Supreme Court No. S275573

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re DEZI C., et al., Persons Coming Under the Juvenile Court Law.	)	2nd Civ. No. B317935
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Petitioner and Respondent, v. ANGELICA A., Defendant and Appellant.	)	Los Angeles County Superior Court Case No. 19CCJP08030A-B

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

On Appeal from an Order of the Juvenile Court
State of California, County of Los Angeles

Hon. Robin R. Kesler, Judge Pro Tempore

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Attorneys for Appellant mother, Angelica A.
Appointed by the Supreme Court

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APPELLANT'S REQUEST FOR JUDICIAL NOTICE

TO THE CHIEF JUSTICE OF THE STATE OF CALIFORNIA:

Petitioner A.A. respectfully requests this Court take judicial notice of the attached excerpts from the California ICWA Compliance Task Force, Report to the California Attorney General's Bureau of Children's Justice 2017 ("Report"). This Court may take judicial notice of the official acts of the legislative, executive, and judicial department of the United States and of any state of the United States. (Evid. Code, § 452, subdivision (c).) This Court may take judicial notice of matters not presented in the lower court. (Evid. Code, § 459, subd. (a).) This material was not presented in the lower courts in this case.

Judicial notice of "agency records as official acts" is appropriate to examine the history of a regulation the court is

interpreting. (*DiCarlo v. County of Monterey* (2017) 12 Cal.App.5th 468, 485.)

This Report is relevant to the issues in this case. It was considered by at least two appellate courts in conjunction with the issues presented. (See, *In re M.M.* (2022) 81 Cal.App.5th 61, 73-74, Wiley J., dissenting; *In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1021, Lavin, J., dissenting.) According to the "executive summary," in 2015, the California ICWA Compliance Task Force was formed after a meeting between California Department of Justice, Office of the Attorney General and the Bureau of Children's Justice, "to gather narratives and data regarding the failure of the ICWA implementation" to "be used in a concerted effort to target reform at non-complaint entities within the dependency system." (Report, p. v.)

This Report addresses the remedial purpose of the statutorily required inquiry when the child welfare agency fails to make the statutorily required inquiry concerning the child's potential Indian ancestry. The report will assist this Court in determining what constitutes "reversible" error, when the child welfare agency fails to make the statutorily required inquiry concerning the child's potential Indian ancestry.

Respectfully submitted,

Dated: December 14, 2022 /s/ Karen J. Dodd

Karen J. Dodd,

attorney for appellant

DECLARATION OF KAREN J. DODD

I, Karen J. Dodd, am the attorney for the mother in this matter and do declare the following to be true of my own personal knowledge and, if called to testify, thereto, could and would do so competently:

1. Attached hereto are true and correct excerpts from the California ICWA Compliance Report. The entire report can be found at the court website:

https://www.courts.ca.gov/documents/BTB24-1E-5.pdf

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

Dated: December 14, 2022 /s/ Karen J. Dodd

Karen J. Dodd

California ICWA Compliance Task Force

Report to the California Attorney General's Bureau of Children's Justice 2017

California ICWA Compliance Task Force

Report to the California Attorney General's

Bureau of Children's Justice

2017

Acknowledgments

The ICWA Compliance Task Force Co-Chairs would like to acknowledge and thank tribal leaders throughout California and other states for their dedication, support and encouragement of this Report. We would also like to express our deep gratitude to all the tribal ICWA representatives and ICWA advocates for their assistance, wisdom and guidance in the development of this Task Force Report. Thank you for sharing your stories, concerns and hopes with us. We would also like to acknowledge and thank Delia Sharpe, Directing Attorney, California Indian Legal Services' Eureka Office; Kimberly Cluff, In-House General Counsel, Morongo Band of Mission Indians; and Maureen Geary, Attorney, Maier Pfeffer Kim Geary & Cohen LLP. It is because of their efforts in supporting this work that the ICWA Compliance Task Force Report has become a reality.

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Executive Summary

At the time of its passage in 1978, the Indian Child Welfare Act, 25 U.S.C. §1901 et seq., (ICWA) was considered landmark civil rights legislation. When California passed what has become known as Cal-ICWA, legislation to adopt many of the protections of the federal ICWA into state law, it was again a landmark moment for the American Indian community. Unfortunately, the promise and potential of the federal ICWA and the Cal-ICWA have not been realized, as neither the letter nor the spirit of the law has been fully implemented.

In 2015, the California ICWA Compliance Task Force came together, after meetings with the Bureau of Children's Justice (BCJ), a newly created Bureau of the California Department of Justice, Office of the Attorney General, to gather narratives and data regarding the failure of ICWA implementation. The goal was that the narratives and data be used in a concerted effort to target reform at non-compliant entities within the dependency system. The intended audience for this work began as the BCJ but has grown to include many branches of state government and other stakeholders.

This Report is the culmination of the Task Force effort thus far, but it is not the end of the effort. This Report is an essential first step, an attempt to examine the issues and frame solutions. As an epicenter of ICWA cases (with more ICWA appeals than any other state), as the home of some of the most divisive and controversial cases involving the ICWA and as a state at the cutting edge of innovation and reform, California has a monumental task ahead to fulfill the promises made to Indian tribes, Indian communities and Indian families in 1978. We, as the Co-Chairs of the Task Force, believe the important work has started with the presentation of this Report but we, as tribal leaders, must ensure that the work continues with our partners in the Governor's office, the Office of the Attorney General, the Judicial Council, the California Bar Association and the California Department of Social Services.

It is essential to make clear that this Report and the Task Force itself do not state or hold as true that there has been no effort or progress in ICWA implementation over the last decades; there has been incremental progress with sincere and innovative efforts to address concerns that tribal leaders and stakeholders have brought forward.

The work of the Tribal-State Workgroup, the passage of several new statutes, and the growing use of Tribal Customary Adoption as a culturally appropriate plan are all exceptional examples of innovation. But, as we near the 40th anniversary of the ICWA, we must hold ourselves to a higher standard so we do not look back on only incremental progress, but look forward to achieve the articulated national and state policies to protect Indian children and preserve Indian tribes through compliance with this landmark legislation.

From the work of the Task Force there are specific areas of ICWA violations that emerged as the most frequent, pointing to where the system is most critically flawed: lack of funding which created an unfunded mandate of ICWA compliance for under-resourced tribes, lack of pre-removal remedial services, lack of robust active reunification efforts, failure to complete diligent inquiry and notice, resistance to tribal court jurisdiction, barriers to tribal participation in court processes, lack of competency within court systems, and deviation from or violation of placement preferences. Tribal leaders, tribal social workers and tribal attorneys disclosed instances all over the state and at all stages of cases where non-compliance with the ICWA had devastating effects on tribes and tribal families.

Tribal representatives shared many profound and deeply troubling stories on a private basis with the Task Force; however, those stories are not included here because the Native American community is effectively silenced by cultural custom. Tribes have shared that it is not appropriate to include a family's tragedy in a public document. In addition, tribes and Task Force participants feared retaliation for divulging ICWA violations and therefore requested privacy. The Task Force also vigilantly protected the confidentiality of children.

Beyond the individual instances of non-compliance, what emerged is a narrative that is no less than a denial of the civil rights that the ICWA and Cal-ICWA were meant to safeguard. Unfortunately, the civil rights violations visited upon California Indians in the dependency system are a small microcosm of a fundamental breakdown of the systems that are failing tribal families and children across the country; one need only

look at the underfunding of legal counsel for indigent tribal families, mental health crises with native youth,[1] the epidemic of sex trafficking of native girls,[2] and the federal court litigation in Pennington County, South Dakota,[3] which could be replicated in California.

As a result of the work of the Task Force, the Co-Chairs are requesting immediate action on the following issues, to be augmented by additional findings and recommendations as this process moves forward:

A) Reframe and reconsider ICWA compliance as a civil rights mandate. The California legislature has repeatedly declared there is no resource more vital to the continued existence and integrity of Indian tribes than their children, and the State has an interest in protecting Indian children in accordance with the Indian Child Welfare Act. The failure to fulfill this mandate is not simply a failure of statutory compliance, it is a systemic and ongoing civil rights violation. It is incumbent on the State to enforce its legislative mandate and require equitable compliance with ICWA, with the same resources and accountability as any other civil rights mandate.

B) Seek legislation to obtain positions and funding to address and develop a concrete action plan for investigating ICWA compliance and to consistently bring to bear the power of the Office of the Attorney General where ICWA compliance is failing.

C) Secure resources to build tracking and data systems that accurately account for tribes and tribal families, ICWA compliance and case outcomes.

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[1] Anna Almendrala, *Native American Youth Suicide Rates Are at Crisis Levels*, Huffington Post (October 2, 2015) available at: http://www.huffingtonpost.com/entry/native-american-youth-suicide-rates-are-at-crisis-levels_us_560c3084e4b0768127005591 (last visited May 31, 2016).

[2] Victoria Sweet, *Trafficking in Native Communities*, Indian Country Today (May 25, 2015) available at: http://indiancountrytodaymedianetwork.com/2015/05/24/trafficking-native-communities-160475 (last visited May 31, 2016).

