities. (Welf. & Inst. Code § 361.31 (g)). **ICWA compliance is best achieved, and the family most effectively served, when collaboration between county social workers and tribes and/or tribal representatives occurs at the earliest possible date. The social worker must carefully document in the court report all efforts to work with the tribe and to secure a placement consistent with the applicable preferences.**

A. Foster Care

When an Indian child who is a member of or eligible for membership in an Indian tribe is detained, the social worker shall make every effort to place the child in an ICWA-compliant home.

When looking at continued placement, Indian children should be placed in the least restrictive setting resembling a family situation in which the child's special needs can be met and is within reasonable proximity to the child's home. **The social worker shall collaborate with the Indian child's tribe to secure placement in an ICWA-compliant home.**

1. Order of Placement Preferences

Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference for Indian children is as follows:

- a) A member of the child's extended family (according to the ICWA “Extended family member” shall be defined by the law or custom of the Indian child's tribe, or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent); or
- b) A foster home licensed, approved, or specified by the Indian child's tribe; or
- c) An Indian foster home licensed by an authorized non-Indian licensing authority; or
- d) An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.

2. Modification of Priorities

a) Tribal Modification of Statutory Placement Preferences

The law or custom of a tribe can be used to expand or modify the priorities. If a tribe, through resolution, establishes a different placement preference order, the court and agency effecting the placement are subject to the modified placement priorities. (Welf. & Inst. Code § 361.31 (d).)

b) Court Finding of “Good Cause” to Modify the Preferences

If a tribe, through formal resolution, does not specify that a particular non-preferential placement is approved, the worker must demonstrate that 1) active efforts were made to place the child with a family committed to enabling the child to have extended family visitation and participation in Indian tribal/community cultural events; and 2) that "good cause" exists for modifying the preferences. (Welf. & Inst. Code § 361.31 (h)-(j).) The "good cause" finding must be documented in the court report and adopted by the court.

To establish good cause, one of the following must be demonstrated and presented to the court:

- i) A diligent search failed to locate a suitable Indian home and such a search included inquiry to the tribe, extended family, Indian/tribal service agencies and state listings of available Indian homes, and Indian licensing and placement agencies (e.g., American Indian Child Resource Center (Oakland), Indigenous Nations (Oakland), Indian Child and Family Services (Temecula), Southern California Indian Center (Los Angeles) and Tribal Economic Social Solutions Agency (T.E.S.S.A.) (Sacramento)). An Indian child may be placed in a non-Indian home only if the court makes a finding that a "diligent" search has failed to find an Indian home. (BIA Guidelines for State Courts, 44 Fed. Reg. 67584(F3); Cal. Rules of Court, rule 5.484(b); or
- ii) The request of a biological parent and the preferences and wishes of the Indian child, when of sufficient age, have been considered, including the request of a parent for anonymity; or
- iii) The child’s special needs for a placement, which offers either proximity to a parent or a therapeutic program, when no available preferred placement can meet these needs.

3. Tribally-Approved Home

A tribally-approved home is a home approved by the child’s tribe. The ICWA authorizes Indian tribes and tribal organizations to establish and operate child and family services programs, including a system for licensing or otherwise regulating Indian foster and adoptive homes. If a tribe chooses to do so, it can establish a process/set of standards for licensing, certifying, or approving homes for placement of their children. Homes that complete this process and are approved by the tribe would be considered a tribally-approved home. The approval document could be a tribal resolution or another form approved by the tribe. The relative or non-related extended family member approval standards required by Adoptions and Safe Families Act are not to be applied to tribally-

approved homes (see Health and Safety Code §1505(o)). The only exception to this is the requirement for criminal records checks.

Prior to placing a child in a tribally-approved home, the ICWA advocate must provide to the social worker a letter or resolution from the tribe designating the home as tribally approved after a criminal records check on all individuals residing in the home age eighteen and over had been completed. If the criminal records check indicates that an individual has been convicted of a crime, a child may not be placed in the home unless a criminal records exemption is granted. Welfare & Institutions Code Section 361.4 permits a tribe to request an exemption from either the State of California or the county to allow placement into a home approved by a tribe. The department must also check the CWS/CMS and Child Abuse Central Index (CACI) for any hits involving the proposed caregiver, or others residing in the home. If hits are found, the social worker and ICWA advocate must assess the home to determine the suitability of the proposed caregiver/placement.

4. Tribally-Designated home

A tribally-designated home is a home not formally approved or licensed by the child's tribe but is designated as a potential placement home. In this case, the Department is responsible for approving the home and completing the SOC 815, 817 and 818 forms, or the home must be licensed. Social workers should work with tribes and recognize the tribes' process to identify tribally-designated homes.

B. Adoptive Placement

The question of adoption of Indian children is a very sensitive issue to most Indian tribes. Many tribes view adoption as contrary to deeply-held beliefs, damaging to the child and the tribe, and laden with the terrible history of past treatment of tribal families. Mendocino County respects tribal customs and beliefs and, in most cases, does not oppose a tribe's request not to have their tribe's member child conventionally adopted, but instead to develop another permanent plan. Effective July 1, 2010, California recognizes "tribal customary adoption", which is adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption. (AB 1325; Welf. & Inst. Code § 366.24.) Pursuant to this new provision, "whenever an assessment is ordered pursuant to 361.5, 366.21, 366.22, 366.25 or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption." (Welf.& Inst. Code § 366.24(b).

Early consultation between the tribe and agency is critical to identify appropriate placements and to explore what can be done to work through issues around permanence and/or to find creative solutions. Tribal customary adoption is now a recognized alternative to termination of parental rights for Indian children that must be considered. Any agreement on a permanent plan should be reflected in a tribal resolution that is filed with the court.

As discussed below, specific placement preferences apply to adoption and Welfare and Institutions Code section 366.26 now includes a specific exception to the termination of parental rights of Indian children in certain circumstances.

1. Adoption Placement Preferences

Separate placement preferences apply in the case of an adoptive placement. The required ICWA placement priority for adoption, and preferred for other permanent placements, are as follows:

- a. A member of the child's extended family; or
- b. Other members of the child's tribe; or
- c. Other Indian families

(25 U.S.C. §1915(a).) As stated above, a child's tribe can establish a different order or preference or approve a specific placement by resolution. Efforts to enlist the tribe's assistance in placement and good cause not to follow the above order of preference must be established as discussed above (section X.A.2) and documented in the court report.

2. ICWA Adoption Exception

Recent legislative amendments have created a new exception to termination of parental rights for Indian children who may otherwise be adoptable. (Welf. & Inst. Code § 366.26 (c)(1)(B)(vi).) This exception applies when the court finds there is a compelling reason for determining that termination of parental rights would not be in the best interests of the child based on the following:

- a. Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights; or
- b. The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another living arrangement as the appropriate permanent plan for the child.

However, when appropriate, the placement preferences of the child and parent shall also be considered.

Exceptions to termination of parental rights also exists for Indian children who are living with a relative/ extended family member (child can be any age) or with an Indian Custodian (child must be age six or older) when removal of the child would be detrimental to their emotional well-being. WIC 366.26(c)(1)(A) and (c)(1)(B)(iv).

3. Tribal Customary Adoption

Tribal Customary Adoption (AB 1325) became operative in California on July 1, 2010. Tribal Customary Adoption (TCA) is considered an agency adoption, by and through the tribal customs, traditions, or laws of an Indian child's tribe, which transfers the custody of a child to the care and protection of adoptive parents without the termination of parental rights. (WIC §366.24; ACL-10-47)

Briefly, once a child is declared a dependent and an ICWA eligible child and the child's tribe is identified, Mendocino County Child Welfare Services (CWS) shall inform the tribe that TCA is a permanency option. It is up to the Indian child's tribe to select a permanent plan of TCA. The tribe informs CWS either in writing or orally of its interest to pursue TCA. The discussion whether to pursue TCA and discussions with the tribe about TCA should begin as soon as possible. CWS obtains information and begins discussions with the tribe.

CWS addresses the appropriateness of TCA as a permanent plan in the dispositional report to the court. (WIC §358.1) **Each tribe maintains the authority and discretion to disclose its tribal customs, laws, traditions, ceremonies and significant history to CWS.**

The key components of TCA are found in WIC §366.24 and requires true consultation between CWS and the Indian child's tribe. Consultation means more than just "checking in." It means the creation of a partnership between CWS and the Indian child's tribe as soon as the child is declared an ICWA eligible child. Consultation shall include verbal and written communication, in person meetings, team decision making, family group conferencing and all information shall be documented in foster care and adoption case records and/or in the case notes section of CWS/CMS.

TCA allows for adoption assistance funding, without the termination of parental rights.

The following is a guide for the stages of TCA – this is merely a guide and should not be substituted for consultation with the Indian child's tribe and county counsel.

Disposition:

- Family Reunification: includes early concurrent permanency planning
- CWS and the Indian child's tribe working together

Status Review Hearings:

- CWS obtains relevant information to update the court on the likelihood the child will be adopted and if TCA continues to be the appropriate plan
- If no family reunification services are offered or if those services are terminated the first WIC §366.26 hearing is set.
- CWS will receive written confirmation from the Indian child's tribe of its selection of TCA as the permanent plan for the child.
- CWS completes the written assessment of the child in collaboration with State Adoptions. State Adoptions will be meeting with the prospective TCA family as part of the child's assessment for the 366.26 report even if State Adoptions is not the designated agency to complete the home study.
- The case is then referred to the Indian child's tribe and State Adoptions to complete the WIC §366.24 process.

WIC §366.24 Process:

Mendocino County does not do its own adoptions. State Adoptions handles all adoptions for Mendocino County CWS.

- At the first WIC §366.26 hearing, a 120 day continuance may be granted to afford the Indian child's tribe and State Adoptions sufficient time to complete the home study, the Adam Walsh criminal background check and for the Indian child's tribe to complete the Tribal Customary Adoption Order.

- At the first WIC 366.26 hearing, the Social Worker must submit a 366.26 report and JV-320 findings and orders which order Tribal Customary Adoption as the permanent plan. Complete items #1, 2, 3, 4, 5 if applicable, 6, 7, 16a(3), 16b and/or 16c, 17, 18, 19, 20 if applicable, 21, 22, 24b and 25 (see sample JV-320, Appendix p.xxiv-xxviii)
1. Home Study:
 - The home study can begin early on if reunification is looking unsuccessful or a hearing is coming up to terminate services and can be completed prior to the first WIC §366.26.
 - The Indian child's tribe informs State Adoptions whether it will conduct its own home study or designate an adoption agency.
 - If the Indian child's tribe elects to conduct its own home study, State Adoptions will receive updates on the home study from the Indian child's tribe as to any problems or concerns and the status on completion.
 - If the Indian child's tribe designates an adoption agency to complete the home study, the Indian child's tribe requests the designee in writing directly to the designee. It is the obligation of the Indian child's tribe to ensure the agency is notified of its designation. The Indian child's tribe must provide a written request to that agency designating them to conduct an assessment of the applicant. The request should come from a tribal representative with authority to make a request on behalf of the tribe.
 - If State Adoptions is the designee, State Adoptions works with the Indian child's tribe to complete the home study and obtains final approval from the Indian child's tribe of the home study.
 - If another adoption agency is designated by the Indian child's tribe, State Adoptions will receive updates from the Indian child's tribe and the designee on the status of the home study and receives a final copy of the home study which has been either approved or denied by the Indian child's tribe.
 2. Adam Walsh Criminal Background Check:
 - If the Indian child's tribe conducts its own home study, State Adoptions performs the Adam Walsh level criminal background check. State Adoptions shall send a letter to the Indian child's tribe indicating the date the background check was done and the date the results were received. The letter shall indicate whether or not the individual received clearance or not.
 - If State Adoptions or a designee conducts the home study, State Adoptions or the designee shall perform the Adam Walsh level criminal background check. Again, State Adoptions or the designee shall send a letter to the Indian child's tribe indicating the date the background check was done and the date the results were received. The letter shall indicate whether or not the individual received clearance or not. If a Foster Family Agency (FFA) is the tribe's designee, the FFA completes the Adam Walsh level criminal background check.
 3. Tribal Customary Adoption Order:
 - The Indian child's tribe completes the Tribal Customary Adoption Order (TCAO) once the home study has been completed and approved by the Indian child's tribe and the Adam Walsh level criminal background check has been completed and is rendered clear.

