



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 26, 2013

Title	Agenda Item Type
Juvenile Law: Indian Child Welfare Act in Delinquency Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.480, 5.481, 5.482, 5.530, and 5.785	July 1, 2013
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	April 8, 2013
Hon. Kimberly J. Nystrom-Geist, Cochair	Contact
Hon. Dean T. Stout, Cochair	Ann Gilmour, 415-865-4207
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Tribal Court/State Court Forum	
Hon. Richard C. Blake, Cochair	
Hon. Dennis M. Perluss, Cochair	

Executive Summary

The Family and Juvenile Law Advisory Committee and the Tribal Court/State Court Forum recommend amending rules 5.480–5.482, 5.530, and 5.785 of the California Rules of Court following the California Supreme Court’s decision in *In re W.B.* (2012) 55 Cal.4th 30, issued August 6, 2012, which requires revisions to the California Rules of Court governing the application of the Indian Child Welfare Act (ICWA) and corresponding provisions of the Welfare and Institutions Code in juvenile wardship proceedings. As currently written, the rules mandate compliance with all of the substantive ICWA requirements in any juvenile wardship proceeding when the child is in foster care or at risk of entering foster care. This is inconsistent with the holding in the *W.B.* decision.

Recommendation

To conform to the holding in the *W.B.* decision, the Family and Juvenile Law Advisory Committee and the Tribal Court/State Court Forum recommend that the Judicial Council amend:

- (1) Rule 5.480, defining the application of the ICWA rules, to clarify that the ICWA requirements apply only to juvenile wardship proceedings when the child is in foster care or at risk of entering foster care and either (i) the proceedings are based on conduct that would not be criminal if committed by an adult, (ii) the court has set a hearing to terminate parental right, or (iii) although the proceedings are based on conduct that would be criminal if committed by an adult, the court is considering a foster care placement based entirely on conditions within the home and not on the child's criminal conduct;
- (2) Rule 5.481(b)(2), addressing ICWA notice in juvenile wardship proceedings, to provide that notice need only be sent in juvenile wardship proceedings where the child is in foster care or at risk of entering foster care, it is known or there is reason to know that an Indian child is involved, and (i) the court's jurisdiction is based on conduct that would not be a crime if the child were 18 years of age or older, (ii) the court is setting a hearing to terminate parental rights, or (iii) although the court's jurisdiction is based on criminal conduct, the court is considering placement outside the family home based entirely on harmful conditions within the child's home;
- (3) Rule 5.482, concerning proceedings after ICWA notice, to apply to only those cases that fall within rule 5.480 as amended. Further, section (g) of rule 5.482 currently provides that any person or court involved in the placement of an Indian child must use the services of the Indian child's tribe to secure placement. This provision would be amended to apply to only those proceedings described in rule 5.480 as amended;
- (4) Rule 5.530, addressing who may be present at juvenile proceedings as it relates to representatives of an Indian child's tribe, to apply to only the proceedings falling under rule 5.480 as amended in the proposal; and
- (5) Rule 5.785(c), addressing case plans in delinquency proceedings in which the probation officer is recommending placement in foster care or in which the child is already in foster care placement. Under the current rule, the court is required to consider whether the probation officer has solicited and integrated into the case plan inter alia the input of "the child's identified Indian tribe." The rule would be amended to apply only to proceedings falling under rule 5.480 as amended.

Previous Council Action

The Judicial Council first addressed the issue of the Indian Child Welfare Act in juvenile wardship proceedings in amendments to former rule 1439 (now incorporated into Rules 5.480 *et*

seq.), which were adopted effective January 1, 2005. The report to the Judicial Council concerning this proposal stated that the amendments:

are needed to clarify the respective responsibilities of the juvenile court, probation department and child welfare agency in cases that fall under ICWA and to ensure that notice to tribes meets ICWA's requirements and intent. Amendments to the rule are also necessary to reflect ICWA's application to delinquency and status offense cases in some circumstances.

(Text of item A23, Judicial Council meeting Oct. 15, 2004.)

Subsection (b) of rule 1439 as amended defined the applicability of the rule as follows:

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

(Cal. Rules of Court, former rule 1439(b).)