[3] *Oglala Sioux Tribe v. Luann Van Hunnik*, United States District Court, District of South Dakota, Western Division, Case 13-cv-05020-JLV

D) Fund authentic and robust tribal consultation consistent with Executive Order B-10-11, and utilize the information and data gathered through consultation to inform policies and processes for meeting, and exceeding, the civil rights mandate of ICWA.

It is the goal of the Task Force that this Report be a call to action for the BCJ and that it starts a conversation examining the civil rights protected by ICWA. The rights to due process, to political and cultural connections and religious freedoms, and to remain in one's community of origin are routinely under attack. To achieve the promise of the ICWA, there must be more than episodic rallying cries and well-meaning grant cycle initiatives; there must be a vigilant force that demands more than mere lip service to compliance. We thank you for joining us as we address ICWA compliance and protection of the civil rights of our most vulnerable population.

I. Task Force Creation and Process

In November 2015, the California Department of Justice, by and through the Bureau of Children's Justice (BCJ), invited the creation of the first Indian Child Welfare Act Compliance Task Force (Task Force) in California.

The Task Force operates under the direction of seven tribal co-chairs: Maryann McGovran, Treasurer, North Fork Rancheria of Mono Indians of California; Robert Smith, Chairperson, Pala Band of Mission Indians; Angelina Arroyo, Vice-Chairperson, Habematolel Pomo of Upper Lake; Mary Ann Andreas, Vice-Chairperson, Morongo Band of Mission Indians; Aaron Dixon, Secretary/Treasurer, Susanville Indian Rancheria; Barry Bernard, Chairperson, Bear River Band of Rohnerville Rancheria; and the Honorable Abby Abinanti, Chief Judge, Yurok Tribal Court. The Task Force is comprised of tribal representatives and advocates.

The purpose of the Task Force is to gather information and data to inform the BCJ of the status of compliance with California laws related to Native American children in California, and provide recommendations regarding changes necessary to decrease violations of these laws across the many state and county systems that impact tribal families in the dependency system.

The Task Force is an independent, tribally led entity. Various methods were used to gather information, including: testimony and feedback from the community of stakeholders, multiple listening sessions, surveys from tribes across the United States and many follow-up individual interviews with stakeholders to gather more specific information. Email notices of each listening session and information regarding the survey were distributed utilizing contacts listed in the Federal Register, well-known websites and blogs and a concerted effort of outreach by individual Task Force participants.

Despite efforts to gain broad participation in the process and gather a wide spectrum of input, this Report is not comprehensive. For example, the data system utilized to gather and analyze the California Child Welfare System is fundamentally flawed in many ways, e.g., it is unable to produce ICWA-specific information at many levels and the Task Force had neither the authority, time or resources to investigate individual cases brought to the Task Force's attention by and through the information gathering that was completed. Further, the condensed timeframe of the Task Force's mandate required some limitations on information gathering. However, the Report does reflect a robust cross-section of input, experiences and information, which the Co-Chairs hope sheds light on the barriers, systemic failures and possible solutions to California's ongoing failure to live up to the mandates of state laws affecting tribal families and tribal governments navigating the juvenile dependency system.

SUMMARY OF SURVEY DATA GATHERED

STAGE OF CASE WHERE MOST NON-COMPLIANCE*: Pre-removal, Active Efforts, Jurisdiction and Placement*

MOST COMMON COMPLIANCE FAILURES*: Notice and Inquiry, Active Efforts, Placement and use of Qualified Expert Witnesses*

MOST COMMON SUGGESTED SOLUTIONS*: In addition to training and collaboration, tribes seek equitable enforcement of ICWA, consistent with any other law. A lack of funding does not and cannot excuse compliance.*

II. Introduction

A. California's Unique Native American Population

Nearly one-fifth of all federally-recognized Native American tribes in the country are in California.[4] Per the 2010 Census, California is home to approximately 723,000 persons identifying as Native Americans, more than any other state.[5] This concentrated population makes it essential that state laws designed to protect Native American families, children and tribes be properly and fully implemented.

For the purposes of understanding the Indian Child Welfare Act, 25 U.S.C. §1901 et seq., (ICWA) and Cal-ICWA, the legislation known as SB 678, certain historical facts must be emphasized. First, a great many California tribes are relatively small, are located on reservations or Rancherias in remote areas, and lack significant economic opportunities or resources. Second, a large percentage of Native Americans in California is from out-of-state tribes.[6,7] The sheer distance between the courthouse venue and the location of tribal representatives, attorneys, experts and social workers often poses a significant monetary burden. Thus, both in-state and out-of-state tribes find it financially impossible to intervene in every ICWA case involving their children. ICWA applies and must be enforced regardless of tribal intervention and there must be a universal understanding that it is the Native American child that triggers ICWA. This is a critical factor which is often ignored.

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[4] 81 Fed. Reg. 26826 (May 4, 2016) (110 of 566 tribes).

[5] Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010 (C2010BR-10)*, Table 2 (January 2012), available at http://tinyurl.com/7h6apt8.

[6] Stella Ogunwole, *We the People: American Indians and Alaska Natives in the United States*, U.S. Census Bureau (February 2006) http://www.census.gov/prod/2006pubs/censr-28.pdf (last visited May 31, 2016), and U.S. Census Bureau, *Census 2000 PHC-T-18: American Indian and Alaska Native Tribes in California: 2000* (June 2004) http://www.census.gov/population/www/cen2000/briefs/phc-t18/tables/tab019.pdf (last visited May 31, 2016).

[7] When termination and assimilation were regarded as appropriate federal policies during the 1950s and 1960s, many Indian families were moved to California via a "voluntary" program, ostensibly for their financial benefit. (See Advisory Council on California Indian Policy, Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416, "The ACCIP Historical Overview Report: The Special Circumstances of California Indians," p. 15 (September 1997).) The Urban Indian Relocation Program transported thousands away from reservations to designated relocation cities, such as Los Angeles, San Francisco, Oakland and San Jose. In an ironic twist, the program was headed by Dillon S. Myer, who had previously overseen the program under which Japanese-Americans were moved to internment camps during World War II.

While legislatures have recognized the importance of compliance with the ICWA and of protecting children's rights as Native Americans,[8] in practice the entity most concerned with seeing that these laws are followed – the tribe – is frequently precluded from participation. As is evident from numerous California appellate decisions year after year,[9] without some other enforcement mechanism or incentive for compliance, the ICWA and the complementary state laws discussed herein may be little more than paper tigers.

All statutory references are to California state law unless otherwise noted. References to "§" are to the California Welfare and Institutions Code. References to "Rule" are to the California Rules of Court.

B. The Passage of the Federal ICWA

Congressional hearings in the mid-1970s revealed a pattern of wholesale public and private removal of Native American children from their homes, undermining Native American families and threatening the survival of Native American tribes and tribal cultures.[10] At the national level, studies in the years leading up to the passage of the ICWA found that:

- Native American children were approximately six to seven times as likely as non-native children to be placed in foster care or adoptive homes;[11] and,

[8] Welf. & Inst. Code §224. All statutory references are to California state law except where noted.
[9] In 2016, there were 175 ICWA cases appealed. California again took the lead with 114 cases; 10 cases were reported. The second highest count is Michigan with 13 cases, 2 reported. Turtle Talk also tracked California cases by appellate district: 37 in the 4th Appellate District, 33 in the 2nd, 24 in the 1st, 9 in the 5th, 6 in the 3rd, and 3 in the 6th. https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/ There were 201 ICWA cases in 2015; 35 of them were reported. As usual, California has the most cases, with 156 (146 unreported). The next highest state was Michigan, with 7 cases (3 unreported). https://turtletalk.wordpress.com/2016/01/06/2015-icwa-appellate-cases-by-the-numbers/ (last visited March 6, 2017)).
[10] *Indian Child Welfare Program: Hearings Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs* (1974) 93rd Cong., 2d Sess. 3 (statement of William Byler) (http://narf.org/icwa/federal/lh/hear040874/, last visited May 15, 2012).
[11] Sherwin Broadhead et al., *Report on Federal, State, and Tribal Jurisdiction: Final Report to the American Indian Policy Review Commission* 81-85 (U.S. Gov't Printing Office 1976).

- Approximately 25%-35% of all Native American children were removed from their homes and placed in foster care or adoptive homes, or institutions such as boarding schools.[12]

In California, specifically:

- Native American children were more than eight times as likely as non-native children to be placed in adoptive homes;
- Over 90% of California Native American children subject to adoption were placed in non-native homes; and,
- One of every 124 Indian children in California was in a foster care home, compared to a rate of 1 in 367 for non-Indian children.[13]

Congress determined that Native American children who are placed for adoption into non-native homes frequently encounter problems in adjusting to cultural environments much different from their own.[14] Such problems include being stereotyped into social and cultural identities which they know little about, and a corresponding lack of acceptance into non-Native American society.[15] Due in large part to states' failures to recognize the different cultural standards of Native American tribes and the tribal relations of Native American people, Congress concluded that the Native American child welfare crisis was of massive proportions and that Native American families faced vastly greater risks of involuntary separation than are typical for our society as a whole.[16] These involuntary separations created social chaos within tribal communities. The emotional problems embedded in Native American children hampered their ability as adults to positively contribute to tribal communities and left families in extended mourning mode, which significantly impaired their ability to meet their tribal citizenship responsibilities.