- State Adoptions and CWS will receive updates on the progress of the TCAO from the Indian child's tribe or legal representative. The Indian child's tribe does not have to disclose private ceremonies or customs used during this process.
4. Continued WIC §366.26 Hearing:
- The Indian child's tribe files the TCAO with the Superior Court no less than 20 days prior to the Continued 366.26 hearing. The TCAO is served on all parties and State Adoptions receives a copy of the TCAO and the home study. No less than seven days prior to the continued WIC §366.26 hearing, CWS shall file and serve an addendum report which updates the Superior Court on the status of the home study and the TCAO. If there are any concerns, the Social Worker will need to talk with the tribe to try to resolve issues before the addendum is written. If TCA is proceeding, the TCAO must be attached to the continued WIC 366.26 findings and orders (#10 on JV-320). In addition to #10, complete #s 1, 2, 3, 4, 5 if applicable, 6, 7, 8a, 17, 18, 19, 20 if applicable, 21, 22, 24c and 25 (see sample JV-320, Appendix p. xxix-xxxiii).
 - The Superior Court shall review the TACO and afford full, faith and credit to the TCAO. Once full, faith and credit is afforded to the TCAO, the adoptive placement will be completed by State Adoptions and the supporting documents and placement agreement shall be reviewed with and signed by the applicant. (See Forms AD 512 and AD 907; all forms AD 558, 580, 907 have been modified by the Judicial Council to include TCA.)
 - The court shall have discretion to grant an additional continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. (WIC §366.24(c)(6).
 - If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders to determine the best permanent plan for the child pursuant to WIC § 366.26(b) (WIC §366.24(c)(6). The Social Worker will need to submit an addendum with a recommended alternative plan and new JV-320 findings and orders identifying the new permanent plan for the child.
5. Post WIC §366.26 Hearing Tasks (Permanency Reviews):
- The CWS Social Worker is responsible for preparing Post Permanency (PP) review reports until the TCA has been finalized.
 - Adoption Assistance payments will be provided to the adoptive family at the time of the adoptive placement and all necessary documents shall be compiled by State Adoptions and signed by the applicants. (See, AAP-4 which has been modified to include TCA)
 - The adoption petition is filed with the Superior Court.
 - State Adoptions files a final court report and the Superior Court issues a final decree of adoption that is inclusive of the TCAO.
 - The TCAO and the final court decree of adoption create the final order of adoption.
 - Once the TCA has been finalized, the CWS Social Worker will file a request for dismissal in the dependency court with a letter from State Adoptions confirming the adoption finalization.

C. ICWA Placement Advantages

Finding Indian foster homes is often difficult. The Act provides important benefits when working closely with tribal representatives in finding a placement. Perhaps the greatest advantage is that the Act allows for the placement of children with families (and creates foster care payment eligibility) for people who might not have otherwise been authorized to care for the child. (See section IV.B.2 (pre-dispositional placement with "Indian Custodian.")) Under the law, placements made "pursuant to the Act" are eligible to receive foster care payments. These placements include any home of a relative or non-relative which is approved, or specified by the Indian child's tribe. (Welf. & Inst. Code § 11401; All County Information Notice No.1-86-08, November 20, 2008.)

Working closely with tribal representatives in conducting a placement search has other advantages. Local tribes are particularly important resources in identifying relatives or Indian families who are interested in caring for court dependents and, under California law, must be consulted as part of the placement search.

In addition, the ICWA advocate should be part of the placement team, and, if diligent and active efforts are still unsuccessful in finding an ICWA compliant placement, an appropriate non-Indian family who is committed to keeping a child connected to his or her Indian heritage shall be the next alternative. (Welf. & Inst. Code § 361.31(i).) **Under ICWA, the tribe can, by resolution, change the placement preferences or unilaterally determine that a tribally-approved placement complies with the Act.** A tribal resolution supporting a placement may help avoid disputes and demonstrate that the ICWA legal requirements were met.

If there is reason to believe that the placement would not be a safe one, the county placement worker shall discuss the concern(s) with the tribe and allow for possible correction of the issue(s) of concern. The tribe may also contact the social worker to voice its concern for the child's safety in placement. However, licensing/approval requirements (e.g., the size of the home, the number of individuals residing in the home, whether more than two children share a bedroom) are **not** to be used as rationale for not placing an Indian child in a tribally-approved home. Ultimately, the final placement decision and responsibility is with the county child welfare services agency for determining the appropriateness of an Indian child placement.

The social worker must document all active efforts made to comply with the order of placement preference for Indian children in CWS/CMS - Contact Note/Delivered Service Log and in the court report under the "Relative Search, Identification and Assessment" section.

It is important to remember that even when parental rights have been terminated, ICWA applies and requires compliance with placement preference. The removal of an Indian child from his/her family and placement in a foster or adoptive home shall be consistent with the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or maintains social and cultural ties.

D. Placement Preference Checklist:

- Parents and child asked to identify extended family members;
- Tribe, Indian advocacy and licensing groups (see Appendix p. xxxvii-xl) were enlisted as part of the placement unit's efforts to help with the search for extended family and other appropriate placement options;
- Extended family members have been contacted about possible placement and informed a) that relatives are first preference for placement, and b) that services and financial support may be available to support a placement;
- Social worker has begun collaborating at the earliest possible date with the tribe on placement and concurrent planning efforts;
- If the child's foster care or adoptive placement does not satisfy highest ICWA priority, case file and court report must document the diligent and active efforts by CWS to locate an appropriate alternative placement and, when possible, tribal resolution or letter should be obtained approving proposed placement;
- If the child's foster care or adoptive placement is not within ICWA placement preferences, social worker must demonstrate "good cause" for modification.
- Note all efforts to locate ICWA compliant placements in the Delivered Services Log.

XI. CONCURRENT PLANNING

Concurrent Planning is developing an alternative plan for permanency for children who have been ordered into out-of-home placement if the parent(s) fail to reunify. The alternative plan could result in adoption, tribal customary adoption, legal guardianship or a planned permanent living arrangement. The alternative plan for the child's permanency is developed at the same time as the reunification plan for the parent(s) is developed and is initially presented in the dispositional report (Welf. & Inst. Code § 358.1).

A. Role of Workers in Concurrent Planning

1. **Court Unit Responsibilities** The Social Worker's responsibility in the dispositional report is to identify the likely concurrent plan for a child including the results of a referral to State Adoptions and whether the child's tribe recommends Tribal Customary Adoption as an appropriate concurrent permanent plan for the child if reunification is unsuccessful.

Prior to writing the dispositional report, the Social Worker must talk with the child's tribe (usually through the ICWA worker) to see if the child's tribe recommends Tribal Customary Adoption for a concurrent plan and note the discussion in the dispositional court report. If so, the Social Worker will make a referral to State Adoptions and inform State Adoptions that Tribal Customary Adoption is the tribe's recommended concurrent plan.
2. **Continuing Services Responsibilities** – Concurrent planning is an on-going process for all children in out-of-home placement that continues even after the dispositional report has been prepared. The concurrent plan must be reassessed as

the reunification plan is reassessed, at a minimum of every six months and discussed in the family reunification review court reports.

Post disposition, the Continuing Services Social Worker's responsibility is to continue to assess and/or follow up on the concurrent plan identified at the time of disposition, including the results of an adoption referral and whether the child's tribe recommends Tribal Customary Adoption as an appropriate concurrent permanent plan for the child if reunification is unsuccessful.

When Tribal Customary Adoption has been identified as the concurrent plan, the social worker must talk with the ICWA Advocate or tribal representative prior to each review hearing to determine the likelihood the child will be adopted and if Tribal Customary Adoption is or continues to be the appropriate concurrent plan. If the tribe has not previously identified Tribal Customary Adoption as the child's concurrent plan and is doing so post-disposition, the Social Worker must make a new referral to State Adoptions.

XII. QUALIFIED EXPERT WITNESS

The ICWA requires the testimony of a qualified expert witness when recommending foster care placement, legal guardianship or termination of parental rights in an Indian child custody proceeding. The expert witness must testify on the issue of whether continued custody by the parents or Indian custodian is likely to result in serious physical or emotional damage to the child. In addition, the court "shall consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices." Welfare & Institutions Code Section 224.6(b)(2). The court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony **only** if the parties involved have so stipulated in writing and the court is satisfied the agreement was made knowingly, intelligently, and voluntarily. (Welf. and Inst. Code section 224.6(e).) The case carrying social worker has the responsibility to identify the qualified Indian expert in consultation with their supervisor and County Counsel and provide copies of all court reports, and other documents as needed, to the expert. The case carrying social worker will work with County Counsel to prepare the qualified Indian expert.

A qualified expert witness may include, but is not limited to, a social worker (a qualified expert witness **cannot** be a Mendocino County HHS employee when the Department is the party seeking the removal or termination of parental rights), sociologist, physician, psychologist, traditional tribal therapist or healer, tribal spiritual leader, tribal historian, or tribal elder or other persons so designated by the tribe. Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of an Indian child custody proceeding:

1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;
2. Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe;

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

The court must consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. The information may be presented by the ICWA advocate, a person designated by the tribe, or another expert, in coordination with County Counsel. Therefore, it is critical that the social worker consult with County Counsel early in an ICWA case.

A. Disposition Hearing

At the Disposition Hearing (an original disposition hearing, a 387 disposition hearing on a supplemental petition and possibly a 342 disposition hearing on a subsequent petition), if the Department is recommending that an Indian child remain in out-of-home care, the court report must document what active efforts have been made to keep the Indian family together. At that hearing, unless waived (see below), a qualified expert witness must provide testimony that demonstrates, by clear and convincing evidence, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. If available, the expert's declaration or report, which should be received prior to the hearing, shall be filed with the court and served on all parties in a timely fashion. The court must also consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. The information may be presented by the ICWA advocate, a person designated by the tribe, or another expert, in coordination with County Counsel. Therefore, it is critical that the social worker consult with County Counsel early in an ICWA case.

B. Legal Guardianship

Prior to implementing a legal guardianship at the disposition hearing or section 366.26 hearing, the qualified expert must provide evidence that demonstrates, by clear and convincing evidence, that continued custody by a parent or Indian custodian is likely to result in serious physical or emotional damage to the child and the expert must discuss the social and cultural standards of the Indian child's tribe. If the expert's report is received prior to the disposition hearing or 366.26 hearing, it should be summarized in the report and attached to the report for all parties. The court must also consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. The information may be presented by the ICWA advocate, a person designated by the tribe, or another expert, in coordination with County Counsel. Therefore, it is critical that the social worker consult with County Counsel early in an ICWA case.

If the prospective legal guardian home is a non-Indian home, the social worker must document in the court report how the prospective legal guardian is committed to enabling the child to participate in the cultural and ceremonial events of the child's tribe. If the Indian child is already in the prospective legal guardian's home, document in the court report how the caretaker has demonstrated this commitment by discussing family visits and participation in cultural and ceremonial events of the child's tribe.

C. Termination of Parental Rights

Prior to termination of parental rights at the section 366.26 hearing, the qualified expert must provide evidence that demonstrates, beyond a reasonable doubt, that continued custody by a parent or Indian custodian is likely to result in serious physical or emotional damage to the child. If the expert's report is received prior to the 366.26 hearing, it should be summarized in the report and attached to the report for all parties. The court must also consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. The information may be presented by the ICWA advocate, a person designated by the tribe, or another expert, in coordination with County Counsel. Therefore, it is critical that the social worker consult with County Counsel early in an ICWA case.