In 2006, with the passage of Senate Bill 678 (Stats. 2006, ch. 838), the Legislature incorporated ICWA's requirements into California statutory law. The primary objective of SB 678 was to increase compliance with ICWA. The bill included provisions specifically directed at the application of ICWA in juvenile wardship proceedings.¹ Following the bill's passage, the Judicial Council adopted rules and forms intended to implement SB 678. The report in which these rules and forms were proposed for adoption—entitled *Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes*—was considered by the Judicial Council and approved as Item A27 at its October 26, 2007, meeting. That report can be found at www.courts.ca.gov/documents/102607ItemA27.pdf.

Rationale for Recommendation

The Indian Child Welfare Act (25 U.S.C. §§ 1901–1963) was enacted by the federal government in 1978. It sets minimum federal standards for a variety of state court proceedings that could result in the removal of Indian children from their parents or Indian custodians or termination of parental rights. Following the passage of Senate Bill 678, rules adopted by the Judicial Council effective January 1, 2008, require inquiry about a child's Indian status in all juvenile wardship proceedings in which the child is either in foster care or at risk of entering foster care. Following

¹ For example, see Welfare and Institutions Code section 224.2(a), which references the duty of a probation officer to comply with ICWA notice requirements in certain circumstances, and section 224.3(a), which references the duty of the probation department to inquire about Indian status.

inquiry, if the court or probation officer has “reason to know” that an Indian child is involved,² then the rules require compliance with ICWA notice and other substantive provisions in any juvenile wardship proceeding in which the Indian child is in foster care or at risk of entering foster care. The holding in *W.B.* finds that this application of ICWA and SB 678 is overbroad. Under *W.B.*, ICWA inquiry must be made in all juvenile wardship proceedings in which the child is either in foster care or at risk of entering foster care, but notice and other substantive ICWA requirements have a much more limited application. They do apply whenever an Indian child is in foster care or at risk of entering foster care, based on conduct that would not be a crime if committed by an adult. However as a general matter, ICWA notice and other substantive provisions do not apply in juvenile wardship proceedings that are based on conduct that would be a crime if committed by an adult. In these “criminal conduct” cases, notice and other substantive ICWA requirements are required only in the following circumstances: (1) the court sets a hearing to terminate parental rights, or (2) the court makes a foster care placement, or contemplates such a placement, and makes a specific finding that the placement is based entirely on conditions within the home and not even in part on the child’s criminal conduct.

Comments, Alternatives Considered, and Policy Implications

Because the Supreme Court’s decision specifically stated that the ICWA rules were overbroad,³ the rule revisions were required to comply with the court’s holding. The committee and forum considered different forms of rule revisions. Specifically, they considered revisions that did not include an Advisory Committee Comment. In the end, the committee and forum decided to include an Advisory Committee Comment to encourage continued use of culturally appropriate services and placements, even in proceedings where ICWA does not apply, because those services can be of benefit to an Indian child and family involved in delinquency proceedings.

The committee and forum sought comments on the proposal from a wide array of persons interested in the subject matter, including justices, judges, attorneys, social workers, probation officers, California Department of Social Services staff, tribes and tribal advocates, and members of the public. The invitation to comment was posted on the California Courts website, and the comment period extended from December 14, 2012, through January 25, 2013. Six comments were received. Three of the commentators agreed with the proposal as drafted. The California Department of Social Services suggested amendments to ensure that there was no conflict with the “contrary to the welfare” findings required under subsection 636(d) of the Welfare and Institutions Code. The proposal was revised as a result of this comment to delete the language “Although the child was initially detained or adjudicated for conduct that would be criminal if the child were 18 years of age or over...” but to leave in place the provision that rules 5.480–5.487 apply only to a placement based on an act that would be criminal if committed by an adult when the court makes a specific finding that the placement is based entirely on conditions within

² The circumstances that may provide reason to know that a child is an Indian child are discussed in Welfare and Institutions Code section 224.3(b).

³ See footnote 17 at page 862 of the decision.

the child's home. This limitation on the application of the rules was an important aspect of the court's holding in *W.B.*, and the committee and forum believe it is important to clearly set this out in the rule.

The Superior Court of California, County of Sacramento, suggested amendments to clarify that without a specific finding that a placement is based entirely on conditions within a child's home, the presumption is that the placement is based at least in part on the child's criminal conduct. The proposal was revised in light of this comment.

Finally, the Torres Martinez Desert Cahuilla Indians Tribe suggested amendments to the Advisory Committee Comment to encourage voluntary notice to an Indian child's tribe in all cases and particularly in those cases where the Indian child's tribe had previously participated in proceedings involving the child. The Advisory Committee Comment was revised in light of this suggestion.