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[12] H.R. Rep. 95-1386, 1978 U.S.C.C.A.N. 7530, 7531.
[13] Sherwin Broadhead et al., *Report on Federal, State, and Tribal Jurisdiction: Final Report to the American Indian Policy Review Commission* 81-82 (U.S. Gov't Printing Office 1976).
[14] See H.R. Rep. No. 95-1386, 1978 U.S.C.C.A.N. 7530, 7531-7532.
[15] Dr. Joseph Westermeyer, *Cross-Racial Foster Home Placement Among Native American Psychiatric Patients*, 69 Journal of the Nat'l Medical Assoc. 231, 231-232 (1977); *Indian Child Welfare Program: Hearings Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs,* 93rd Cong., 2d Sess. 46-50 (1974) (testimony of Dr. Westermeyer).
[16] See H.R. Rep. No. 95-1386, 1978 U.S.C.C.A.N. 7530, 7531-7532.

Congress passed the ICWA to remedy the above.[17] The ICWA is meant to fulfill an important aspect of the federal government's trust responsibility to tribes by protecting the significant political, cultural and social bonds between Native American children and their tribes. In doing so, the ICWA ultimately is civil rights legislation which protects the interests of Native American children and the existence of Native American tribes and families.[18],[19] Because the ICWA serves Native American children as well as parents, Indian custodians and Native American tribes, the ICWA must be applied regardless of whether a child's tribe is involved in the case.

Further, what was not accomplished by Congress and still plagues the system today is the lack of funding for the mandates of the ICWA. Fulfilling the promise of ICWA requires resources, but ICWA remains an "unfunded mandate" and the cost is borne by tribes and Native American families.

C. California Codifies ICWA via Senate Bill 678 and Other Laws

In 2006, Senate Bill 678 (referred to herein as the Cal-ICWA) was passed with the aim of harmonizing federal legislation and intent with state law.[20] Before it took effect, the ICWA had inconsistently been applied through Rules of Court, case law and the BIA Guidelines, but had not been codified for implementation on a state level. Cal-ICWA remains the most comprehensive ICWA-related legislation adopted by any state. The final legislation was the culmination of efforts by State Senator Denise Moreno Ducheny, its sponsor, on behalf of the Pala Band of Mission Indians, California Indian Legal Services and a host of others.

Cal-ICWA codified the federal ICWA's requirements into California Welfare & Institutions code, Probate code and Family code. This legislation specifically declared that a Native American child's best interests are served by protecting and encouraging a

[17] 25 U.S.C. §1901.
[18] 25 U.S.C. §1902.
[19] See, The Department of the Interior, Bureau of Indian Affairs adopted final regulations for implementation of the ICWA, which were published June 14, 2016, effective December 12, 2016. 81 Fed. Reg. 38778; codified at 25 CFR Part 23; www.indianaffairs.gov/cs/groups/public/documents/text/idc1-034238.pdf; ("ICWA Regulations"); the Bureau of Indian Affairs also published Guidelines for Implementing the Indian Child Welfare Act on December 13, 2016. 81 Fed. Reg. 96476 (December 30, 2016). www.indianaffairs.gov/cs/groups/public/documents/text/idc2-056831.pdf ("BIA Guidelines").
[20] Ducheny, Denise M., Senate Daily Journal for the 2005-2006 Regular Session, pp. 5606–5607 (August 31, 2006).

connection to his or her tribal community.[21] In addition, this legislation built upon the ICWA's foundation by creating further safeguards, such as:

(1) Clarifying that the ICWA applies to probate guardianships and conservatorships;[22,23]

(2) Imposing an ongoing and affirmative duty to inquire whether a child in a child-custody proceeding may be a Native American child;[24]

(3) Requiring documentation of the active efforts made to place a Native American child within the ICWA's order of preference;[25]

(4) If no preferred placement is available, requiring active efforts to place a Native American child "with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe;"[26]

(5) Requiring expert witness testimony to be live, rather than by declaration, unless all parties agree otherwise;[27]

(6) Prohibiting the party seeking foster care placement or termination of parental rights from using its own employee as the required expert witness;[28]

(7) Providing that a tribe wait until reunification services have been terminated before requesting a transfer to tribal court does not constitute good cause to deny such a request;[29]

(8) Requiring that available tribal resources be used when making active efforts to keep the Native American family intact;[30]

(9) Requiring that available tribal resources be used when trying to meet the ICWA's placement preferences;[31]

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[21] Welf. & Inst. Code §224(a)(2).
[22] Prob. Code §1459.5.
[23] Prior to SB 678, a question existed whether a non-social services petitioner could circumvent the ICWA by filing for guardianship or conservatorship letters for an Indian child while not following state or federal law requiring active efforts be made to prevent the breakup of the family.
[24] Welf. & Inst. Code §224.3(a).
[25] Welf. & Inst. Code §361.31(k).
[26] Welf. & Inst. Code §361.31(i).
[27] Welf. & Inst. Code §224.6(e).
[28] Welf. & Inst. Code §224.6(a).
[29] Welf. & Inst. Code §305.5(c)(2)(B).
[30] Welf. & Inst. Code §361.7(b).
[31] Welf. & Inst. Code §361.31(g).

(10) Acknowledging that the Interstate Compact on the Placement of Children does not apply to any placement sending or bringing a Native American child into another state pursuant to a transfer to tribal court under 25 U.S.C. §1911;[32] and, Applying sanctions of $10,000 for the first offense and $20,000 for the second if a person knowingly and willfully falsifies or conceals a material fact concerning whether a child is an Indian child or the parent is an Indian. [33]

SB 678 Includes Non-Federally Recognized Tribes

Non-federally recognized tribes ("N-FR tribes") are disadvantaged when ICWA is triggered in a child custody proceeding. Many N-FR tribes have organized as non-profits or are state-recognized tribes. Often, individuals who are affiliated with a N-FR tribe or are a member of a N-FR tribe reside on or near the reservation of a federally recognized tribe or within that federally recognized tribe's service area. Indians from N-FR tribes may therefore be eligible for services and programs from those federally recognized tribes and their affiliated programs. In addition, N-FR tribes may receive federal funding as a non-profit or state-recognized tribe, which may include funding for housing, employment and education. See United States Government Accountability Office, Report to the Honorable Dan Boren, House of Representatives; Indian Issues: Federal Funding for Non-Federally Recognized Tribes. April 2012.

To address and ease the impact of child custody proceedings on N-FR tribes, SB 678 embraced the spirit and intent of the ICWA with the inclusion of Indian children from non-federally recognized tribes by adding Section 306.6 to the Welfare & Institutions Code. With the court's discretion, this section allows a non-federally recognized tribe to:

1. be present at a hearing

2. address the court

3. request & receive notice of the hearings

4. request to examine court documents relating to the proceeding

5. present information to the court that is relevant

6. submit written reports and recommendations to the court

7. perform other duties & responsibilities as requested or approved by the court

While the ICWA and Cal-ICWA apply only to those tribes that meet the federal definition set forth in 25 U.S.C. §1903(8), the State of California made clear that Sec. 306.6 is "intended to assist the court in making decisions that are in the best interest of the child." This includes allowing the tribe to inform the court regarding placement options within the family and tribal community and provide information regarding services and programs that serve the parents and child as Indians. By including Sec. 306.6 in Cal-ICWA, the Legislature extended the state and federal interest to protect the best interests of Indian children to all Indian children in California.

Indian children from non-federally recognized tribes suffer similar hardships to other children, and counties must work to place these Indian children in their tribal communities and with tribal relatives. Counties must also work to provide culturally appropriate services and programs to Indian children and parents.

[32] Fam. Code §7907.3.
[33] Fam. Code §8620(g); see also Welf. & Inst. Code §224.2(e).

In addition to the Cal-ICWA, the California Legislature passed AB 1325 in 2009 to allow dependent tribal children in need of a long-term placement plan to be adopted without the necessary precursor of termination of parental rights. California's Tribal Customary Adoption bill has been utilized in California courts by both California and non-California tribes to have a culturally consistent permanency option for tribal children. As discussed below, Tribal Customary Adoption is, however, unfortunately still underutilized, despite being found to be the most culturally appropriate permanency option for many tribal children.[34]

D. Compliance Remains a Problem

Despite ICWA's federal mandate, and despite the Cal-ICWA's passage in 2006, systemic problems with compliance persist. Tribal attorneys and representatives experience frequent resistance and dismissiveness from child welfare agencies,[35] county attorneys and even courts when appearing in dependency cases. Procedural requirements designed to protect the connection between Indian children and their tribes[36] are too often viewed as requiring onerous paperwork, contributing to additional delays and creating impediments to permanence. The perception that Indian tribes, parents and children receive unnecessary special treatment persists—even though such treatment is entirely congruent with federal law recognizing the unique political status of tribes—and continues to be an underlying theme of many cases. The protections provided through the statutes are also part of the federal government's trust responsibility to tribes and Indian persons.[37]

The lack of ICWA-specific competence standards and training exacerbates this problem. Absence of true understanding of the ICWA's purpose leads to perfunctory compliance or complete violations of the law. For example, a recent report describes the right to legal counsel for children and families as "on the brink" because of budget cuts

[34] *In re H.R.* (2012) 208 Cal.App.4th 751,759.
[35] For purposes of this report, County Child Welfare Agencies are referred to as "the Agency" and "the County" interchangeably.
[36] Welf. & Inst. Code §224; *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 37.
[37] 25 U.S.C. §1901.

and rising caseloads.[38] As the population that is repeatedly documented as the most disproportionally represented in the child welfare system - coupled with a system in collapse to provide adequate legal counsel - tribal families and tribes are forced to pick up where the system falls short.[39] Added to the diminishing ability of appointed counsel to represent their clients is the reality that ICWA cases take additional competencies, training and resources. These two factors combined means that it is a near impossibility that the civil rights promised by the ICWA and Cal-ICWA can be protected.