If the prospective adoptive home is a non-Indian home, the social worker must document in the court report how the prospective adoptive parent is committed to enabling the child to participate in the cultural and ceremonial events of the child's tribe. If the Indian child is already in the prospective adoptive home, document in the court report how the caretaker has demonstrated this commitment by discussing family visits and participation in cultural and ceremonial events of the child's tribe.

D. Waiver of Qualified Expert

A waiver of the requirement for expert testimony can be made by the tribe and the parents if the court finds that it is knowing, intelligent and voluntary. Cal. Rule of Ct., rule 5.484(a)(2). Such a waiver stipulation should be made in writing, signed by all parties and filed with the court.

XIII. COURT REPORTS

The court report is the social worker's primary mechanism to communicate to the judge, the tribe, the parties, and the attorneys that the mandates of ICWA were followed. Due to the unique evidentiary status of social worker's court reports, the importance of a complete accounting of ICWA efforts cannot be overemphasized. As discussed in the relevant sections above, each court report should contain an ICWA section that, at a minimum, describes the date and outcome of the court's ICWA determination. When ICWA does apply, the court report should discuss the current status of collaboration with the tribe on "active efforts" and placement, as well as the contact with the tribe's ICWA advocate.

Court Report Checklist:

- Each report must contain separate sections that include a review of (a) notice and status of determination of whether minor is an "Indian Child"; (b) identification of services provided to the child and parents through Indian programs; (c) discussion of how placement fits within the ICWA placement preference; and (d) identification of Indian expert.
- Detention report designates whether an "emergency removal" was made and includes facts to demonstrate the child was in danger of imminent harm if left with parents or Indian Custodian;

- Case plan discussed in report makes clear that “active efforts” were/are being made and services were/are being offered through culturally-appropriate providers;
- Child, child’s parents and/or Indian custodian’s involvement in and exposure to Indian-related programs is documented;
- Report reflects how placement preferences were followed or describes current efforts to find appropriate placement;
- Correct ICWA findings and orders were used and County Counsel was consulted.

XIV. INVALIDATION

If ICWA notice is not proper, active efforts were not provided, or there was not a qualified ICWA expert witness or waiver thereof, any Indian child, parent, Indian custodian, or tribe may petition the court to invalidate the proceedings. Invalidation is the legal remedy for violations of the ICWA and state law. If the minute order and the findings and orders indicate that the court heard the case without verification of the child’s Indian status, grounds for invalidation may exist and all parties should consult legal counsel. (25 US Code Section 1914; WIC 224(e))

XV. ACKNOWLEDGEMENTS

The Mendocino County ICWA Roundtable convened a work group during 2010-2011 to revise the Draft ICWA Protocol report to the Roundtable as to their progress and future steps. Every tribe in Mendocino County was invited and encouraged to participate.

The work group gratefully acknowledges the contributions of its participants: Lorraine Laiwa, Dolli Rose, Elizabeth Elgin-DeRouen and Laila DeRouen, Indian Child & Family Preservation Program, representing Stewarts Point Rancheria, Lytton Rancheria and Coyote Valley Reservation; Christine Dukatz, Manchester-Point Arena Tribe; Beverly Rodriguez, Redwood Valley Rancheria; Elaine Sparks, Sherwood Valley Rancheria; Maureen Geary, Maier Pfeffer Kim & Geary, LLP; Alex Cleghorn, California Indian Legal Services; Sandra Applegate, Mendocino County Counsel’s Office; and Jena Conner, Mendocino County Health and Human Services Agency.

APPENDIX

SAMPLE ICWA-010(A)

ICWA-010(A)

CHILD'S NAME: <u>Bart Simpson</u>	CASE NUMBER: <u>SCUK-JVSQ-xx-xxxxx-xx</u>
--------------------------------------	--

1. Name of child: Bart Simpson

Indian child inquiry made not made and (check all that apply):

- a. The child is or may be a member of or eligible for membership in a tribe.
 Name of tribe(s): Cherokee
 Name of band (if applicable): _____
- b. The child's parents, grandparents, or great-grandparents are or were members of a tribe.
 Name of tribe(s): Cherokee
 Name of band (if applicable): _____
- c. The residence or domicile of the child, child's parents, or Indian custodian is in a predominantly Indian community.
- d. 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 or Tribal Temporary Assistance to Needy Families (TANF).
- e. The child may have Indian ancestry.
- f. The child has no known Indian ancestry.
- g. Other reason to know the child may be an Indian child: _____

Person(s) questioned:
 Name: Homer Simpson
 Address: 100 Simpson Lane
 City, state, zip: Ukiah, CA 95482
 Telephone: (707) 123-4567
 Date questioned: 1/15/11
 Means of communication: in person
 Relationship to child: father
 Summary of information: His grandparents have Cherokee heritage.

Person(s) questioned:
 Name: _____
 Address: _____
 City, state, zip: _____
 Telephone: _____
 Date questioned: _____
 Means of communication: _____
 Relationship to child: _____
 Summary of information: _____

h. Information about other persons questioned is attached.

2. If this is a delinquency proceeding under Welfare and Institutions Code, § 601 or 602:

- The child is in foster care.
- It is probable the child will be entering foster care.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1/15/11

Best Social Worker Ever, MSW
(TYPE OR PRINT NAME)



(SIGNATURE)

SAMPLE ICWA 020 – PARENT 1

ICWA-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mendocino County HHSA P.O. Box 839 Ukiah, CA 95482 TELEPHONE NO.: (707) 463-7990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO STREET ADDRESS: 100 N. State St. MAILING ADDRESS: 100 N. State St., Room 107 CITY AND ZIP CODE: Ukiah, CA 95482 BRANCH NAME: Ukiah	
CASE NAME: Bart Simpson	
CHILD'S NAME: Bart Simpson	
PARENTAL NOTIFICATION OF INDIAN STATUS	CASE NUMBER: SCUK-JVSQ-xx-xxxxx-xx

To the parent, Indian custodian, or guardian of the above-named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.

1. Name: Marge Simpson
2. Relationship to child: Parent Indian custodian Guardian Other _____
3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe(s) (name each): _____
 Name of band (if applicable): _____
- b. I may have Indian ancestry.
 Name of tribe(s): _____
 Name of band (if applicable): _____
- c. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe (name each): Cherokee
 Name of band (if applicable): _____
- d. I have no Indian ancestry as far as I know.
- e. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
 Name of tribe (name each): _____
 Name of band (if applicable): _____
 Name and relationship of ancestor(s): _____
4. A previous form ICWA-020 has has not been filed with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1/31/11

Marge Simpson
(TYPE OR PRINT NAME)

(SIGNATURE)

Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.

SAMPLE ICWA 020 – PARENT 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mendocino County HHS P.O. Box 839 Ukiah, CA 95482 TELEPHONE NO.: (707) 463-7990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY CASE NUMBER: SCUUK-JVSQ-XX-XXXXX-XX
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO STREET ADDRESS: 100 N. State St. MAILING ADDRESS: 100 N. State St., Room 107 CITY AND ZIP CODE: Ukiah, CA 95482 BRANCH NAME: Ukiah	
CASE NAME: Bart Simpson	
CHILD'S NAME: Bart Simpson	
PARENTAL NOTIFICATION OF INDIAN STATUS	

To the parent, Indian custodian, or guardian of the above-named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.

1. Name: Homer Simpson
2. Relationship to child: Parent Indian custodian Guardian Other _____
3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe(s) (name each): Cherokee
 Name of band (if applicable): _____
- b. I may have Indian ancestry. Cherokee
 Name of tribe(s): _____
 Name of band (if applicable): _____
- c. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe (name each): Cherokee
 Name of band (if applicable): _____
- d. I have no Indian ancestry as far as I know.
- e. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
 Name of tribe (name each): Cherokee
 Name of band (if applicable): _____
 Name and relationship of ancestor(s): paternal grandmother & paternal great-grandparents
4. A previous form ICWA-020 has has not been filed with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1/31/11

Homer Simpson

(TYPE OR PRINT NAME)



(SIGNATURE)

Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.

SAMPLE ICWA 030

CONFIDENTIAL

ICWA-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mendocino Co. Health & Human Services Agency 727 S. State St. Ukiah, California 95482-0839 TELEPHONE NO.: (707) 463-7990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Mendocino STREET ADDRESS: 100 N. State Street MAILING ADDRESS: 100 N. State St. Room 107 CITY AND ZIP CODE: Ukiah 95482 BRANCH NAME: UKIAH BRANCH - JUVENILE COURT TELEPHONE NO:			
CASE NAME: Bart Simpson			
NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD (check all that apply): <input checked="" type="checkbox"/> JUVENILE <input checked="" type="checkbox"/> Dependency <input type="checkbox"/> Delinquency <input type="checkbox"/> ADOPTION <input type="checkbox"/> CONSERVATORSHIP* <input type="checkbox"/> CUSTODY (Fam. Code, § 3041) <input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS <input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT		CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX	
		HEARING DATE: 02/09/2011	DEPT.: F

NOTICE TO (check all that apply):

- Parents or Legal Guardians Tribes Indian Custodians Sacramento Area Director, BIA
 Secretary of the Interior

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child (a separate notice must be filed for each child):

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
Bart Simpson	08/01/2001	Ukiah, CA

2. HEARING INFORMATION

a. Date: 02/09/2011	Time: 9:00 a.m.	<input checked="" type="checkbox"/> Dept.: F	<input type="checkbox"/> Room:
<input checked="" type="checkbox"/> Type of hearing: Jurisdiction			

b. Address and telephone number of court same as noted above is (specify):

3. The child is or may be eligible for membership in the following Indian tribes (list each):
 Cherokee

See Attached "Notice to Tribes"

***Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.**

CASE NAME: Bart Simpson	CASE NUMBER: SCUJ-JVSQ-XX-XXXX-XX
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4. Under the Indian Child Welfare Act (ICWA) and California law:

- a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
- b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
- c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
- d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
- e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible adoption of the child.
- f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
- h. An Indian custodian is any person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

5. INFORMATION ON THE CHILD NAMED IN 1

- a. The child's birth certificate is attached unavailable
- b. A copy of the tribal registration card of the child the parent is attached.
- c. Biological relative information is listed below. *(Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A.") (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)*

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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Biological Mother	Biological Father
Name (include maiden, married, and former names or aliases): Marge Simpson aka Margie Simpleton (alias) aka Marge Jones (maiden name)	Name (include former names or aliases): Homer Simpson aka "Homie" Simpson (alias)
Current address: 100 Simpson Lane Ukiah, CA 95482	Current address: 100 Simpson Lane Ukiah, CA 95482
Former address: 55 Hollywood Blvd. Los Angeles, CA 90027	Former address: Mendocino County Jail 951 Low Gap Rd. Ukiah, CA 95482
Birth date and place: 06/28/1970, New York, NY	Birth date and place: 01/08/1969, East Fork, OK
Tribe or band, and location: none	Tribe or band, and location: Cherokee
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: Cherokee
If deceased, date and place of death: Does not apply	If deceased, date and place of death: Does not apply
Additional information: See attached ICWA – Parent History Chart	Additional information: See attached ICWA – Parent History Chart

5. c. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Mother (Child's Maternal Grandmother)	Father's Biological Mother (Child's Paternal Grandmother)
Name (include maiden, married, and former names or aliases): Jane Jones aka Jane Smith (maiden name)	Name (include maiden, married, and former names or aliases): Mary Angelina Simpson aka Mary Angelina Redbird (maiden name)
Current address: 500 S. Dora St. Ukiah, CA 95482	Current address: 100 N. State St. Ukiah, CA 95482
Former address: 10 F. St. Sacramento, CA 95818	Former address: East Fork, OK
Birth date and place: 12/12/1955, Sacramento, CA	Birth date and place: 06/11/1946, East Fork, OK
Tribe or band, and location: none	Tribe or band, and location: Cherokee
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: Cherokee
If deceased, date and place of death: Unknown	If deceased, date and place of death: Does not apply