Implementation Requirements, Costs, and Operational Impacts

The committee and forum believe that no costs will be associated with the proposal. In fact, cost savings may result because ICWA notice and other substantive requirements will be mandatory in more limited circumstances.

Implementation of the changes may require training for judges and probation officers, which can be accomplished by existing AOC staff with existing resources. Within the Center for Families, Children & the Courts, the AOC has a state/tribal programs unit that is grant funded. This unit's staff would be pleased to provide such training on request of the presiding judge or chief probation officer.

Relevant Strategic Plan Goals and Operational Plan Objectives

The amendments to the rules support strategic Goal IV: Quality of Justice and Service to the Public by amending the rules to conform to the California Supreme Court's decision.

Attachments

1. Cal. Rules of Court, rules 5.480–5.482, 5.530, 5.785, at pages 6–10
2. Chart of comments, at pages 11–15

Rules 5.480, 5.481, 5.482, 5.530, and 5.785 of the California Rules of Court are amended, effective July 1, 2013 to read:

1 **Rule 5.480. Application**
2

3 This chapter addressing the Indian Child Welfare Act (25 United States Code section
4 1901 et seq.) as codified in various sections of the California Family, Probate, and
5 Welfare and Institutions Codes, applies to ~~all~~ most proceedings involving Indian children
6 that may result in an involuntary foster care placement; guardianship or conservatorship
7 placement; custody placement under Family Code section 3041; declaration freeing a
8 child from the custody and control of one or both parents; termination of parental rights;
9 or adoptive placement. ~~Including~~ This chapter applies to:

10
11 (1) ~~Proceedings under Welfare and Institutions Code section 300 et seq., and sections~~
12 ~~601 and 602 et seq. in which the child is at risk of entering foster care or is in foster~~
13 ~~care, including detention hearings, jurisdiction hearings, disposition hearings,~~
14 ~~review hearings, hearings under section 366.26, and subsequent hearings affecting~~
15 ~~the status of the Indian child;~~

16
17 (2) Proceedings under Welfare and Institutions Code sections 601 and 602 et seq.,
18 whenever the child is either in foster care or at risk of entering foster care. In these
19 proceedings, inquiry is required in accordance with rule 5.481(a). The other
20 requirements of this chapter contained in rules 5.481 through 5.487 apply only if:

21
22 (A) The court's jurisdiction is based on conduct that would not be criminal if
23 the child were 18 years of age or over;

24
25 (B) The court has found that placement outside the home of the parent or
26 legal guardian is based entirely on harmful conditions within the child's
27 home. Without a specific finding, it is presumed that placement outside
28 the home is based at least in part, on the child's criminal conduct, and this
29 chapter shall not apply; or

30
31 (C) The court is setting a hearing to terminate parental rights of the child's
32 parents.

33
34 ~~(2)~~(3) Proceedings under Family Code section 3041;

35
36 ~~(3)~~(4) Proceedings under the Family Code resulting in adoption or termination of parental
37 rights; and

38
39 ~~(4)~~(5) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

40
41 This chapter does not apply to voluntary foster care and guardianship placements
42 where the child can be returned to the parent or Indian custodian on demand.

1
2 **Rule 5.481. Inquiry and notice**

3
4 (a) * * *

5
6 (b) **Notice**

7
8 (1) * * *

9
10 (2) If it is known or there is reason to know that an Indian child is involved in a
11 wardship proceeding under Welfare and Institutions Code sections 601 and
12 602 et seq., ~~and the probation officer has assessed that it is probable the child~~
13 ~~will be entering foster care, or if the child is already in foster care,~~ the
14 probation officer must send *Notice of Child Custody Proceeding for Indian*
15 *Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if
16 any, and the child’s tribe, in accordance with Welfare and Institutions Code
17 section 727.4(a)(2) in any case described by rule 5.480(2)(A)—(C) .