This Report documents that almost 40 years after ICWA's passage, compliance with basic, fundamental aspects of the law (e.g., efforts to prevent the need for removal, notice and inquiry, providing appropriate reunification services, and meeting the placement preferences) remain a significant concern. The problem is further compounded by the fact that there is no reliable way to assess compliance on a systemic basis. There is no readily available data on how many cases the ICWA is or ought to be applied in. The data that does exist is not up to date and is not accurate. Counties routinely fail to keep required records, such as documentation of active efforts to meet the placement preferences[40] -- characterized by the Supreme Court as the ICWA's "most important substantive requirement."[41] As demonstrated in this Report, the lack of meaningful and accurate data is a systemic failure tied to a lack of training, resources and competency.[42]

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[38] American Civil Liberties Union of California, *System on the Brink: How Crushing Caseloads in the California Dependency Courts Undermine the Right to Counsel, Violate the Law and Put Children and Families as Risk*, May 26, 2015.

[39] See, Child Welfare Information Gateway, https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/; racial disproportionality index for American Indian/Alaska Native children increased from 1.5 in 2000 to 2.7 in 2014. Page 3; "Race or ethnicity may be incorrectly assumed by whomever is recording the data. For example, a caseworker may assume a child is not American Indian even though the child may be a Tribal member or is eligible for Tribal membership. This would affect the count of American Indian children involved with child welfare and could affect the services, supports, and jurisdiction of the case." Page 5.

[40] 25 U.S.C. §1915(e); Welf. & Inst. Code §361.31(k).

[41] *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36.

[42] See, 81 Fed. Reg. 90524 (December 14, 2016) Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule. Incorporation of data elements related to the Indian Child Welfare Act (ICWA) are mandatory by 2020. https://federalregister.gov/d/2016-29366

III. Failure to Fully Train Legal Counsel, State Agents, Advocates and Bench Officers Creates Systemic Barriers to ICWA Compliance

Tribal representatives identified an imbalance in training, competence and resources devoted to dependency case participants in relation to Cal-ICWA cases. The absence of training, continuing education, special certification and cultural sensitivity directly impacts the enforcement of the Cal-ICWA. The Task Force's research represents a small sample of the ICWA cases statewide, but a lack of ICWA-specific training appeared across the board, which is a systemic problem.

ISSUES:

1) Rules of Court failed to include CAL-ICWA-related issues and failed to consult with tribes, tribal social workers or tribal attorneys regarding establishing the Rules for competency.

2) Substantive areas of dependency training are incomplete because they fail to account for ICWA cultural competency and the heightened ICWA standards.

3) New social workers are not adequately familiar with ICWA issues when they first handle a case. Seasoned social workers suffer from a lack of ICWA training.

4) Rural tribal communities need to be included in the training process for social workers and CASA volunteers.

A. Legal Counsel

California Rules of Court, rule 5.660 compels each Superior Court to adopt a local rule regarding the representation of parties in dependency proceedings. The Rules direct each county to adopt a local rule on representation of parties in dependency cases *after* consultation with a variety of constituents (i.e., county counsel, district attorneys, public defenders and county welfare departments), but omit including any consultation with tribes, tribal social workers or tribal attorneys.

On its face, the rule is well-intentioned and designed to assure that legal counsel is qualified—but does not apply equally to all participants in dependency cases. More importantly, Rule 5.660 does not include any training, expertise, course work or verification that the participants are versant in

ICWA, Cal-ICWA or cultural issues. The gap, however, is that the rule does not apply to county attorneys or retained attorneys, but has on occasion been used to thwart tribal attorneys from appearing in cases.

Aside from the disparity of application in the competency rule, the substantive areas of expertise only include attorney training on: (i) dependency law, statutes and cases; (ii) information on child development, abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and (iii) instruction on cultural sensitivity and best practices for lesbian, gay, bisexual and transgender youth in out-of-home placement. The rule requires a recertification and eight hours of continuing education related to these areas every three (3) years.

RECOMMENDATIONS:

1) Revise the Rules of Court to effectively mandate ICWA competency for legal counsel, social workers, CASAs, bench officers and others. Expand the Rule to require specific substantive, procedural and cultural components of the ICWA and CAL ICWA.

*2) Hold attorneys to the appropriate standards for compliance with **all** laws including ICWA and Cal-ICWA.*

3) New and seasoned social workers should receive both on the job and non-adversarial training regarding ICWA compliance.

4) Establish a Tribal/Cal-ICWA CASA program with funding for recruitment, training and support for CASA volunteers.

(continued)

A rule that omits the ICWA and Cal-ICWA in a dependency training dilutes the effectiveness and competency of the entire process, and must be addressed through a statewide rule of court or statute. Non-compliant parties should be identified, to assist in ensuring compliance, to tribal attorneys and representatives. Ultimately the process will improve if the same level of training for generic dependency issues is afforded to ICWA issues.

The rule should be expanded to include all parties and social workers who appear in dependency cases, including county counsel and private attorneys. In addition, the rule should *specifically* include and incorporate training in substantive, procedural and cultural components of the ICWA and Cal-ICWA.

Notably, the rule includes training on *reasonable efforts*, but is silent on the higher ICWA standard of *active* efforts. Cultural sensitivity training, already required specifically for LGBT children, should be expanded to include specific training for Indian children.

B. Social Workers, CASAs and CAPTA Guardians

County social workers, CASAs and CAPTA guardians are not adequately trained in Cal-ICWA requirements or cultural competency. New social workers are not adequately familiar with ICWA issues when they first handle a case. Seasoned social workers also suffer from a lack of ongoing CAL-ICWA training and are often the most challenging to work with, given their number of years in the system. In addition, the rotation of case workers in the different phases of dependency was identified as problematic for tribes and tribal representatives, especially in large counties where case assignments are not vertically integrated through the different procedural phases. Tribes are forced to reorient as cases are moved from a *Detention Worker* to a *Placement Worker*, then to a *Case Plan Worker*, and sometimes to various assignments of *Permanency Workers*. To further complicate these cases, counties use various and different labels for each phase of a case, which compounds and frustrates the process for tribes. The fragmentation of assignments means that the newly assigned social workers are not familiar with the tribe or the culture, and often the Cal-ICWA, leaving tribes to start over several times in one case.

***RECOMMENDATIONS** (cont.):*

5) Reduce the rotation of social workers in the different phases of dependency.

6) Consult with tribes regarding appointment/assignment of bench officers.

7) Legislatively mandate training for new judicial officers and seasoned bench officers on tribal child welfare, ICWA and CAL-ICWA.

8) Delays in holding hearings and filing reports should trigger sanctions against the agency and or their counsel.

9) Bench officers must not allow the social service workers to submit generic, conclusory findings of compliance with CAL-ICWA.

Although All County Letters (ACLs), which interpret state and federal law for the county staff, address CAL-ICWA policies and procedures, this is not an adequate

substitute for training on an ongoing basis. The CDSS has issued ACLs on Changes in State Law, SB 678 (ACL 8-02); ICWA Adoption Forms, Process and Standards (ACL 8-02); Implementation of Tribal Customary Adoption (TCA) (ACL 10-47); and the Requirement of use of Expert Witnesses (ACIN 1-40-10), to name a few, but has overlooked continued training of the line social workers in non-adversarial situations. This lack of training applies to agency section managers, supervisors and directors.

Cultural competency, particularly when it comes to placements, services and being knowledgeable about the specific tribes that have children in the system, is a must for social workers, CASAs (Court Appointed Special Advocates) and CAPTA (Child Abuse Prevention and Termination Act) guardians. The size of California and the diversity of jurisdictions create a regional challenge, particularly for rural communities, and those tribes need to be part of the training process for social workers. The Task Force could find no corresponding training requirements on the Cal-ICWA for CASAs or CAPTA Guardians. Though in some instances the CASA and CAPTA GAL (Guardian ad Litem) may be the same person, the GAL could also be the social worker or minor's counsel, which lends to a confusing overlay of roles, but more importantly invites a discrepancy of training or competency when it comes to Cal-ICWA issues. The increasing roles of CASAs, CAPTAs and caregivers who are granted educational and other rights compels the State to ensure that these stakeholders are properly trained in the full spectrum of ICWA issues. Courts afford great weight to CASAs and others who speak for young children, and to the extent that the representative is ignorant of a tribe's legal and cultural stature, it adversely affects the minor and the tribe, and often contributes to the negative view of Cal-ICWA, the tribe and almost always the Native American parents and/or Indian custodian.