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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Mother's Biological Father (Child's Maternal Grandfather)	Father's Biological Father (Child's Paternal Grandfather)
Name (include former names or aliases): Johnny Jones	Name (include former names or aliases): Jack Beanstalk Simpson
Current address: 700 N. Highway 101 Willits, CA 95490	Current address: 4913 Helbush Ave. Lakeport, CA 95453
Former address: 123 CPS Lane Ukiah, CA 95482	Former address: East Fork, OK
Birth date and place: 07/27/1947, San Francisco, CA	Birth date and place: 10/15/1947, Beanstalk, OK
Tribe or band, and location: None	Tribe or band, and location: None
Tribal membership or enrollment number, if known: None	Tribal membership or enrollment number, if known: None
If deceased, date and place of death: Does not apply	If deceased, date and place of death: Does not apply

5. d. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Grandmother (Child's Maternal Great-grandmother)	Mother's Biological Grandmother (Child's Maternal Great-grandmother)
Name (include maiden, married, and former names or aliases): Betsy Smith aka Betsy Ross (maiden name)	Name (include maiden, married, and former names or aliases): Julie Jones Julie Brown (maiden name)
Current address: Sacramento, CA	Current address: Does not apply
Former address: North Carolina & Georgia	Former address: San Francisco, CA
Birth date and place: 8/3/1930, place of birth unknown	Birth date and place: Sacramento, CA, date of birth unknown
Tribe or band, and location: None	Tribe or band, and location: None
Tribal membership or enrollment number, if known: None	Tribal membership or enrollment number, if known: None
If deceased, date and place of death: Does not apply	If deceased, date and place of death: 3/13/2007, Sacramento, CA

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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Mother's Biological Grandfather (Child's Maternal Great-grandfather)	Mother's Biological Grandfather (Child's Maternal Great-grandfather)
Name (include former names or aliases): Chuck E. Smith	Name (include former names or aliases): Donald Jones
Current address: Unknown	Current address: Does not apply
Former address: Unknown	Former address: Unknown
Birth date and place: Unknown	Birth date and place: Unknown
Tribe or band, and location: None	Tribe or band, or location: None
Tribal membership or enrollment number, if known: None	Tribal membership or enrollment number, if known: None
If deceased, date and place of death: Unknown	If deceased, date and place of death: Deceased, date & place of death, unknown

5. e. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Father's Biological Grandmother (Child's Paternal Great-grandmother)	Father's Biological Grandmother (Child's Paternal Great-grandmother)
Name (include maiden, married, and former names or aliases): Sylvia Redbird Sylvia Vaughn (maiden name)	Name (include maiden, married, and former names or aliases): Daisy Simpson Daisy Duckling (maiden name)
Current address: Does not apply	Current address: Unknown
Former address: Cherokee, OK	Former address: Unknown
Birth date and place: 10/5/1925, Cherokee, OK	Birth date and place: Unknown
Tribe or band, and location: Cherokee	Tribe or band, and location: None
Tribal membership or enrollment number, if known: Cherokee	Tribal membership or enrollment number, if known: None
If deceased, date and place of death: 2005, place of death unknown	If deceased, date and place of death: Unknown

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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Father's Biological Grandfather (Child's Paternal Great-grandfather)	Father's Biological Grandfather (Child's Paternal Great-grandfather)
Name (include former names or aliases): James Redbird	Name (include former names or aliases): Marvin Simpson
Current address: Does not apply	Current address: Unknown
Former address: Cherokee, OK	Former address: Unknown
Birth date and place: 01/01/1920, Cherokee, OK	Birth date and place: Unknown
Tribe or band, and location: Cherokee	Tribe or band, or location: None
Tribal membership or enrollment number, if known: Cherokee	Tribal membership or enrollment number, if known: None
If deceased, date and place of death: 2000, place of death unknown	If deceased, date and place of death: Unknown

5. f. **INFORMATION ON THE CHILD NAMED IN 1**

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	Indian Custodian Information
Name (include maiden, married, and former names or aliases): Does not apply	Name (include maiden, married, and former names or aliases): Does not apply
Current address: Does not apply	Current former address: Does not apply
Former address: Does not apply	Former address: Does not apply
Birth date and place: Does not apply	Birth date and place: Does not apply
Tribe or band, and location: Does not apply	Tribe or band, and location: Does not apply
Tribal membership or enrollment number, if known: Does not apply	Tribal membership or enrollment number, if known: Does not apply

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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6. **ADDITIONAL INFORMATION ON CHILD NAMED IN 1**
(Indicate if any of the information requested below is unknown.)

- a. Biological birth father is named on birth certificate. Unknown
- b. Biological birth father has acknowledged parentage. Unknown
- c. There has been a judicial declaration of parentage. Unknown
- d. Other alleged father (name each):
Does not apply

Unknown

The following optional questions may be helpful in tracing the ancestry of the child in 1.

7. Has the child in 1 or any members of his or her family ever (if "yes", provide the information requested below):

- a. Attended an Indian school? Yes No Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?

- Yes No Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given
Bart Simpson	Vaccines	Unknown	Consolidated Tribal Health Project, 6991 N. State St., Redwood Valley, CA 95470

c. Lived on federal trust land, a reservation or rancheria, or an allotment? Yes No Unknown

Name/relationship to child	Name/description of property and address	Dates of residence
James & Sylvia Redbird, paternal great-grandparents	Cherokee Nation, OK	unknown

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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d. Other relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)

Name/relationship to child	Current and former address	Birth date and place	Tribe, band, and location
Cheney Simpson; paternal uncle	Redding, CA	Unknown	None
Lianna Redbird; paternal aunt	West Hollywood, CA	Unknown	Cherokee
Stephan Duckling; cousin	Redwood Valley, CA	Unknown	None

8. Tribal affiliation and location of child in 1 (check all that apply):

- a. 1906 Final Roll Name of relative listed on roll:
Relationship to child in 1:
- b. Roll of 1924 Name of relative listed on roll:
Relationship to child in 1:
- c. California Judgment Roll. Roll number, if known:

9. Additional party information (list the name, mailing address, and telephone number of all parties notified):

<u>Name</u>	<u>Mailing Address</u>	<u>Telephone Number</u>
Marge Simpson	100 Simpson Lane Ukiah, CA 95482	(707) 123-4567
Homer Simpson	100 Simpson Lane Ukiah, CA 95482	(707) 123-4567
John Passalacqua	107 West Perkins St., Suite 12 Ukiah, California 95482	(707) 462-5806
Julie Spoljaric	104 N School St Ukiah, California 95482	(707) 468-9140
Tanya M. Ridino	P.O. Box 908 Ukiah, California 95482	(707) 462-4117 305

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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DECLARATION

(To be completed, dated, and signed in all cases by each petitioner named in companion petition.)

I am the petitioner or we are all of the petitioners in this proceeding. In response to items 5 – 9 of this form, I/we have given all information I/we have about the relatives and, if applicable, the Indian custodian, of the child named in item 1 of this form.

I/We declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: January 24, 2011

Minnie Mouse, Social Worker

(TYPE OR PRINT NAME)



(SIGNATURE)

Date: January 24, 2011

Billie Timpson, Family Outreach Specialist

(TYPE OR PRINT NAME)



(SIGNATURE)

Date:

(TYPE OR PRINT NAME)




(SIGNATURE)

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQL-XX-XXXX-XX
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**CERTIFICATE OF MAILING –JUVENILE COURT PROCEEDINGS
(To be completed by social worker or probation officer.)**

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*): Ukiah, CA on (*date*): January 24, 2011


Date: January 24, 2011 Title: Legal Clerk Department: Mendocino Co. HHS

Judy Jetson, Legal Clerk  _____
(TYPE OR PRINT NAME) (SIGNATURE)

**DECLARATION OF MAILING –ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS
(To be completed by the attorney for Petitioner if Petitioner is represented.)**


I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter. I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*): _____ on (*date*): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: _____
_____  _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY)

**CERTIFICATE OF MAILING –PROBATE PROCEEDINGS
(To be completed by the clerk of the court if Petitioner is unrepresented.)**

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at (*place*): _____ on (*date*): _____

Date: _____ Title: _____ Department: _____
_____  _____
(TYPE OR PRINT NAME) (SIGNATURE)

This form and all return receipts must be filed with the court.

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS,
TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED**

- | | | | |
|---|---|--|--|
| <p>1. <input checked="" type="checkbox"/> Parent (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | <p>Marge Simpson
100 Simpson Lane
Ukiah, California 95482</p> | <p>2. <input checked="" type="checkbox"/> Parent (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | <p>Homer Simpson
100 Simpson Lane
Ukiah, CA 95482</p> |
| <p>3. <input type="checkbox"/> Guardian (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | | <p>4. <input type="checkbox"/> Guardian (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | |
| <p>5. <input type="checkbox"/> Indian Custodian (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | | <p>6. <input type="checkbox"/> Indian Custodian (Name):
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | |
| <p>7. <input checked="" type="checkbox"/> Sacramento Area Director
Bureau of Indian Affairs
Street address:
City and zip code:
Telephone number:</p> | <p>2800 Cottage Way
Sacramento, CA 95825</p> | <p>8. <input checked="" type="checkbox"/> Secretary of the Interior
U.S. Department of the Interior
Street address:
City, state and zip code:
Telephone number:</p> | <p>1849 C Street, N.W.
Washington D.C. 20240</p> |
| <p>9. <input checked="" type="checkbox"/> Tribe (Name):
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | <p>Cherokee Nation
Linda Woodward,
Director, Children & Family
Services
P.O. Box 948
Tahlequah, OK 74465
(918) 458-6900</p> | <p>10. <input checked="" type="checkbox"/> Tribe (Name):
Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:</p> | <p>Eastern Band of Cherokee
Indians
Barbara Jones
Program Manager, Family
Support Services
508 Goose Creek Road
P.O. Box 507
Cherokee, NC 28719
(828) 497-6092</p> |

CASE NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXX-XX
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11. Tribe (Name):

United Keetoowah Band of Cherokee Indians in Oklahoma
Addressee (Name): Sonya Cochran/Mary L. Carey
Title: ICW Director
Street address:
Mailing address: P.O. Box 726
City, state and zip code: Tahlequah, OK 74465
Telephone number: (918) 456-9200

12. Tribe (Name):

Addressee (Name):
Title:
Street address:
Mailing address:
City, state and zip code:
Telephone number:

Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.

Additional tribes served listed on attached form ICWA-030(A)

NOTICE TO TRIBES- ICWA-030 ATTACHMENT



Mendocino County Health and Human Services Agency

"Healthy People, Healthy Communities"

Stacey Cryer ♦ Director

Pat Meek – Assistant Director

Children and Family System of Care

Stacey Cryer ♦ Branch Director

Providing Social Services and Mental Health Services



Ukiah Offices: Social Services • 727 S. State St. • P.O. Box 839 • Ukiah • CA • 95482 • (707) 463-7990 • FAX (707) 463-7960
Mental Health • 860 N. Bush St. • Ukiah • CA • 95482 • (707) 463-4303 • FAX (707) 463-6395
Fort Bragg Offices: Social Services • 825 S. Franklin St. • P.O. Box 1306 • Fort Bragg • CA • 95437 • (707) 962-1102 • FAX (707) 962-1110
Mental Health • Avila Center • 790-B S. Franklin St. • Fort Bragg • CA • 95437 • (707) 964-4747 • FAX (707) 961-2698
Willits Integrated Services Center: Social Services • 221 S. Lenore Ave • Willits • CA • 95490 • (707) 456-3700 • FAX (707) 456-3701
Mental Health • 211-B S. Lenore Ave • Willits • CA • 95490 • (707) 456-3850 • FAX (707) 456-3808

NOTICE TO TRIBES

In your written response to the attached ICWA-030 Notice of Child Custody Proceedings for Indian Child, Mendocino County Social Services requests that you address the following questions:

1. Is the child a member of the tribe?
2. If the child is not a member, is the child eligible for membership in the tribe?
3. Is the child's biological mother a member of the tribe?
4. Is the child's biological father a member of the tribe?