18
19 (3)–(4) * * *

20
21 **Advisory Committee Comment**

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23 Except for purposes of inquiry, the requirements of the Indian Child Welfare Act (ICWA) and
24 related provisions of state law do not apply to most cases adjudicated under section 602 of the
25 Welfare and Institutions Code for conduct that would be criminal if committed by an adult (see *In*
26 *re W.B.* (2012) 55 Cal.4th 30). But in those cases where ICWA does not apply, following inquiry
27 and receipt of information about Indian ancestry, the court is encouraged to communicate with
28 and voluntarily provide informal or formal notice to the Indian child’s tribe regarding resources
29 and services to benefit the Indian child and his or her family. Such notice should particularly be
30 encouraged wherever the Indian child’s tribe has previously intervened or participated in other
31 proceedings involving the child, such as earlier dependency or probate guardianship proceedings.
32 The California Legislature has stated: “[i]t is in the interest of an Indian child that the child’s
33 membership in the child’s Indian tribe and connection to the tribal community be encouraged and
34 protected....” (See Welf. & Inst. Code, §§ 224(a)(2), 306.6.) Further, Welfare and Institutions
35 Code section 727.1(a) mandates that in selecting a placement for a child under the supervision of
36 a probation officer, the court “shall consider, in order of priority, placement with relatives, **tribal**
37 **members,** and foster family....” (Emphasis added.) This mandate applies even if the case is not
38 governed by ICWA.

39
40 As a matter of policy and best practice, culturally appropriate placements and services provide
41 psychological benefit for the Indian child and family. By engaging the Indian child’s tribe, tribal
42 members, Indian Health Services, or other agencies and organizations providing services to
43 Native Americans, additional resources and culturally appropriate services are often identified to

1 assist in case planning. (See Welf. & Inst. Code, §§ 727.4(d)(5),(6) & 16501.1(c)(1) for
2 information on services and case planning for children adjudicated under section 602.) Outreach
3 to these entities is also an important part of family finding and engagement efforts for Indian
4 children and of finding appropriate placements. By contacting the child’s tribe, placement options
5 and services—such as substance abuse treatment, counseling, and other services—may be
6 available to Indian children and their families. A list of available services can be found on the
7 California Courts website at Program, Tribal/State Programs, ICWA, Statewide Directory of
8 Services for Native American Families, at www.courts.ca.gov/5807.htm.

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10
11 **Rule 5.482. Proceedings after notice**

12
13 **(a) Timing of proceedings**

14
15 (1) * * *

16
17 (2) The detention hearing in dependency cases and in delinquency cases in which
18 the probation officer has assessed that the child is in foster care or it is
19 probable the child will be entering foster care described by rule
20 5.480(2)(A)—(C) may proceed without delay, provided that:

21
22 (A)—(B) * * *

23
24 (3) The parent, Indian custodian, or tribe must be granted a continuance, if
25 requested, of up to 20 days to prepare for the proceeding, except for specified
26 hearings in the following circumstances:

27
28 (A) The detention hearing in dependency cases and in delinquency cases ~~in~~
29 ~~which the probation officer has assessed that the child is in foster care~~
30 ~~or it is probable the child will be entering foster care~~ described by rule
31 5.480(2)(A)—(C);

32
33 (B) The jurisdiction hearing in a delinquency case described by rule
34 5.480(2)(A)—(C) in which the court finds the continuance would not
35 conform to speedy trial considerations under Welfare and Institutions
36 Code section 657; and

37
38 (C) The disposition hearing in a delinquency case described by rule
39 5.480(2)(A)—(C) in which the court finds good cause to deny the
40 continuance under Welfare and Institutions Code section 682. A good
41 cause reason includes when probation is recommending the release of a
42 detained child to his or her parent or to a less restrictive placement. The

1 court must follow the placement preferences under rule 5.484 when
2 holding the disposition hearing.

3
4 **(b)–(f)** * * *

5
6 **(g) Consultation with tribe**

7
8 Any person or court involved in the placement of an Indian child in a proceeding
9 described by rule 5.480 must use the services of the Indian child’s tribe, whenever
10 available through the tribe, in seeking to secure placement within the order of
11 placement preference specified in rule 5.484.

12
13
14 **Rule 5.530. Persons present**

15
16 **(a)** ***

17
18 **(b) Persons present**

19
20 The following persons are entitled to be present:

21
22 **(1)–(6)** * * *

23
24 **(7)** In a proceeding described by rule 5.480, a representative of the Indian child’s
25 tribe;

26
27 **(8)–(11)** * * *

28
29 **(c)–(f)** * * *

30
31
32 **Rule 5.785. General conduct of hearing**

33
34 **(a)–(b)** * * *

35
36 **(c) Case plan**

37
38 When a child is detained and is at risk of entering foster care placement, the
39 probation officer must prepare a case plan.