C. Court and Bench Officers

California Rules of Court, rule 5.40(d) delineates training and orientation established by the Presiding Judge of the Juvenile Court to include educational rights, disability accommodation and minimum continuing education requirements for counsel and participants, but does not include Cal-ICWA-related issues. The absence of any

tribal or Cal-ICWA training component in a state with 110 federally recognized tribes almost guarantees that some stakeholders in the system will not view the Cal-ICWA as equally important as other training areas.

California legislatively mandated training for judicial officers regarding domestic violence in recognition of the necessity for education on this particular topic, both because of the importance and the specificity of the issues.[43] Legislatively mandated training - for both new judicial officers and periodically for all bench officers - on tribal child welfare and Cal-ICWA is similarly necessary, as other methodologies such as non-mandated training have not resulted in a decrease in Cal-ICWA appeals nor appear to have increased systemic competency.

A separate issue, and one that is not unique to ICWA cases, is the institutional acceptance of delays in child welfare cases. The Welfare and Institutions Code requires cases to be heard within a strict and short timeframe. A detention hearing must occur within 48 hours of a child being taken into custody,[44] with jurisdiction being heard 15 days thereafter (if the child is detained) or 30 days (if child is not detained).[45] Disposition, which is the linchpin of a dependency case—because it is where the court decides whether to return a child home (family maintenance), or place out of home (family reunification, with a formal case plan) — can only be decided *after* a court takes jurisdiction. The dispositional hearing must also occur within strict time parameters: (i) 10 days if a child is detained;[46] and (ii) no later than 30 days if the child is not detained.[47] In non-reunification cases, a continuance cannot exceed 30 days.[48]

Notice to federally recognized Indian tribes must also be factored into each case, and requires 10 days' notice to the tribe and/or Bureau of Indian Affairs and, if

[43] Gov. Code §68555; 2014 Rule of Court 10.464.
[44] Welf. & Inst. Code §313(a); Rule of Court 5.670(b).
[45] Welf. & Inst. Code §334; Rule of Court 5.670(f).
[46] Welf. & Inst. Code §358; Rule of Court 5.686(a).
[47] Welf. & Inst. Code §358; Rule of Court 5.686(a).
[48] Rule of Court 5.686(b).

requested by a tribe, parent or Indian custodian, a 20-day continuance must be granted after notice is received.[49]

The now-common practice of combining Jurisdiction and Disposition into one hearing, which is contrary to the statutory time scheme, coupled with late or defective notice to tribes, has cultivated systemically sanctioned delays. The logistical difficulties of agency or counsel noticing tribes does not alleviate the public policy requirement of hearing dependency and ICWA cases within the specified and accelerated timetables. In addition, the common practice of filing late reports, and not serving tribes or their representatives with all documents and discovery, is an abuse of process that was identified by the Task Force respondents. The willful disobedience or interference with orders of the Juvenile Court or judge constitutes contempt, and is punishable under §213 in the same manner as regular civil courts under CCP §1218. The Dependency Court's inherent authority to sanction counsel and parties extends to failures to provide discovery and disclosure to tribal attorneys, tribal representatives and Indian tribes.[50]

The delays in holding hearings and filing reports, coupled with delays in providing notice, discovery and disclosure to tribes—despite amendments to §827, and despite tribes being relegated to second-tier parties—is something that can and should trigger sanctions against the agency and/or their counsel. Acquiescence by the court raises a question of collective competence because the court should not condone parties' unfamiliarity with or, worse, disregard of the rules.

Finally, bench officers must not allow social service workers to submit generic, conclusory findings of compliance with Cal-ICWA. Where a finding of good cause to deviate from placement preferences, by way of example, is required, then the court should specify in exacting detail—on the record—what the good cause is, and not allow unsupported findings. Much of the problem identified by Task Force participants stemmed from juvenile courts broad-brushing findings that appear, on paper, to comply with the Cal-ICWA, but in practice exclude tribal input and compliance.

[49] Rule of Court 5.482.
[50] Rules of Court 5.486(j) and (k).

To be clear, not every case involves social workers, legal counsel or judges who are not well-versed in the Cal-ICWA, but the prevalence of untrained participants and the perception by tribes that they must force compliance—especially where tribes do not have lawyers or have not formally intervened—demonstrates that a training and certification component is sorely needed for all counsel and social workers.

Task Force Participants ~

"It appears as though many appointed attorneys and bench officers have a very limited understanding of ICWA, which leads to contentious relationships with tribes and a bare minimum effort at following the law. Thus, training is needed to ensure cases don't become adversarial and lead to more trials and conflicts for Indian families."

***Regarding Orange County**: "Training for the court, attorneys and social workers on ICWA and the importance of ICWA compliant placement."*

***Regarding Nevada County**: "The court and parties need to be trained on ICWA and forced to comply."*

***Regarding Sacramento County**: "Training and clarification on ICWA and the specific requirements of the placement and active efforts. Training on the new guidelines would greatly improve understanding."*

IV. Child Welfare Agencies Fail to Provide Pre-Removal Active Efforts

A. Active Efforts to Prevent Removal

Absent exigent circumstances, active efforts must be provided to an Indian family prior to removing an Indian child.[51] Active efforts are to be assessed on a case-by-case basis and must take into account the "prevailing social and cultural values, conditions, and way of life of the Indian child's tribe."[52] Referrals to and utilization of "available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies and individual Indian caregiver service providers" would be demonstrative evidence.[53] Given the widespread lack of understanding in California of what "active efforts" means and what is required,[54] it is the rare situation when an Indian family has received active efforts before a child welfare agency initiates a removal of an Indian child.[55]

ISSUES:

1) Failure of child welfare agencies to reach out to tribal service providers to secure active efforts for Indian families and children due to specific service contract providers.

2) Failure of child welfare services to file timely reports and serve tribes and their representatives with documents and discovery.

3) Tribal recommendations regarding services are not being honored.

4) Gearing culturally relevant pre-removal services to both the parent and the Indian child.

The goal of pre-removal active efforts is to identify and address the issues impacting the family, which may put an Indian child at risk for removal. Despite the number of Indian Health Services clinics and hospitals in California, as well as tribal organizations providing a myriad of services and tribes with social service programs, child welfare agencies often do not connect and reach out to these

[51] See Welf. & Inst. Code § 361.7(a); Cal. Rules of Ct. 5.484 (c).
[52] See Welf. & Inst. Code §361.7(b).
[53] *Id.*
[54] Counties specifically named as not providing adequate pre-removal services or not disclosing information to tribes regarding pre-removal issues were: Kings, Riverside, Sacramento, Sonoma, San Diego, Napa and Humboldt.
[55] See, ICWA Regulations defining "active efforts" codified at 25 CFR Part 23.2. This provides a higher standard of protection to the parents or Indian custodian and is therefore the applicable standard.

service providers to secure active efforts for Indian families and children because agencies contract with specific service providers to refer parents to prior to removing a child. In addition, whether a matter of ignorance, distrust or a combination of both, social workers all too often reject tribal recommendations regarding the type of services to be provided or service providers to be accessed, in favor of the county's standard case plan and contracted providers. This not only frustrates the relationship between tribes and child welfare agencies, but rejection of these services is in violation of federal and state law and a disservice to Indian children, youth and families. An additional concern at this stage is that services and referrals are almost always geared to the parent, with diminished consideration of services targeted to the Indian child.

ISSUES (cont.):

5) Child welfare investigations are not handled properly.

6) Safety plans are not utilized consistently or properly.

7) Protective custody warrants are not shared with Tribes.

8) PEPS are executed in violation of ICWA and CAL-ICWA.

9) Lack of cross-reporting between the county and tribe. Refusal by the county to provide a copy of protective custody warrants to tribal representatives.

B. Investigation

When a report is made to a child welfare agency, the agency is required to investigate. Tribes report that some child welfare agencies fail to investigate at all when the report comes from an Indian reservation. In those situations, the tribe is told to address the issue or that a worker will be in touch, but there is no follow-through.[56] In the event a child welfare agency does enter an Indian reservation to investigate, the tribe is routinely not notified and not included, even though the investigation is on tribal land. This is true for off-reservation investigations as well. Tribes in California have concurrent jurisdiction over child welfare matters regardless of whether the child is on or off reservation.[57] The counties and State must recognize and respect that jurisdiction. Tribal involvement at the investigation stage is critical for family preservation, active

[56] This specific issue was reported by Tribal Representatives on cases in Lake and Mendocino counties, but other Tribal Representatives agreed that they had this experience in other counties as well.
[57] *Doe v. Mann* (9th Cir. 2005) 415 F.3d 1038, 1064.

efforts and CAL-ICWA compliant placement. Some investigations are not conducted within the statutory timeframes and are not fully or competently completed. In addition, and this is evidenced in the social workers' delivered service logs, there is a failure to adequately document the Indian child's tribes, tribal representatives, extended family and identification of the reasons for the investigation. Poor documentation results in a failure to fulfill the agency's duty of inquiry.