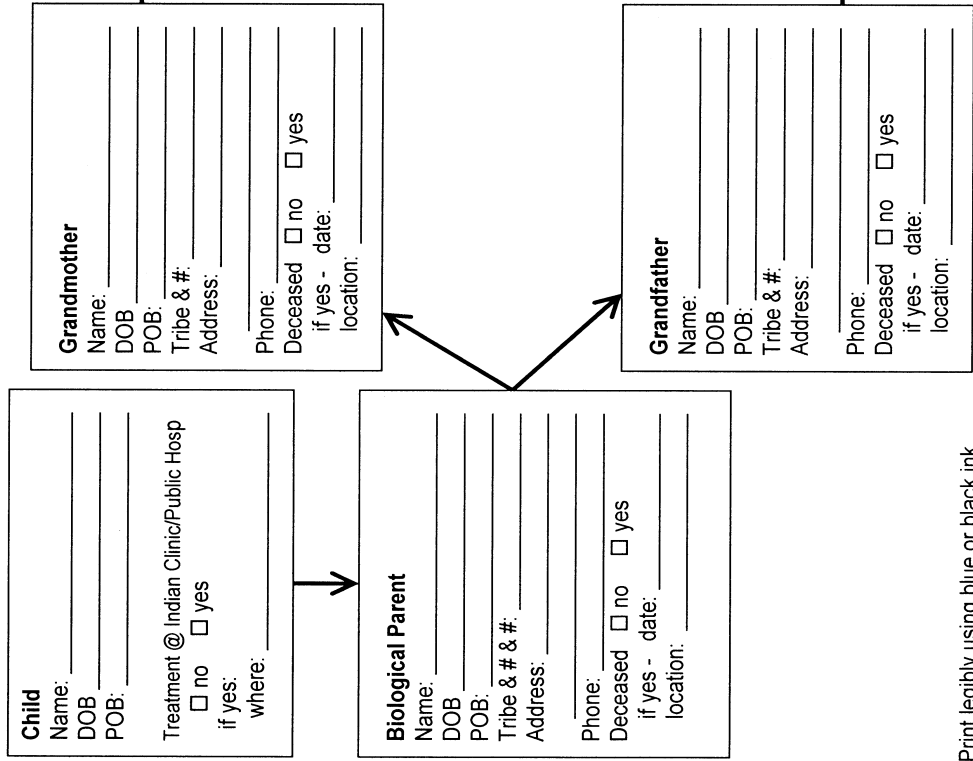
PLEASE NOTE:

If you respond that the child is not "enrolled" or is not eligible for "enrollment" in your tribe, the court cannot consider your response to be determinative of the child's membership status in the tribe unless you also confirm in writing that enrollment is a prerequisite for membership under your tribal law or custom. (California Welfare and Institutions Code Section 224.3(e)(1))

ICWA PARENT HISTORY CHART

ICWA Parent History Chart – Biological Parent

Provide the following in as much detail as possible.
 DOB = Date of Birth - POB = Place of Birth



Child
 Name: _____
 DOB: _____
 POB: _____
 Treatment @ Indian Clinic/Public Hosp
 no yes
 if yes: _____
 where: _____

Biological Parent
 Name: _____
 DOB: _____
 POB: _____
 Tribe & #: _____
 Address: _____
 Phone: _____
 Deceased no yes
 if yes - date: _____
 location: _____

Grandmother
 Name: _____
 DOB: _____
 POB: _____
 Tribe & #: _____
 Address: _____
 Phone: _____
 Deceased no yes
 if yes - date: _____
 location: _____

Grandfather
 Name: _____
 DOB: _____
 POB: _____
 Tribe & #: _____
 Address: _____
 Phone: _____
 Deceased no yes
 if yes - date: _____
 location: _____

<p>Great-Grandmother Name: _____ DOB: _____ POB: _____ Tribe & #: _____ Address: _____ Phone: _____ Deceased <input type="checkbox"/> no <input type="checkbox"/> yes if yes - date: _____ location: _____</p>	<p>Great-Great Grandmother Name: _____ DOB: _____ POB: _____ Tribe & #: _____</p>
<p>Great-Grandfather Name: _____ DOB: _____ POB: _____ Tribe & #: _____ Address: _____ Phone: _____ Deceased <input type="checkbox"/> no <input type="checkbox"/> yes if yes - date: _____ location: _____</p>	<p>Great-Great Grandfather Name: _____ DOB: _____ POB: _____ Tribe & #: _____</p>

Print legibly using blue or black ink
Fill out from the perspective of the child

Completed by: _____ Date: _____

If SW is completing who is giving info.: _____

SOC 155C- VOLUNTARY PLACEMENT INDIAN CHILD

STATE OF CALIFORNIA – HEALTH AND HUMAN SERVICES AGENCY

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

VOLUNTARY PLACEMENT AGREEMENT PARENT/AGENCY (Indian Child)

COMPLETE IN DUPLICATE:

One copy to: Parents of Guardian
Child's Social Service Record

CASE NAME	CASE NUMBER
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I request that the _____ County Welfare Department place my child _____

in a licensed/certified foster care facility. My reason for the request is _____

I know that voluntary foster care is limited to six months and that my child will be returned to me by _____ (DATE)

The Agency agrees to:

1. Place my child in accordance with the provisions of the Indian Child Welfare Act (25 United States Code 9001 et. seq.)
2. Arrange for care of my child in a licensed/certified foster care facility.
3. Select the home with the participation of me and my child.
4. Supervise my child while in foster care.
5. Arrange for services which will help my child return home, discuss those services with me and list them in a written service plan.
6. Arrange for medical care. Notify me of emergency medical care or hospitalization of my child.
7. Notify me if a change in foster care facility is necessary.
8. Provide a grievance procedure.
9. Carry out legal consent provisions on behalf of my child in this agreement.

Recognizing my responsibility for the care and welfare of my child, I agree to:

1. Assist the Welfare Department in determining my financial responsibility for the care of my child while in foster care.
2. Keep the Agency advised at all times of my address and telephone number.
3. Visit my child as per arrangement with the placement agency.
4. Allow the Agency to move my child, if necessary, to another foster care facility.
5. My child's participation in the activities planned by the placing agency and/or foster care facility, including trips within the state.
6. Carry out my part of the service plan.
7. Discuss with the Agency placement problems of my child.
8. Give reasonable notice to the placement worker if I plan to move my child, although I retain the right to withdraw my consent to foster care placement at any time.
9. Authorize the foster parent to give consent on behalf of my child except as prohibited by me in the agreement.

I agree the person providing care for my child may give legal consent on behalf of my child except as limited in the following statement.
(if more space is needed use the reverse side of this form).

THE UNDERSIGNED HAS CUSTODY AND CONTROL OF THE CHILD				CERTIFICATION	
SIGNATURE OF PARENT		SIGNATURE OF WITNESS TO PARENT		<i>The terms and consequences of the voluntary signing of consent were fully explained to the Indian parent by the Agency representative in my presence, in a language understood by the parent. The right to withdraw consent at any time was also explained.</i>	
SIGNATURE OF PARENT		SIGNED IN PRESENCE OF			
ADDRESS		REPRESENTATIVE, COUNTY WELFARE DEPARTMENT			
		ADDRESS			
HOME PHONE		ALTERNATE PHONE		SIGNATURE OF JUDGE	
		DATE SIGNED		SUPERIOR COURT	
				DATE SIGNED	

SOC 155C (1/00)

PLEASE READ IMPORTANT INFORMATION ON THE REVERSE SIDE
Required Form
No Substitute Permitted

Under provisions specified by State Child Welfare Services, if a child has been voluntarily placed for six consecutive months one of the following actions will be taken (*except for children otherwise provided for by State Department of Social Services regulations*):

- (1) Return the child to the physical custody of his or her parents or guardians.
- (2) Refer the child to a licensed adoption agency for consideration of adoptive planning and receipt of permanent relinquishment of care and custody rights from the parents pursuant to subdivision (m) of Section 224 of the California Civil Code.
- (3) Apply for a petition pursuant to Welfare and Institutions Code Section 332 and file the petition with the Juvenile court to have the child declared a dependent child of the court under Welfare and Institutions Code Section 300.

MJV-150 REQUEST FOR TELEPHONE APPEARANCE

ADVISEMENT REGARDING TELEPHONE APPEARANCE

1. I know that I can personally appear at this hearing, and I give up that right. I agree to be duly sworn upon request by the court clerk, holding up my right hand and agreeing under penalty of perjury under the laws of the State of California to tell the truth and nothing but the truth.
2. I understand that if I do not make the proper arrangements for a telephone appearance as set out in local rules or in directions provided by the court, the matter may proceed without my personal or telephone appearance and the court may decide my case based on the documents filed and any testimony given for this hearing.
3. I understand that the court may decide at any time to require my personal appearance and continue my hearing.

I have read the Advisement Regarding Telephone Appearance section of this form and I understand that the terms apply to me.

Date: _____

Signed: _____

MJV-151 ORDER ON REQUEST FOR TELEPHONE APPEARANCE

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO**

<input type="checkbox"/> Ukiah Main Courthouse 100 North State Street Ukiah, CA 95482	<input type="checkbox"/> Ten Mile Branch 700 South Franklin Street Fort Bragg, CA 95437
In the matter of: <p align="center">Child(ren)</p>	
ORDER re: REQUEST FOR TELEPHONE APPEARANCE (Juvenile Dependency)	Case No.:

IT IS HEREBY ORDERED THAT:

Pursuant to Local Rule of Court 11.1, this *Request for Telephone Appearance (Juvenile Dependency)*, filed by _____, on _____, in the above entitle matter is hereby:

- GRANTED** as to Hearing date: _____
- DENIED** as untimely.
- DENIED:** _____

Dated: _____

Judge of Superior Court

SAMPLE WIC 366.26 FINDINGS AND ORDERS

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mendocino County HHS Children and Family System of Care 727 S. State St. Ukiah, CA 95482 TELEPHONE NO.: (707) 463-7990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO STREET ADDRESS: 100 N. State Street MAILING ADDRESS: 100 N. State Street, Room 107 CITY AND ZIP CODE: Ukiah, CA 95482 BRANCH NAME: Ukiah Branch- Juvenile Court	
CHILD'S NAME: Bart Simpson	
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX

Child's name: Bart Simpson Date of birth: 08/01/2001 Age: 10 yrs. Parent's name (if known): Marge Simpson <input checked="" type="checkbox"/> Mother <input type="checkbox"/> Father Parent's name (if known): Homer Simpson <input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father

1. a. Hearing date: **10/5/2011** Time: **9:00 a.m.** Dept.: **F** Room:
- b. Judicial officer: **David Nelson**
- c. Parties and attorneys present:
Mother, Father, Mother's attorney, Father's attorney, Child's attorney, Tribal Representative, Tribe's attorney (if applicable), County Counsel, Social Worker, Child (if will be present) and State Adoptions.

2. The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), or 366.25(b) and the report and recommendation of the social worker probation officer and other evidence.
3. The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. Notice has been given as required by law.
- b. This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. **For child 10 years of age or older who is not present:** The child received proper notice of his or her right to attend the hearing and was given an opportunity to be present.
6. The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
 parent (name): **Marge Simpson** Mother Father
 parent (name): **Homer Simpson** Mother Father

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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8. a. There is clear and convincing evidence that it is likely the child will be adopted.
- b. This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (If item 8a or 8b is checked, go to item 9 **unless** item 10, 11, 12, or 13 is applicable. If item 8a or 8b is not checked, go to item 15 or 16.) **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**
9. The parental rights of
- a. parent (name): Mother Father
- b. parent (name): Mother Father
- c. alleged fathers (names):
- d. unknown mother all unknown fathers
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**
(If item 9 is checked, go to item 17.)
10. This case involves an Indian child. The parental rights of
- a. parent (name):
- b. parent (name):
- c. Indian custodians (names):
- d. alleged fathers (names):
- e. unknown mother all unknown fathers
are modified in accordance with the tribal customary adoption order of the (specify): _____ tribe,
dated _____ and comprising _____ pages, which is accorded full faith and credit and fully incorporated herein.
The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal
customary adoptive placement in accordance with the tribal customary adoption order.
(If item 10 is checked, go to item 17.)
11. The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. (If item 11 is checked, go to item 15 or 16.)
12. Termination of parental rights would be detrimental to the child for the following reasons (If item 12 is checked, check reasons below and go to item 15 or 16):
- a. The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b. The child is 12 years or older and objects to termination of parental rights.
- c. The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d. The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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12. e. There would be substantial interference with the child's sibling relationship.
 f. The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
 (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
 (2) The child's tribe has identified guardianship or another permanent plan for the child.

13. Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child (*if item 13 is checked, check reasons below and go to item 14*):
 a. is a member of a sibling group that should stay together.
 b. has a diagnosed medical, physical, or mental disability.
 c. is 7 years or older.

14. a. Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by (*date, not to exceed 180 days from the date of this order*):
 (*Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.*)

- b. Visitation between the child and
 parent (*name*): Mother Father
 parent (*name*): Mother Father
 legal guardian (*name*):
 other (*name*):
 is scheduled as follows (*specify*):

- c. Visitation between the child and (*names*):
 is detrimental to the child's physical or emotional well-being and is terminated.

15. The child's permanent plan is legal guardianship with a specific goal of (*specify*):
 Adoption
 Dismissal of dependency
 Other (*specify*):

(*Name*):
 is appointed legal guardian of the child, and *Letters of Guardianship* will issue. (*Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.*)

- a. Visitation between the child and
 parent (*name*): Mother Father
 parent (*name*): Mother Father
 legal guardian (*name*):
 other (*name*):
 is scheduled as follows (*specify*):

- b. Visitation between the child and (*names*):
 is detrimental to the child's physical or emotional well-being and is terminated.

- c. Dependency Wardship is terminated.

- d. Dependency Wardship is not terminated. The likely date for termination of the dependency or wardship is (*date*):
 (*If this item is checked, go to items 17.*)

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

16. a. The child's permanent plan is an identified placement with (name of placement): **Mary Simpson**
with a specific goal of (specify):
- | | |
|---|---|
| (1) <input type="checkbox"/> Returning home | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative |
| (2) <input type="checkbox"/> Adoption | (6) <input type="checkbox"/> A less restrictive foster care setting |
| (3) <input checked="" type="checkbox"/> Tribal customary adoption | (7) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
| (4) <input type="checkbox"/> Legal guardianship | |

The child's specific goal is likely to be achieved by (date): **2/1/2012**
(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)

- b. Visitation between the child and
- | | | |
|---|--|---------------------------------|
| <input checked="" type="checkbox"/> parent (name): Marge Simpson | <input checked="" type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian (name): | | |
| <input type="checkbox"/> other (name): | | |

is scheduled as follows (specify):
Once every two weeks for 1 hour, supervised by the Health and Human Services Agency or their designee.

- c. Visitation between child and (names): **Homer Simpson**
is detrimental to the child's physical or emotional well-being and is terminated.
17. The child's placement is necessary.
18. The child's placement is appropriate.
19. The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
20. The services set forth in the case plan include those needed to assist the child age 16 or older in making the transition from foster care to independent living. (This finding is required only for a child 16 years or older.)
21. The child remains a dependent ward of the court. (If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)
22. All prior orders not in conflict with this order will remain in full force and effect.
23. Other (specify):

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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24. Next hearing date: 2/1/2012 Time: 9:00 a.m. Dept.: F Room:
- a. Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b. Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
- c. Six-month postpermanency review

25. The Parent (name): Marge Simpson Mother Father
- Parent (name): Homer Simpson Mother Father
- Indian custodian (name):
- Child
- Other (name):
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: 10/5/2011 _____

JUDICIAL OFFICER

SAMPLE CONTINUED WIC 366.26 FINDINGS AND ORDERS

JV-320

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mendocino County HHS Children and Family System of Care 727 S. State St. Ukiah, CA 95482 TELEPHONE NO.: (707) 463-7990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO STREET ADDRESS: 100 N. State Street MAILING ADDRESS: 100 N. State Street, Room 107 CITY AND ZIP CODE: Ukiah, CA 95482 BRANCH NAME: Ukiah Branch- Juvenile Court	
CHILD'S NAME: Bart Simpson	
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX

Child's name: Bart Simpson Date of birth: 08/01/2001 Age: 10 yrs. Parent's name (if known): Marge Simpson <input checked="" type="checkbox"/> Mother <input type="checkbox"/> Father Parent's name (if known): Homer Simpson <input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father

1. a. Hearing date: **2/1/2012** Time: **9:00 a.m.** Dept.: **F** Room:
- b. Judicial officer: **David Nelson**
- c. Parties and attorneys present:
- Mother, Father, Mother's attorney, Father's attorney, Child's attorney, Tribal Representative, Tribe's attorney (if applicable), County Counsel, Social Worker, Child (if will be present) and State Adoptions.**

2. The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), or 366.25(b) and the report and recommendation of the
 social worker probation officer and other evidence.
3. The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. Notice has been given as required by law.
- b. This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. **For child 10 years of age or older who is not present:** The child received proper notice of his or her right to attend the hearing and was given an opportunity to be present.
6. The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
 parent (name): **Marge Simpson** Mother Father
 parent (name): **Homer Simpson** Mother Father

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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8. a. There is clear and convincing evidence that it is likely the child will be adopted.
- b. This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (If item 8a or 8b is checked, go to item 9 unless item 10, 11, or 12 is applicable. If item 8a or 8b is not checked, go to item 14 or 15.) **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of
- a. parent (name): Mother Father
- b. parent (name): Mother Father
- c. alleged fathers (names):
- d. unknown mother all unknown fathers
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**
(If item 9 is checked, go to item 17.)

10. This case involves an Indian child. The parental rights of
- a. parent (name): Marge Simpson
- b. parent (name): Homer Simpson
- c. Indian custodians (names):
- d. alleged fathers (names):
- e. unknown mother all unknown fathers
are modified in accordance with the tribal customary adoption order of the (specify): **Cherokee Nation** tribe, dated **01/03/2012** and comprising **4** pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.
(If item 10 is checked, go to item 17.) **See Attachment No. 10.**

11. The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. (If item 11 is checked, go to item 15 or 16.)

12. Termination of parental rights would be detrimental to the child for the following reasons (If item 12 is checked, check reasons below and go to item 15 or 16):
- a. The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b. The child is 12 years or older and objects to termination of parental rights.
- c. The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d. The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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12. e. There would be substantial interference with the child's sibling relationship.
- f. The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
 - (2) The child's tribe has identified guardianship or another permanent plan for the child.
13. Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child (if item 13 is checked, check reasons below and go to item 14):
- a. is a member of a sibling group that should stay together.
 - b. has a diagnosed medical, physical, or mental disability.
 - c. is 7 years or older.
14. a. Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by (date, not to exceed 180 days from the date of this order):
(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)
- b. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian (name): | | |
| <input type="checkbox"/> other (name): | | |
- is scheduled as follows (specify):
- c. Visitation between the child and (names):
is detrimental to the child's physical or emotional well-being and is terminated.
15. The child's permanent plan is legal guardianship with a specific goal of (specify):
- Adoption
 - Dismissal of dependency
 - Other (specify):
- (Name):
is appointed legal guardian of the child, and Letters of Guardianship will issue. (Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)
- a. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian (name): | | |
| <input type="checkbox"/> other (name): | | |
- is scheduled as follows (specify):
- b. Visitation between the child and (names):
is detrimental to the child's physical or emotional well-being and is terminated.
- c. Dependency Wardship is terminated.
- d. Dependency Wardship is not terminated. The likely date for termination of the dependency or wardship is (date):
(If this item is checked, go to items 17.)

CHILD'S NAME: Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

16. a. The child's permanent plan is an identified placement with *(name of placement)*:
with a specific goal of *(specify)*:
- | | |
|--|---|
| (1) <input type="checkbox"/> Returning home | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative |
| (2) <input type="checkbox"/> Adoption | (6) <input type="checkbox"/> A less restrictive foster care setting |
| (3) <input type="checkbox"/> Tribal customary adoption | (7) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
| (4) <input type="checkbox"/> Legal guardianship | |

The child's specific goal is likely to be achieved by *(date)*:
(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)

- b. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : | | |
| <input type="checkbox"/> other <i>(name)</i> : | | |
- is scheduled as follows *(specify)*:

- c. Visitation between child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

17. The child's placement is necessary.
18. The child's placement is appropriate.
19. The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
20. The services set forth in the case plan include those needed to assist the child age 16 or older in making the transition from foster care to independent living. *(This finding is required only for a child 16 years or older.)*
21. The child remains a dependent ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
22. All prior orders not in conflict with this order will remain in full force and effect.
23. Other *(specify)*:

CHILD'S NAME: _ Bart Simpson	CASE NUMBER: SCUK-JVSQ-XX-XXXXX-XX
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24. Next hearing date: 5/17/2012 Time: 9:00 a.m. Dept.: F Room:
- a. Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b. Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
- c. Six-month postpermanency review
25. The Parent (name): Marge Simpson Mother Father
- Parent (name): Homer Simpson Mother Father
- Indian custodian (name):
- Child
- Other (name):
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: 2/1/2012

JUDICIAL OFFICER

ACTIVE EFFORTS VS REASONABLE EFFORTS

Examples of Reasonable Efforts:	Examples of Active Efforts:
Giving contact information to a parent for parenting classes they could sign up for.	Assist the client in signing up for parenting classes at a local Native American health center, Native American agency or TANF agency and arranging transportation to/from their classes in coordination with the child's tribe and extended family. (Examples: Indian Child and Family Preservation Program, Pinoleville Vocational Rehabilitation Program)
Referring a client to medical, dental and mental health services through county providers.	Referring the family to the local Native American health center for medical, dental and mental health services. Examples: Consolidated Tribal Health Project, Round Valley Indian Health Services)
Referring a youth that is acting out violently to an anger management group with county providers.	Speaking with youth violence prevention coordinators or anger management providers at a local Native American health center, Native American agency or youth's Tribe and finding a group time/class that works with the youth's schedule.
Arranging general counseling once a week with county mental health providers.	Finding a therapist at a local Native American agency, arranging a session that meets the needs of the family's schedule and asking the family if they want the Native American agency or their tribe to provide a traditional healer to work with.
Approving child to occasionally attend family events, but not if potential for AWOL.	Asking the family if there are any important ceremonies or events in their family and/or tribe the child would like to participate in, arrange transportation and if potential for AWOL, coming up with a plan with the family and tribe for how the child will be supervised and avert potential for AWOL (tip: often it is the Tribe's ceremonies that are the key in healing a child(ren) and their family).
Social worker creating a case plan for the family for the next court hearing.	Social worker inviting the tribe/tribe's ICWA rep (via phone or in person) and the family to create a culturally appropriate case plan that is based on the family's needs and Tribe's childrearing practices/belief systems.
Referring a client to substance abuse treatment services through county providers.	Referring the client to the local Native American health center or local Native American treatment programs for substance abuse treatment services.
Providing materials on how the family can contact and sign up for TANF.	Helping a family sign up for California Native or Tribal TANF, contacting the tribe TANF representative to find out if the family is eligible and what services are available from that TANF office, signing up the family for the services through that office and keeping in regular phone/in-person contact with the Native TANF provider(s). Currently, the only tribe in Mendocino County that has a TANF program is Round Valley.