40
41 **(1)** * * *

42
43 **(2)** The court must consider the case plan and must find as follows:

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- (A) The probation officer solicited and integrated into the case plan the input of the child, the child’s family, in a case described by rule 5.480(2)(A)—(C) the child’s identified Indian tribe, and other interested parties; or

- (B) The probation officer did not solicit and integrate into the case plan the input of the child, the child’s family, in a case described by rule 5.480(2)(A)—(C) the child’s identified Indian tribe, and other interested parties. If the court finds that the probation officer did not solicit and integrate into the case plan the input of the child, the child’s family, the child’s identified Indian tribe, and other interested parties, the court must order that the probation officer solicit and integrate into the case plan the input of the child, the child’s family, in a case described by rule 5.480(2)(A)—(C) the child’s identified Indian tribe, and other interested parties, unless the court finds that each of these participants was unable, unavailable, or unwilling to participate.

(3)–(5) * * *

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Juvenile Law: Indian Child Welfare Act in Delinquency Cases (*amend Cal. Rules of Court, rules 5.480, 5.481, 5.482, 5.530, and 5.785*)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Department of Social Services, by Elizabeth Sandoval, Supervising Staff Attorney	AM	<p>The introductory phrase of Section 2(b) should be deleted. The phrase reads as follows: “although the child was “initially detained or adjudicated due to conduct that would be criminal if the child was over 18, the court has found that the placement is entirely based on harmful conditions...”</p> <p>This language is problematic for the following reasons: (1) it can be read to create a potential conflict with the requirement in WIC 636(d) that the court consider whether to make the “contrary to welfare” finding prior to detaining the youth; (2) it is inconsistent with the structure of the rule; and (3) it isn’t needed to convey the requirement of the WB case.</p> <p>Further explanation: The way Section 2(B) is worded it appears that the initial removal/detention is never based on concern about the harmful conditions in the youth’s home, but rather is always based solely on the youth’s conduct. If this is so then the court cannot make the “contrary to welfare” finding, addressed in section 636(d). However, this “contrary to welfare” finding may be made in cases in which the court’s jurisdiction under WIC 600 et seq is based on the youth’s conduct which would be criminal if the child was over 18. The 2 conditions may exist simultaneously at the outset of the case; subsequently, as recognized by the WB case, a placement into a particular foster care facility may be made based solely on the harmful conditions of the home.</p>	<p>The proposal has been modified in response to this comment to delete the language “Although the child was initially detained or adjudicated for conduct that would be criminal if the child were 18 years of age or over...”, but to leave in place the provision that the provisions of Rule 5.480 through 5.487 only apply to a placement based upon an act which would be criminal if committed by an adult when the court makes a specific finding that the placement is based entirely on conditions within the child’s home. This was an important aspect of the court’s holding in <i>W.B.</i> and the committee and forum believe it is important to clearly set this out in the rule.</p> <p>The committee and forum have considered this comment and agree that the two conditions of criminal conduct and conditions within the child’s home that make it “contrary to the welfare” of the child to remain in the home may exist simultaneously at the outset of the case, or at any point during a case. However, according to the holding in <i>W.B.</i>, harmful conditions within the child’s home must be the sole reason for the placement in order for the ICWA notice and other requirements to be triggered. The committee and the forum believe that as revised the proposal does not give rise to a conflict between the rule and Welfare and Institutions Code section 636(d).</p>

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	Commentator	Position	Comment	Committee Response
			The same rule can be stated – that the court has to make the finding that the “placement is entirely based on harmful conditions...” -- without suggesting elimination of the possibility that there is a mixed reason for the initial removal of the youth, thus allowing the court to make the “contrary to welfare” finding at the first hearing that results in detention of the youth, as permitted by WIC 636(d).	
2.	Orange County Bar Association, by Mr. Wayne R. Gross	A	Agree with proposed changes.	No response required.
3.	Superior Court of California, County of Riverside	A	Agree with proposed changes.	No response required.
4.	Superior Court of California, County of Sacramento, by Hon. Stacy Boulware Eurie, Presiding Judge of the Juvenile Court	AM	I would note that the California Supreme Court held in <i>In re W.B.</i> that unless the trial court announces otherwise on the record, it will be presumed that any placement of a 602 ward outside of the home is based, at least in part, on the ward’s criminal conduct and thus the placement is not subject to ICWA. (<i>In re W.B.</i> (2012) 55 Cal.4th 30, 59.) A clear statement of this presumption should be included in the first paragraph of CRC 5.480.	The proposal has been revised in response to this comment by adding language which references this presumption.
5.	Superior Court of California County of San Diego, by Mr. Mike Roddy, Executive Officer	A	Agree with proposed changes.	No response required.
6.	Torres Martinez Desert Cahuilla Indians Tribe, by Rovianna A. Leigh, Tribal ICWA Attorney	AM	We write on behalf of the Torres Martinez Desert Cahuilla Indians Tribe (Tribe), a federally recognized Indian Tribe that operates one of the largest Tribal Temporary Assistance	The Advisory Committee Comment has been revised in response to this comment to encourage voluntary tribal notice in all wardship proceedings involving an Indian child and in particular those in