C. Safety Plans Are Avoidance Mechanisms to Compliance

A component of service plans is often a safety plan that allows a child to remain in the home with a parent(s) or caregiver(s) when there has been an abuse or neglect referral and an investigation. A safety plan is one method to eliminate conditions or circumstances that could lead to removal, and is a measure of "reasonable efforts." The use of safety plans varies from county to county; however, they appear to be used with regularity to circumvent the minimum federal standards of ICWA. Tribes have seen safety plans used in lieu of a petition, for example, when a child welfare agency receives a referral to investigate an allegation of child abuse/neglect and a TDM (Team Decision Making) is called.

A typical scenario described by Listening Session participants was: A relative is present who agrees to care for the child. A safety plan is created between the relative and the child welfare agency regarding the child's safety and how to keep the child safe from harm. The parent is told to address the issue posing the risk to the child and the child is placed with the relative. This is a violation of state and federal law.

The common refrains in Indian Country are: Who creates the plan, is it in writing, and who gets a copy? Tribes may ask for a copy of the safety plan, but it is not provided, there is no transparency and counties often refuse to release the plans during discovery. This begs the question: Are the plans in writing and are they enforceable? What if the parent fully complies with the plan but the child isn't returned or a petition is filed? Enforcement of the plan is usually detaining the child and filing a petition. However, safety plans differ from voluntary family maintenance and/or temporary removals. Normally, there are statutory timeframes for voluntary family maintenance

and temporary removals. However, in many counties, safety plans are open-ended and have no timeframes.[58] Further, tribal representatives disclosed that, more often than not, the process of using safety plans turns into simply a period of time in which the agency gathers damning information about a parent that is later used as evidence against a parent or caregiver, sometimes to justify bypass under §361.5.

Safety plans are also developed on the spot in the home and there is no tribal input and no active efforts to support the Indian child and family. This is true when a TDM is used and the tribe has not been invited/informed. Safety plans are meant to be used between parents and a child welfare agency. They are sometimes only offered to one parent. Safety plans deprive the parent(s) and/or Indian custodian of reunification services, the right to his/her child upon demand and pre-removal active efforts. They also fail to comply with the requirement for a judicial certification.[59] Use of safety plans circumvents a parent's right to reunify with his/her child and a parent's right to active efforts. [See discussion below on PEPS.] While a safety plan may be used to keep a child out of the child welfare system, it may also be used as a tool to skirt the law.

A similar tactic, veiled as a voluntary placement, is protective emergency placement services (PEPS) or informal supervision (IS). Commonly used in Sacramento County, PEPS are done without court intervention or the filing of a petition. These "voluntary placements" are of an indefinite duration. In addition, they are in violation of ICWA and Cal-ICWA. When a parent or Indian custodian voluntarily consents to a foster care placement, such consent "shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied

RECOMMENDATIONS:

1) Consent to foster care placement should be certified by the presiding judge that all aspects were full explained and fully understood.

2) Guardianship proceedings should not be completed until investigation and reporting is provided to the court. No referral to probate guardianship when dependency is most appropriate.

[58] Kings, Sonoma and Marin Counties specifically reported this issue.
[59] 25 U.S.C. §1913; Welf & Inst. Code §16507.4

by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail, and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood."[60] This consent may be withdrawn at any time and "upon such withdrawal, the child shall be returned to the parent or Indian custodian."[61] The use of PEPS is in violation of the state and federal law.[62]

Task Force Participants ~

"A relative was given the child under a safety plan, the parents could not have the child returned and the social worker referred the parents to the family law court to address custody issues." (Sonoma County)

"The Tribe asked for a copy of the safety plan to support the family and it was not provided based on 'confidentiality requirements.'"

"My report of suspected child abuse was classified as a 'community report' and was not recognized as being from the Tribe, resulting in a slower response."

"Kings County Human Services Agency fail[ed] to notify and work with the Tribe to develop a plan prior to removal."

[60] 25 U.S.C. §1913(a).
[61] §1913(b) Welf. & Inst. Code §16507.4, See also, 25 U.S.C. §1922.
[62] See also, Sacramento County Annual SIP Progress Report 2014, p. 4: "Sacramento County uses Protective Emergency Placements Services (PEPS) placement, which are voluntary placements, primarily utilized in Emergency Response and Informal Supervision Programs. These placements are counted as an entry into placement, therefore, when they end they are also counted as a reunification." It is unknown if Sacramento County is following Welf. & Inst. Code §361.31(k) and keeping a record of these placements in perpetuity or whether any of these placements are ICWA compliant. PEPS are in violation of Welf. & Inst. Code §16507.4.

D. Information Gathering and Sharing

Several common issues were identified during the Listening Sessions where tribal representatives reported not being informed when the County became aware of families in need, either on or off the reservation, even when said families were identified as being tribally affiliated. This issue was often combined with failures to cross report between counties and inter-county agencies, such as CPS and the school district. Further, there were many issues reported relating to Agencies not sharing information necessary for tribes to safely place children in homes, such as access to home studies and criminal histories.

In addition, tribal representatives reported not being contacted in advance or even soon after protective custody warrants were deemed necessary. Temporary custody/removal of a child by a peace officer aside, Welfare and Institutions Code §309(a) requires a social worker who has temporarily removed a child to immediately release the child to the parent, guardian or responsible relative unless one of five conditions exist. These conditions include: if the child has no parent, guardian or responsible relative or they are unable to care for the child; "continued detention of the child is a matter of immediate and urgent necessity" to protect the child and the child cannot be reasonably protected in the home; substantial evidence that the parent, guardian or responsible relative is flight risk; the child left the placement ordered by the juvenile court; or the parent/other relative with lawful custody voluntarily surrendered custody under Health & Safety Code §1255.7 and has not reclaimed the child in 14 days." Tribes reported multiple issues related to detentions without warrants and a refusal to provide a copy of protective custody warrants to tribal representatives.

E. Guardianships Are Used to Circumvent the Law

Probate Code §1513(c) requires the Probate Court to refer a guardianship case to CPS/Social Services whenever it is alleged that a parent is unfit. Further, if dependency proceedings are initiated, the guardianship proceedings must be stayed in accordance with §304. "If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by §300 of the Welfare and

Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by §§328 and [is] completed and a report is provided to the court in which the guardianship proceeding is pending."[63] If a dependency proceeding is not initiated, the probate court shall retain jurisdiction to hear the guardianship matter.

Listening Session participants reported being told that the family could avoid removal by CPS if it secured a probate guardianship. Unfortunately, while sometimes this recommendation may have been provided with good intentions, there are problems with utilizing probate guardianships in these circumstances. First, probate courts are even less familiar with Cal-ICWA than dependency courts. Also, there is no system for appointing counsel for parents[64] in probate court and parties seeking guardianship are often referred to courthouse-based self-help centers which have little or no training with Cal-ICWA. Therefore, parents, Indian custodians, children and tribes are deprived of their rights under ICWA and Cal-ICWA, and the agency is quietly, with no ramifications to the agency, relieved of its obligations.

Many Listening Session participants reported that families were told to go get a guardianship or the child would be detained, but they had no way of pursuing a guardianship petition and then were accused of not being protective of the child or being uncooperative.

[63] *In re Guardianship of Christian G.* (2011) 195 Cal.App.4th 581, 595.
[64] Probate Code §1460.2 provides for court-appointed counsel to parents and Indian custodians. Courts are unaccustomed to appointing attorneys for parents, let alone Indian custodians in these cases.

V. State Courts and Child Welfare Agencies Are Not Complying with Cal-ICWA Requirements for Notice and Inquiry

Cal-ICWA, like its federal counterpart, requires tribes be noticed of proceedings involving Indian children.[65] Notice is one of the ICWA's most fundamental requirements, as "failure to give proper notice… forecloses participation by the tribe."[66] Failure to notice keeps the party most invested in ICWA compliance out of the picture, and decreases the chances that the stated goals of the ICWA and the Cal-ICWA will be met.

ISSUES:

1) Inadequate notice and inquiry where a child may be an Indian child.

2) ICWA 030 is a Judicial Council form signed under penalty of perjury by the petitioner. Many courts are ordering parents to complete the form, which incorrectly places the burden on them.

3) Counties attempting to make determinations regarding tribal membership.

4) Failure to provide notice in non-dependency ICWA cases.

The notice requirement is as old as the ICWA itself, yet inexplicably continues to be a problem in case after case. Prior to the enactment of the Cal-ICWA, failure to provide proper notice was described by one court as a "virtual epidemic."[67] Even after the notice provisions of the Cal-ICWA were enacted,[68] another court stated that the failure of adequate notice "remains disturbingly high."[69] And notice cases continue to clog the system to this day. The California Dependency Online Guide[70] annual review for 2015 reports that:

> "In reviewing the case law from 2015, it is significant that ICWA compliance continues to be an active appellate issue. In the last six months of 2015, ICWA cases accounted for roughly 30% of all juvenile dependency appeals. Approximately 85% of those appeals were related to inquiry and

[65] 25 U.S.C. §1912; Welf. & Inst. Code § 224.2.
[66] *In re Robert A.* (2007) 147 Cal.App.4th 982, 987.
[67] *In re I.G.* (2005) 133 Cal.App.4th 1246, 1254-1255 (listing 11 published appellate cases requiring reversal between 2003 and 2005, and noting the existence of 72 unpublished cases in 2005 alone which required reversal in whole or in part due to ICWA notice violations).
[68] Welf. & Inst. Code §224.2.
[69] *Justin L. v. Superior Court* (2008) 165 Cal.App.4th 1406, 1410.
[70] Judicial Council of California, *California Dependency Online Guide*, available at: www.courts.ca.gov/dependencyonlineguide.

notice, with 70% resulting in remand for ICWA noticing, and in some instances, reversal of findings and orders in addition to the order to comply with ICWA inquiry and notice requirements."