Indian Child Welfare Act (“ICWA”) Requirements

Revised 01/2008

<p>Applicability (25 U.S.C. §§ 1901-1923, 1903(i); Prob. Code, §§ 1459.5(a), 1516.5(d); Cal. Rules of Court, rule 5.480) ICWA applies to any state court proceeding involving an Indian child that may result in a voluntary or involuntary foster care placement; guardianship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or voluntary or involuntary adoptive placement including all proceedings under WIC sections 300 et seq. and 601 and 602 et seq. when the child is in foster care or at risk of entering foster care.</p>
<p>Indian Child (25 U.S.C. § 1903(4); Fam. Code, § 170(a); Prob. Code, § 1449(a); WIC, § 224.1(a)) Is an unmarried person under the age of 18 who is (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is a biological child of a member of an Indian tribe. A determination by a tribe or the Bureau of Indian Affairs (BIA), absent a determination by the tribe to the contrary, that a child is or is not a member or eligible for membership is conclusive.</p>
<p>Indian Custodian (25 U.S.C. § 1903(6); Fam. Code, § 170(a); Prob. Code, § 1449(a); WIC, § 224.1(a)) Is any person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary physical care, custody, and control has been transferred by the parent.</p>
<p>Intervention / Invalidation (25 U.S.C. §§ 1911(c), 1914; Fam. Code, §§ 175(e), 177(a); Prob. Code, §§ 1459(c), 1459.5(b); WIC, §§ 224(c), 224.4; Cal. Rules of Court, rule 5.482(e)) An Indian child, Indian custodian, and Indian child’s tribe have the right to intervene at any point in the proceeding. If ICWA applies, the Indian child, parent, Indian custodian, or the child’s tribe may petition any court of competent jurisdiction to invalidate the proceedings for not complying with ICWA.</p>
<p>Inquiry (Fam. Code, § 177(a); Prob. Code, §§ 1459.5(b), 1513(h); WIC, § 224.3; Cal. Rules of Court, rule 5.481) In all child custody proceedings, the court and the petitioner, including a social worker, a probation officer, a licensed adoption agency or adoption service provider, or an investigator must ask the child, the parents or legal guardians, and the Indian custodian as soon as possible whether the child may be an Indian child and must record the information, if applicable, on the petition. In all juvenile cases, at their first court appearance, the parent or guardian must be ordered to complete <i>Parental Notification of Indian Status</i> (form ICWA-020).</p>
<p>Circumstances That May Provide Reason to Know the Child Is an Indian Child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 224.3(b); Cal. Rules of Court, rule 5.481(a)(5)) 1. A person having an interest in the child provides information suggesting that the child is an Indian child; 2. The residence or domicile of the child, the child’s parents, or an Indian custodian is in a predominantly Indian community; or 3. The child or family has received services or benefits that are available to Indians, from a tribe or a federal agency, such as the Indian Health Service.</p>
<p>Notice (25 U.S.C. § 1912(a); Fam. Code, § 180; Prob. Code, § 1460.2; WIC, §§ 224.2, 727.4(a)(2); Cal. Rules of Court, rule 5.481(b)) <u>When:</u> It is known or there is reason to know that an Indian child is involved unless it is determined that ICWA does not apply in accordance with WIC, § 224.3. <u>How:</u> Party seeking foster care placement, guardianship, or termination of parental rights must notify the parent and Indian custodian, and the Indian child’s tribe, of the pending proceedings in the manner specified in Fam. Code, § 180, Prob. Code, § 1460.2, or WIC, § 224.2. <i>Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)</i> (form ICWA-030) is required to be completed and sent for all juvenile proceedings and recommended for all other applicable proceedings. In addition to the information included on form ICWA-030, the party must also include: 1. Information regarding the Indian child’s Indian custodian including: all known names, including maiden, married, former, and aliases; current and former addresses; birthdates; places of birth and death; tribal enrollment numbers; and any other identifying information, if known. 2. A copy of the child’s birth certificate if available. 3. A copy of the petition by which the proceeding was initiated. 4. The location, mailing address, and telephone number of the court and all parties notified.</p>
<p>Active Efforts (25 U.S.C. § 1912(d); Fam. Code, §§ 177(a), 3041(e); Prob. Code, § 1459.5(b); WIC, § 361.7; Cal. Rules of Court, rule 5.484(c)) The party seeking an involuntary foster care placement, guardianship, or termination of parental rights must provide evidence to the court 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. What constitutes active efforts is assessed on a case-by-case basis. Active efforts must consider the prevailing social and cultural values and way of life of the Indian child’s tribe. Active 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, Indian social service agencies, and individual Indian caregivers.</p>
<p>Qualified Expert Witness Testimony (25 U.S.C. § 1912(e); Fam. Code, §§ 177(a), 3041(e); Prob. Code, § 1459.5(b); WIC, §§ 224.6, 361.7(c); Cal. Rules of Court, rule 5.484(a)) Before the court orders foster care or adoptive placement, establishes a guardianship or terminates parental rights, the court must require testimony of a qualified expert witness regarding whether continued custody of the child by the parent or Indian custodian is likely to cause the child serious emotional or physical damage. This person cannot be an employee of the person or agency seeking the foster care placement or termination of parental rights. Persons most likely to meet the requirements for a qualified expert witness are: 1. a member of the child’s tribe, who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices; 2. any expert witness with substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the child’s tribe; and 3. a professional person having substantial education and experience in the area of his or her specialty.</p>

<p>Placement Preferences (25 U.S.C. § 1915; Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 361.31; Cal. Rules of Court, rule 5.484(b))</p> <p>The following placement preferences and standards must be followed in any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian. <u>Foster Care, Guardianships, and Custody to Non-parent:</u> If reason to know the child is an Indian child, the court must order the least restrictive setting that most approximates a family situation within reasonable proximity to the Indian child's home and meets the child's special needs, if any. Preference must be given in the following order:</p> <ol style="list-style-type: none"> 1. a member of the Indian child's extended family; 2. a foster home licensed, approved, or specified by the Indian child's tribe; 3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; 4. an institution approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. <p><u>Adoptive Placements:</u> Preference must be given in the following order: 1. a member of the Indian child's extended family; 2. other members of the Indian child's tribe; 3. another Indian family. The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.</p>
<p>Placement Standards and Records (25 U.S.C. § 1915; Fam. Code, §§ 177(a), 3041(e), 7892.5; Prob. Code, § 1459.5(b); WIC, §§ 361(c)(6), 361.31, 361.7(c), 366.26(c)(2)(B); Cal. Rules of Court, rule 5.484(b)(1))</p> <p>The preferences of the Indian child and the parent must be considered. Placement standards must be the prevailing social and cultural standards of the child's tribe or the Indian community in which the parent or extended family member resides or extended family member maintains social and cultural ties. A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or qualified expert witness testimony. The California Department of Social Services must maintain a record of each placement of an Indian child and active efforts to comply with the placement preferences.</p>
<p>Burden of Proof and Qualified Expert Witness (25 U.S.C. § 1912(e), (f); Fam. Code, §§ 3041(e), 7892.5; Prob. Code, § 1459.5(b); WIC, §§ 361.7(c), 366.26(c)(2)(B); Cal. Rules of Court, rule 5.484(a))</p> <p>The burden of proof to place a child in foster care, appoint a guardian, and award custody to a non-parent is <i>clear and convincing evidence</i>, including testimony of a qualified expert witness. The burden of proof to terminate parental rights is <i>beyond a reasonable doubt</i>, including testimony of a qualified expert witness.</p>
<p>Good Cause to Deviate From the Placement Preferences (25 U.S.C. § 1915; WIC, § 361.31(h); Cal. Rules of Court, rule 5.484(b)(2) and (3))</p> <p>The court may determine that good cause exists not to follow the placement preferences, which may include the following considerations:</p> <ol style="list-style-type: none"> 1. Requests of the parent or Indian custodian or Indian guardian; 2. Requests of the Indian child; 3. Extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; and 4. Unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria. <p>The party requesting a different order has the burden of establishing good cause.</p>
<p>Adoption (25 U.S.C. §§ 1917, 1951; Fam. Code, § 9208; Cal. Rules of Court, rule 5.487)</p> <p>The court must provide the Secretary of the Interior a copy of the adoption order and other information needed to show: 1. the name and tribal affiliation of the Indian child; 2. the names and addresses of the biological parents; 3. the names and addresses of the adoptive parents; 4. the identity of any agency having files or information relating to such adoptive placement; and 5. any confidential parent affidavits. At the request of an adopted Indian child over age 18, the adoptive or foster parents, or the tribe, the Secretary must disclose information about enrollment or any rights or benefits associated with membership in the tribe. If the documents contain a confidential parent affidavit, the Secretary must certify to the tribe the information necessary for enrollment. At the request of an adopted Indian child over the age of 18, the court must provide information about the individual's tribal affiliation, biological parents, and other information as may be necessary to protect any rights flowing from the individual's relationship to the tribe..</p>
<p>Jurisdiction and Transfer (25 U.S.C. § 1911(a), (b); Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 305.5 Cal. Rules of Court, rule 5.483)</p> <p><u>Exclusive Jurisdiction:</u> If an Indian child is a ward of the tribal court or resides or is domiciled on a reservation that exercises exclusive jurisdiction, notice must be sent to the tribe by the next working day following removal. If the tribe determines that the child is an Indian child, the child-custody proceeding must be transferred to the tribe within 24 hours after receiving the written determination from the tribe.</p> <p><u>Transfer to Tribal Jurisdiction:</u> If the above exclusive jurisdiction does not apply, the tribe, parent, or Indian custodian may petition the court to transfer the proceedings to the tribal jurisdiction. The court must transfer the proceedings unless there is good cause not to do so. Either parent may object to the transfer, or the tribe may decline the transfer of the proceedings.</p>
<p>Right to Counsel (25 U.S.C. § 1912(b); Fam. Code, § 180(b)(5)(G)(v); Prob. Code, § 1474; WIC, § 317(a)(2))</p> <p>The parent, Indian custodian, or Indian guardian, if indigent, has the right to court-appointed counsel.</p>
<p>Examination of Reports and Documents (25 U.S.C. § 1912(c); Fam. Code, § 177(a); Prob. Code, § 1459.5(b))</p> <p>The parent, Indian child, Indian custodian, tribe, and their attorneys have the right to examine all court documents related to the dependency case.</p>
<p>Full Faith and Credit (25 U.S.C. § 1911(d); Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 224.5)</p> <p>Full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe is required.</p>
<p>Right to Additional Time (25 U.S.C. § 1912 (a); Fam Code § 180(e); Prob. Code § 1460.2(e); WIC §224.2(d); Cal. Rules of Court, rule 5.482(a))</p> <p>With the exception of the detention hearing, and jurisdiction hearing in a delinquency case, and certain disposition hearings in a delinquency case, the court cannot proceed until 10 days after receipt of notice by tribe(s) and BIA and must grant 20 extra days for preparation if requested.</p>

TRIBAL LIST/RESOURCE GUIDE 2011*
(*Check Federal Register! This list is subject to change at any time)

Tribe/ Tribal Chairperson	ICWA Worker	Mailing Address	Telephone/ Fax	E-mail/ Website
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LAKE COUNTY

Big Valley Rancheria Antonio Jack	Cynthia Jefferson Alternate: Tina Ramos	2726 Mission Rancheria Rd. Lakeport, CA 95453	T- 263-3924 263-7875 F- 263-3977 263-7280 Cell- 621-1108 (Cynthia) 349-0789 (Tina)	cjefferson@big-valley.net tramos@big-valley.net
Elem Indian Colony	Wahlia Pearce	P.O. Box 757 Clearlake Oaks, CA 95423	T- 998-3003 F- 998-3033	gerri@elemnation.org
Lower Lake Rancheria		P.O. Box 3162 Santa Rosa, CA 95402	T- 575-5586	
Middletown Rancheria Jose Simon III	Ursula Simon	P.O. Box 1829 Middletown, CA 95461	T- 987-8288 F- 987-8205	USimon@ middletownrancheria.com
Robinson Rancheria Tracey Avila	Marsha Lee	P.O. Box 4015 Nice, CA 95464	T- 275-9363 F- 275-0235 275-9001	mlee@robinsonrancheria.org www.robinsonrancheria.org
Scotts Valley Rancheria Donald Arnold	Gabriel Ray	301 Industrial Avenue Lakeport, CA 95453	T- 263-4220 x 404 F- 263-4345	svpomo@svpomo.org gray@svpomo.org
Habematolel Pomo of Upper Lake Sherry Treppa	Angelina Arroyo	P.O. Box 516 Or 375 E. Hwy 20, Suite I Upper Lake, CA 95485	T- 275-0737 F- 275-0757 Cell- 262-2947	tribaladmin@upperlakepomo.com Angelina's e-mail: coachyoyos@yahoo.com