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	Commentator	Position	Comment	Committee Response
			<p>to Needy Families (TANF) programs in the nation. We write in support of the Advisory Committee Comment. We also request that the Comment be expanded to encourage voluntary notice be provided to Indian tribes any time that a Court knows or has reason to know that an Indian child is either in foster care or at risk of entering foster care. We provide more details below.</p> <p>The Tribe has intervened and participated in numerous delinquency proceedings on behalf of Tribe member youth. Certainly, the Tribe is extremely disappointed by the Supreme Court’s ruling in <i>In re W.B. Jr.</i> (2012) 55 Cal.4th 30. Despite the Supreme Court’s limited holding, we write to encourage the Committee to specifically state that voluntary notice may be provided to a minor’s Indian Tribe any time that a Court has reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 and is either in foster care or at risk of entering foster care for any reason. The value, and potential cost savings, of providing voluntary notice to a delinquent minor’s Tribe cannot be overstated.</p> <p>By way of example, the Tribe most recently intervened in a Wardship proceeding under Welfare and Institutions Code section 602. This proceeding would not fall within the limited reach of <i>In re W.B.</i> Despite that, the Court encouraged the Tribe’s participation in the proceedings. In fact, the Court eventually released the minor to the care of the Tribally</p>	<p>which an Indian child’s tribe had previously intervened or participated in child custody proceedings involving the child.</p>

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	Commentator	Position	Comment	Committee Response
			<p>approved home of the minor’s grandmother. The minor could not have been returned to the home in which he was living with his Legal Guardian when the alleged criminal conduct occurred.</p> <p>Without the Tribe’s participation, it is highly unlikely that the minor would have been released to the grandmother’s care. (The grandmother lived in a separate county and had no knowledge of the Wardship proceedings until the Tribe received notice). Without the Tribe’s intervention, the minor would also not have been afforded the services available to him through the Tribe’s TANF Program and the nearby Indian Health Clinic. Those services are available to the minor at no cost to the County. In this case, the alleged criminal conduct would have been considered a crime if committed by an adult; the minor was not removed from the home solely based on the harmful conditions within the child’s home; and, the court was not setting a hearing to terminate parental rights. However, it was undisputed that the minor was not welcome to return to the home of the Legal Guardian. Moreover, the Tribe had been involved in the voluntary Probate Court proceedings in which the minor was placed out of county in the Legal Guardian’s home. It simply makes good sense to involve a minor’s Indian tribe in any case in which the delinquent minor will not be released to his or her previous caretaker. This is especially true where, as here, the minor’s Tribe was involved in placing the minor in that home in separate proceedings.</p>	

W13-08**Juvenile Law: Indian Child Welfare Act in Delinquency Cases** (*amend Cal. Rules of Court, rules 5.480, 5.481, 5.482, 5.530, and 5.785*)

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	Commentator	Position	Comment	Committee Response
			<p>Moreover, even if a delinquent Indian youth is required to serve time, he or she will eventually be released from that facility and will need an appropriate placement. Identifying relatives or Tribal homes early on is a best practice, as it improves the minor's chance of a smooth transition to a new home and, hopefully, a fresh start with the support he or she needs.</p> <p>In sum, the Tribe strongly encourages the Committee to expand the Advisory Committee Comment to allow for voluntary notice to be given to a minor's Tribe. In the above example, voluntary notice to the delinquent minor's Tribe resulted in substantial cost savings to the County: the Tribe identified a relative placement and provided much needed and culturally appropriate services to the minor. On behalf of the Tribe and its Indian children, we hope that the Committee will include voluntary notice as one option available to Courts despite the Supreme Court's recent holding in <i>In re W.B.</i></p>	