The Cal-ICWA is clear in requiring notice to be sent prior to every hearing in which the court, a social worker or a probation officer knows or has reason to know that an Indian child is involved.[71] Both the Cal-ICWA and related Rules lay out what information is to be provided in each notice, to whom notice must be provided, and the proper inquiries necessary to determine if a child is or may be an Indian child.[72,73]

The California Rules of Court are also clear that the duty of inquiry is an affirmative and continuing duty, meaning that it violates the Cal-ICWA to rely on the parents to notify the tribe or alert the social services agency that they may have Indian ancestry, or to ask the parents once at the inception of the case without also contacting the extended family and Bureau of Indian Affairs.[74]

How then does notice continue to be such a prevalent issue, squandering such a disproportionate share of judicial resources? There are a variety of ways in which the law is still violated. Tribal representatives explained that they often saw failures to make adequate initial inquiries, to follow up on potential Indian ancestry or alternative sources of information, to provide complete or accurate information to tribes, to provide information to the correct person or address at the tribe, or to contact all of the tribes where a child may possibly be a member or eligible for membership.[75] Further, all too frequently, the agency or Court takes it upon itself to determine whether the child is an "Indian child" as defined, rather than defer to the tribe as the law explicitly provides.[76]

A. Initial Inquiries and Follow-Ups

The threshold question at the start of any child custody proceeding is simply whether there is any reason to believe that the child may be an Indian child. If there is,

[71] Welf. & Inst. Code §224.2(a), (b).
[72] Welf. & Inst. Code §224.2; Rule of Court 5.481 (emphasis added).
[73] ICWA Regulations, 25 CFR Part 23.111; The BIA Guidelines are also instructive on this latter point, at §B.
[74] Welf. & Inst. Code §224.3; Rule of Court 5.481.
[75] Tribal representatives identified inquiry as being nonexistent in Madera County.
[76] Welf. & Inst. Code §224.3(e)(1).

further inquiry is required.[77] The duty of inquiry belongs to the court, court-connected investigator and party seeking the foster-care placement, guardianship, conservatorship, custody placement under Family Code §3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption of the child, which includes the county child welfare agency, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator, and appointed fiduciary.[78] The statute does not restrict this inquiry to be made solely of the parents,[79,80,81] but the applicable CRC could be interpreted to do so,[82] and to the extent that it has been so interpreted, it should be amended. Welfare and Institutions Code §224.3 lists many persons, entities and other sources who or which might provide information on a child's potential status as an Indian,[83,84] and considering the statutory requirement that inquiry be affirmative and ongoing, this suggests a duty to make reasonable attempts to contact and investigate those persons, entities and sources at the outset. Section 224.3 also states that "reason to know" is not limited to information from those persons, entities and

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[77] Rule of Court 5.481(a)(4).
[78] Rule of Court 5.481(a).
[79] Welf. & Inst. Code §224.3.
[80] It is reported that the parents are frequently the only persons asked, and unfortunately the courts have at times affirmed this approach. (*In re E.H.* (2006) 141 Cal.App.4th 1330 [parent failed to respond affirmatively to court's repeated inquiries when asked about child's possible Indian heritage; incumbent on parent to disclose the child's Indian ancestry or to object to the social worker's reports].
[81] However, other courts have recognized that even a parent's silence on the issue and/or murky information does not waive the juvenile court's affirmative duty to inquire. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414; *In re Samuel P.* (2002) 99 Cal.App.4th 1259; *In re Gabriel G.* (2012) 206 Cal.App.4th 1160.)
[82] Rule of Court 5.481.
[83] Welf. & Inst. Code §224.3(b) states: "The circumstances that may provide reason to know the child is an Indian child…"include, but are not limited to, the following:

> (1) 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.
>
> (2) The residence or domicile of the child, the child's parents or Indian custodian is in a predominantly Indian community.
>
> (3) 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.

[84] ICWA Regulations, 25 CFR Part 23.107. BIA Guidelines are again instructive, stating that: "State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. This inquiry must be done on the record. At §B.1.

sources, reinforcing the view that initial inquiry should not be made only to the parents. Since notice to tribes "must contain enough identifying information to be meaningful," the party providing notice has a duty to inquire about and obtain, if possible, "all of the information about a child's family history as required under regulations promulgated to enforce [the] ICWA."[85]

The 2016 ICWA Regulations and BIA Guidelines recommend that the court ask each participant in the case (including the guardian ad litem and the agency representative) to certify *on the record* whether they have discovered or know of any information that suggests or indicates the child is an Indian child.[86]

In requiring this certification, the court may require the agency to provide:

> (i) Genograms or ancestry charts for both parents,
> (ii) The addresses for the domicile and residence of the child, his or her parents or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.[87]

When parents are the sole target of the initial inquiry, it should be understood that there are a variety of reasons why relying on the parents does not necessarily protect the child's best interests, or the rights of the tribe. Parents may simply not have that information, or may possess only vague or ambiguous information.[88]

The parents or Indian custodian may be fearful to self-identify, and social workers are ill-equipped to overcome that by explaining the rights a parent or Indian custodian has under the law. Parents may even wish to avoid the tribe's participation or assumption of jurisdiction.[89]

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[85] *In re Robert A.* (2007) 147 Cal.App.4th 982, 987 (internal citations omitted).
[86] ICW Regulations, 25 CFR Part 23.107. BIA Guidelines at §B.1.
[87] ICWA Regulations, 25 CFR Part 23.108. BIA Guidelines, at §B.7
[88] *In re L.S.* (2014) 230 Cal.App.4th 1183 (parents claimed various Indian heritages, including "Blackfoot" (located in Canada); agency erred in not sending notice to "Blackfeet" (located in Montana)).
[89] *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30 (mother gave birth to twins at hospital 150 miles from reservation in express attempt to avoid tribal jurisdiction).

Task Force Participants~

"The Tribe was not notified of a removal at birth, but we were notified at the 366 termination of parental status and move to adopt by the non-native foster family. We intervened at that point. The impact on the Tribe is firstly finding out the child was in the system for 18 months from birth."

"The case was in San Francisco, which is typically known to do a pretty good job…Mother filled out the ICWA-020 form, naming two tribes…the names of her grandfather and great-grandfather. Instead of doing additional inquiry…the court determined ICWA didn't apply [because of an old sibling case]….The Court of Appeal was very clear" and overturned the trial court's determination.

Even when the extended family is contacted and reports possible Indian ancestry, the reports are too-often disregarded as being remote or insignificant. Welfare and Institutions Code §224.3(b) includes as a reason that a child may be an Indian child: "one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe." This provision neither limits the generations from which relevant information may be obtained nor creates a general "remoteness" exception to ICWA notice requirements.[90] "The notice requirement

RECOMMENDATIONS:

1) Amend the Rules of Court to support more robust inquiry and notice and include sanctions and penalties for failing to comply.

2) Each party should be required to certify on the record whether they have discovered or know information that indicates the child is an Indian child.

3) Remove reliance on the parents to supply information relevant to inquiry; insist on due diligence of the social worker.

(continued)

[90] *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1387, n. 9.

RECOMMENDATIONS (cont.):

4) Require accurate and complete notice to enable the tribe to determine whether the minor is an Indian child.

5) Require notice to all tribes with which the child may have Indian ancestry.

6) Require notice for voluntary adoption proceedings, probate guardianships and delinquency proceedings.

7) Create a single point of contact within the agency for noticing so training regarding noticing tribes can be concentrated.