MENDOCINO COUNTY

Coyote Valley Band of Pomo Indians Brad McDonald (??) John Feliz, Jr. (per 5/11 fed register)	Melinda Hunter <i>Health & Human Svc. Director</i> In addition- ICFPP**	P.O. Box 39 7751 N. State St. Redwood Valley, CA 95470	T- 485-8723 F- 485-1247	tribaladministrator @coyotevalleytribe.com
Guidiville Rancheria Merlene Sanchez	Juana Brown	P.O. Box 339 Talmage, CA 95481	T- 462-3682 F- 462-3183	admin@guidiville.net

			462-9183	
Hopland Rancheria Shawn Pady	Gayle Zepeda	3000 Shanel Road Hopland, CA 95449	T- 472-2100 ext. 1105 F- 744-8643 472-2104	gzepeda@hoplandtribe.com
Laytonville Rancheria (Cahto Tribe) Christy Taylor	Cherie Smith- Gibson <i>Tribal Administrator</i>	P.O. Box 1239 Laytonville, CA 95454	T- 984-6197 F- 984-6201	chairwoman@cahto.org ta@cahto.org
Manchester-Pt. Arena Rancheria Nelson Pinola	Christine Dukatz	P.O. Box 623 Point Arena, CA 95468	T- 882-2788 F- 882-3417	christimarie@earthlink.net
Pinoleville Pomo Nation Leona Williams	Linda Noel	500 B Pinoleville Drive Ukiah, CA 95482	T- 463-1454 x. 101 F- 463-6601	linden@pinoleville-nsn.us
Potter Valley Rancheria Salvador Rosales		2251 S. State St. Ukiah, CA 95482	T- 462-1213 F- 462-1240	pottervalleytribe@ pottervalleytribe.com
Redwood Valley Rancheria Elizabeth Hansen	Beverly Rodriguez	3250 Road I Redwood Valley, CA 95470	T- 485-0361 F-485-5726	brodriguezicwa@gmail.com
Round Valley Reservation Kenneth Wright	Cynthia Card	77826 Covelo Road Covelo, CA 95428	T- 983-8008 F- 983-6128	ccard@rvit.org www.rvit.org
Sherwood Valley Rancheria Michael Fitzgeral	Elaine Sparks Scarlett Carmona <i>Tribal Administrator</i>	190 Sherwood Hill Drive Willits, CA 95490	T- 459-9690 F- 459-6936	svicwa@hotmail.com svadministrator@sbcglobal.net

SONOMA COUNTY

Cloverdale Rancheria Patricia Hermosillo	Marce Becerra	555 S. Cloverdale Blvd., Cloverdale, CA 95425	T- 894-5775 F- 894-5727 Cell- 953-9954	marcebecerra@comcast.net www.cloverdalerancheria.com
Dry Creek Rancheria Harvey Hopkins	Percy Tejada	3750 Westwind Blvd. Suite 200A Santa Rosa, CA 95403 P.O. Box 607 Geyserville, CA 95441	T- 522-4248 473-2185 Direct line- 291-1852 F- 522-4286 473-2171	percyt@drycreekrancheria.com
Federated Indians of Graton Rancheria Greg Sarris	???	6400 Redwood Drive Suite 104 Suite 300 (tribal office) Rohnert Park, CA 94928	T- 566-6100 Ext. 115 566-2288 F- 206-0351	www.gratonrancheria.com

			566-2291	
Lytton Rancheria Margie Mejia	ICFPP**	1300 N. Dutton Avenue Suite A Santa Rosa, CA 95401	T- 575-5917 F- 575-6974	lyttonband@aol.com
Stewarts Point Rancheria Ralph Sepulveda	Tara Candelaria <i>Administrative Assistant</i> ICFPP**	3535 Industrial Drive Suite B-2 Santa Rosa, CA 95403	T- 591-0580 F- 591-0583	tara@stewartspointrancheria.com tribalofc@stewartspointrancheria.com

UNRECOGNIZED TRIBES

Mishewal Wappo Tribe Scott Gabaldon	Scott Gabaldon	P.O. Box 5676 Santa Rosa, CA 95402	T- 585-0502	
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INDIAN CHILD AND FAMILY PRESERVATION PROGRAM (ICFPP) **

Ukiah Office	Lorraine Laiwa Dolli Rose	684 S. Orchard Avenue Ukiah, CA 95482	T- 463-2644 F- 463-8956	lorrainel_1@comcast.net lorrainel@adelphia.net karukee@yahoo.com
Santa Rosa Office	Liz DeRouen Laila DeRouen	2525 Cleveland Avenue Suite H Santa Rosa, CA 95403	T- 544-8509 F- 544-8729	lizderouen@sbcglobal.net lailaderouen@sbcglobal.net

OTHER INDIAN SERVICE PROVIDERS

Sonoma County Indian Health Project	Molin Malicay <i>Ex. Director</i> Dr. Leon Wakefield <i>Director, Behavioral Health</i>	144 Stony Point Road Santa Rosa, CA 95401	T- 521-4545 526-1016 (Ex. Director) F- 521-4523 521-4500 (Behavioral Health) Pt. Arena satellite office phone- 882- 2877	www.scihp.org
		Member tribes include: Cloverdale Rancheria, Dry Creek Rancheria, Federated Indians of Graton Rancheria, Lytton Rancheria, Stewarts Point Rancheria, Manchester-Point Arena Rancheria and Mishewal Wappo Tribe		
Lake County Tribal Health Consortium	Ashley Tuomi <i>Ex. Director</i> Merrill Featherstone <i>Human Services</i>	925 Bevins Court P.O. Box 1950 Lakeport, CA 95453	T- 263-8382 x. 101 F- 263-8382 x. 184	www.lcthc.com
		Member tribes include: Scotts Valley Rancheria, Middletown Rancheria, Big Valley Rancheria, Robinson Rancheria, Elem Indian Colony and Habematolei Pomo of Upper Lake		
Consolidated Tribal Health Project, Inc.	Frederick Rundlet <i>Ex. Director</i>	6991 North State Street Redwood Valley, CA 95470	T- 485-5115 F- 485-5185	www.cthp.org

	Alice Moore <i>Behavioral Health</i>	P.O. Box 387 Calpella, CA 95418	(General Fax) 485-5199 (Behavioral Health)	
		Member tribes include: Laytonville Rancheria, Coyote Valley Rancheria, Guidiville Rancheria, Hopland Rancheria, Pinoleville Pomo Nation, Potter Valley Rancheria, Redwood Valley Rancheria, Sherwood Valley Rancheria and Yokayo		
Round Valley Indian Health Center	James Russ <i>Ex. Director</i> Kianna Zielesch, PhD <i>Behavioral Health (Yuki Trails)</i>	P.O. Box 247 Covelo, CA 95428	T- 983-6404 F- 683-6648	www.rvindianhealth.com
Graton Tribal TANF Federated Indians of Graton Rancheria	Denell Bronco <i>Cash Assistance</i> Lara Walker <i>Y & F Services</i>	6400 Redwood Drive Suite 104 Rohnert Park, CA 94928	T- 586-6100	www.gratonrancheria.com
California Tribal TANF Partnership (CTTP)		2985 Lakeshore Blvd. Nice, CA 95464	T- 262-4400	www.cttp.net (36 member tribes, 13 county offices)
Round Valley Tribal TANF Round Valley Indian Tribes	Julie Russ <i>Director</i>	Mail- P.O. Box 217 Covelo, CA 95428 Physical- 24065 Riffe Road Covelo, CA 95428	T- 983-6126 983-6100 F- 983-6060	www.rvit.org www.rvtt.net
The Friendship House	Wayne Grigsby	56 Julian Avenue San Francisco, CA 94103	(415) 865-0964 <i>(T- Admin)</i> (415) 431-6323 <i>(T- Program)</i> F- (415) 865-5428	www.friendshiphousesf.org Residential program for men and women
Native American Health Center-SF		160 Capp Street San Francisco, CA 94110	T- (415) 621-8051 F- (415) 621-3985	www.nativehealth.org
Native American Community Education Center		P.O. Box 632 Lakeport, CA 95453	T- 263-8424 F- 263-0120	
Bay Area Collaboration of American Indian Resources	Mary Trimble Norris <i>Chairperson</i>	BACAIR c/o AICRC 522 Grand Avenue Oakland, CA 94610	T- (888) 885-8286	info@bacair.org www.bacair.org

FEDERAL CONTACTS

Bureau of Indian Affairs-Sacramento		Pacific Regional Office 2800 Cottage Way Sacramento, CA 95825	(916) 978-6000	
U.S. Dept. of the Interior, Indian Affairs	Larry Echo Hawk <i>Assistant Secretary-</i>	Indian Affairs MS-4141-MIB 1849 C Street, N.W. Washington, D.C. 20240	(202) 208-7163 (202) 208-5320	www.bia.gov

	<i>Indian Affairs</i>			
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USEFUL LINKS

Administrative Office of the Courts: www.courts.ca.gov

Click on the link (or enter it in your web browser) which will lead to the California Court homepage. On the top bar, there is a list of options. Click on Programs and then scroll down to Tribal Projects. Click on that link and you will be taken to the Tribal Projects homepage. This page contains numerous useful links including:

- Resources
 - [ICWA Laws, Rules & Regulations](#)
 - [Statewide Directory of Services for Native American Families](#)
- Technical Assistance
 - [ICWA Job Aids](#)
 - [Tribal Customary Adoption](#)
- Education- [Curriculum: ICWA & Family Violence](#)
 - ICWA Bench Handbook for Judicial Officers (March 2008): [Bench Handbook: The Indian Child Welfare Act](#)
 - Basic ICWA: [Indian Child Welfare Act \(ICWA\): Nuts & Bolts - PowerPoint](#)
 - Advanced ICWA:
 - [Active Efforts Module](#)
 - [Powerpoint Presentation](#)
 - [ICWA Inquiry and Notice](#)

California Department of Social Services: <http://www.childsworld.ca.gov>

This is the direct link to CDSS Children and Family Services Division. Scroll down to Featured Links and click on Indian Child Welfare Act (ICWA). This page provides a link to the Indian Child Welfare Act passed by Congress in 1978. It also provides contact information for the ICWA Specialist and ICWA Analyst within the Division.

There are Helpful Links:

- [ICWA Resources and Job Aids](#)
- [County Letters and Notices](#)
- [Legislation and Regulations](#)

There are links for Agencies and Organizations:

- [State and Federal Agencies](#)
- [Training and Technical Assistance](#)
- [Tribal Advocacy, Legal Assistance and Court Information](#)
- [CWS Data Outcomes](#)

Bureau of Indian Affairs: <http://www.bia.gov/>

This is a valuable site with information pertaining to all tribes in the United States. On the right-hand side there is a drop down box: CHOOSE A SERVICE. Go to [Indian Services](#) and then click on [Tribal Leaders Directory](#) for a list of all federally recognized tribes or [ICWA- Designated Tribal Agents for Service of Notice \(Federal Register\)](#) for a list of ICWA Designates for Service of Notices. It also has an Indian Child Welfare Act link. To access the Guide to Tracing your American Indian Ancestry, click on the Documents Library tab at the top of the home page and scroll down the list.

Judicial Council Forms (ICWA 010, 020, 030): www.courts.ca.gov

Native American Rights Fund: www.narf.org

Click on National Indian Law Library, then click on A Practical Guide to the Indian Child Welfare Act.

List of Non-Federally Recognized Tribes: <http://www.csulb.edu/~qcampus/libarts/am-indian/tribes/>

***This is not an official list and a tribe can be federally recognized and not placed on the Federal Register list until the following year so it is important to ask the tribe about their status.