8) Create a regional (non-county) clearinghouse to track notices going out and, where counties continually fail, to take over noticing.

applies even if the Indian status of the child is uncertain. The showing required to trigger the statutory notice provisions is minimal.[91] A hint may suffice for this minimal showing."[92]

B. Failure to Provide Complete or Accurate Information

The Cal-ICWA requires that notice include various details regarding the family and a copy of the child's birth certificate, if it is available.[93] Notices must be fully and accurately filled out to enable the tribe to determine whether the minor is an Indian child. Many of the challenges relating to ICWA notice relate to deficiencies in this regard, which include misspellings and/or incomplete names;[94] incomplete identifying information; [95] and/or notice sent for some but not all siblings. Courts have recognized notice is meaningless if the information in it is insufficient to allow for a determination of membership or eligibility.[96]

C. Notice to Incorrect Person/Address or Not to All Tribes

Notice is to be sent to the Tribal Chairperson unless the tribe designates another agent.[97] The BIA maintains a list of persons for each federally-recognized tribe who are

[91] Welf. & Inst. Code §224.3(b).
[92] *In re D. C.* (2015) 243 Cal.App.4th 41, 61, citing *In re Miguel E.* (2004) 120 Cal.App.4th 521, 549 (emphasis added).
[93] Welf. & Inst. Code §224.2(a)(5)(E).
[94] *In re Louis S.* (2004) 117 Cal.App.4th 622 (notice contained misspelled and incomplete names, relevant information in the wrong part of the form, and did not include available birth dates).
[95] *In re Christian P.* (2012) 208 Cal.App.4th 437 (social services agency initially did not provide any information regarding mother's grandparents, nor did it provide the locations of mother's or the children's births, and where it failed to provide any further information, despite its being available, after receiving a letter requesting more information from the Navajo Nation); *In re S.E.* (2013) 217 Cal.App.4th 612.
[96] *In re Louis S., supra; In re S.M.* (2004) 118 Cal.App.4th 1108.
[97] Welf. & Inst. Code §224.2(a)(2); Rule of Court 5.481(b)(4).

authorized to accept ICWA service.[98] Notice is also to be sent to the BIA in all cases subject to the ICWA.[99] This provision, however, is separate and distinct from the requirements for rendering *substituted service*. Substituted service on the BIA occurs if the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child -- notice of the proceeding *must* be sent to the appropriate BIA Regional Director and Secretary of the Interior.[100] This is intended to allow the BIA to use its special expertise with Indian tribes to assist in determining whether the child may be an Indian child. After receiving notice, the BIA has 15 days to notify the parents or custodian and the tribe of the pending action and to send a copy of the notice to the state court.[101]

Several difficulties have emerged regarding this process. First, if the BIA cannot determine whether the child is an Indian child or cannot locate the parents or Indian custodian within the 15-day period, it must notify the state court "prior to the initiation of the proceedings" how much additional time it will need.[102] The challenge, however, is that juvenile proceedings are subject to a statutorily mandated timeline. Second, to be effective, notice to the BIA should contain as much information as possible about the child's Indian ancestry.[103] However, as discussed above, notice is often not accurate or complete.

D. Potential Membership in Multiple Tribes

Notice must be sent to all tribes in which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the child's tribe.[104] If more than one tribe claims the child as a member (or the child is not a member but is eligible for membership in more than one tribe), the state court may

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[98] 25 C.F.R. §23.12.
[99] 25 C.F.R. §23.11(a).
[100] 25 U.S.C. §1912(a); 80 Fed. Reg. 10146, 10154 at §B.6(e); 25 C.F.R. §23.11(a); Welf. & Inst. Code §224.2(a)(4); Rule of Court 5.481(b).)
[101] 25 C.F.R. §23.11(f).
[102] 25 C.F.R. §23.11(f).
[103] 25 C.F.R. §23.11(b).
[104] ICWA Regulations, 25 CFR Part 23.109. BIA Guidelines, at §B.5; Welf. & Inst. Code §224.2(a)(3), (b); Rule of Court 5.482(d)(2); Rule of Court 5.481(b)(1).

select the tribe that has "the more significant contacts" with the child.[105] It is reported that often notice is not sent to all of the tribes through which a child may have Indian ancestry. This is particularly common in California, especially where there are multiple tribes on Rancherias in one geographical region. For example, there are three federally recognized Cherokee tribes on the BIA's contact list; there are more than 15 Pomo tribes on the same list.[106]

E. Determining Whether a Child is an "Indian Child" Instead of Deferring to the Tribe

A common mistake by agencies, county counsels, court-appointed attorneys and the courts themselves is to conflate the issues of: (a) whether ICWA applies and (b) whether notice is required under the ICWA. In a recently published opinion, the court reiterated that the relevant question is not whether the evidence currently supports a finding that a minor is Indian; it is whether the evidence triggers the notice requirement so that the tribe itself can make that determination.[107]

This conflation stems in part from ignorance of child welfare agencies and county counsels as to their roles and responsibilities. They often believe it is their role/responsibility to determine if a child is a member or eligible for membership and thus if the ICWA applies. As Task Force respondents shared, too often social workers or county counsel want to make enrollment or eligibility decisions as soon as possible, not understanding that tribal eligibility and membership are only within the tribe's purview. The courts cannot make these determinations either. Every Indian tribe establishes and is knowledgeable of its specific eligibility requirements. The United States Supreme Court has held that "a tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."[108] The tribe has the definitive and final word on whether a child is

[105] 25 U.S.C. §1903(5)(b); Welf. & Inst. Code §224.1(e)(2).
[106] 81 Fed. Reg. 26826 (May 4, 2016).
[107] *In re D.C.* (2015) 243 Cal.App.4th 41, 63.
[108] *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1468-1469 (definition of Indian child does not automatically exclude grandchildren by adoption of an ancestor with Indian blood).

or is not a member or is or is not eligible for membership.[109] The tribe's determination is conclusive on the state court.[110]

Often there is a fixation on the issue of enrollment. It is important to remember that while enrollment is a common evidentiary means of establishing Indian status, it is not the only means, nor is it determinative.[111] In fact, Cal-ICWA expressly states that "(i)nformation that the child is not enrolled or eligible for enrollment in the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom."[112] Enrollment is not required to be considered a member of many tribes, since some tribes do not have written rolls. As noted above, the tribe's determination is conclusive.

F. Voluntary adoptions, guardianships, and delinquency

Notice is required in voluntary adoption proceedings,[113] probate guardianships[114] and delinquency proceedings in which the child is either in foster care or at risk of entering foster care.[115,116] Probate guardianships were an area of concern raised by Task Force respondents. Despite a recent First District Court of Appeal decision holding that the ICWA's requirements, including that of notice, do indeed apply in probate guardianship proceedings,[117] it is reported that the same trial court involved in that case, as well as courts in nearby counties, continues to disregard the ICWA's applicability.

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[109] *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49.
[110] Welf. & Inst. Code §224.3(e)(1); *In re D.N.* (2013) 218 Cal.App.4th 1246.
[111] *In re Jack C* (2011) 192 Cal.App.4th 967.
[112] Welf. & Inst. Code §224.3(e)(1).
[113] 25 U.S.C. §1913; Family Code §180; *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30; *Adoption of Lindsay C.* (1991) 229 Cal.App.3d 404.
[114] Probate Code §1460.2.
[115] Welf. & Inst. Code §727.4; Rule of Court 5.480(2).
[116] See also, 25 U.S.C. §1913 (judicial certification required for voluntary placements and termination of parental rights).
[117] *Guardianship of D.W.* (2013) 221 Cal.App.4th 242. (In this case, the trial court incorrectly assigned appellant, the party objecting to the guardianship, the responsibility of providing notice to the possible Indian tribes. By the time of the contested hearing on the guardianship petition, appellant had a letter from the Karuk Tribe, indicating that the minor was potentially affiliated with the tribe and that the matter was currently under investigation. Rather than waiting for the results of that investigation for at least 60 days, as required by Rule of Court 7.1015(c)(9), the court proceeded with the guardianship proceeding as if the minor was not an Indian child, granted the guardianship petition, and placed the minor in the guardian's care. On appeal, the guardianship order was reversed. The trial court's failure to apply the ICWA and the appropriate state law and Rules of Court is a familiar scenario throughout California).

Delinquency was also an issue raised by respondents. While a recent California Supreme Court case limited the general application of the ICWA to delinquency proceedings,[118] notice is still useful to tribes, because they often can offer services or the assistance of elder tribal mentors to youth who are wards of the court.[119] And the Act can and does apply to status offenders (such as truancy or possession of alcohol) or probation violations for minors (which are not in and of themselves a criminal act). Without notice, a tribe cannot provide services or placements for the small subset of delinquent minors who are covered by the ICWA.

[118] *In re W.B.* (2012) 55 Cal.4th 30.

[119] The Advisory Committee Comment for Rule of Court 5.481 (governing notice and inquiry) provides insight into this issue, available at: www.courts.ca.gov/5807.htm.

Proof of Service

I am, and was at the time of the service of this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is jdodd@appellate-law.com and my business address is 17621 Irvine Blvd., Ste. 200, Tustin, CA 92780. On December 14, 2022, I served the persons and/or entities listed below by the method checked. For those marked "Served Electronically," I transmitted a PDF version of the Appellant's Request for Judicial Notice by TrueFiling Electronic service or by e-mail to the e-mail service address(es) provided below. For those marked "Served by Mail," I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place show below, following the my office's ordinary business practices. I am readily familiar with this business practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

Served Electronically:
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2. Stephen Watson, Esq. (swatson@counsel.lacounty.gov)
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7. Hon. Robin Kelser (JuvJoAppeals@lacourt.org)
8. Sean Burleigh, Esq. (Saburleigh@gmail.com)
9. Second District, Div.Two (Truefiling)

By Mail:
7. A.A. (address omitted)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed this 14th day of December, 2022, at Tustin, California.

/s/ Karen J. Dodd
Karen J. Dodd

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

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Lower Court Case Number: **B317935**

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Dodd, Karen (146661)

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John L. Dodd & Associates

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