

Cal.Rules of Court, Rule 5.482

WEST'S ANNOTATED CALIFORNIA CODES

CALIFORNIA RULES OF COURT

TITLE 5. FAMILY AND JUVENILE RULES

DIVISION 2. RULES APPLICABLE IN FAMILY AND JUVENILE PROCEEDINGS

CHAPTER 2. INDIAN CHILD WELFARE ACT

**Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b))**

**(a) Timing of Proceedings (Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e); Welf. & Inst. Code, § 224.2(c), (d))**

(1) If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, except as stated in sections (a)(2) and (3).

(2) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster care may proceed without delay, provided that:

(A) Notice of the detention hearing must be given as soon as possible after the filing of the petition initiating the proceeding; and

(B) Proof of notice must be filed with the court within 10 days after the filing of the petition.

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

(A) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster;

(B) The jurisdiction hearing in a delinquency case in which the court finds the continuance would not conform to speedy trial considerations under Welfare and Institutions Code section 657; and

(C) The disposition hearing in a delinquency case in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.484 when holding the disposition hearing.

**(b) Proof of notice (Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. & Inst. Code, § 224.2(c))**

Proof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.

**(c) When there is information or a response from a tribe that requires additional steps**

If after notice has been provided as required by federal and state law a tribe responds indicating that the child is eligible for membership if certain steps are followed, the court must proceed as if the child is an Indian child and direct the appropriate individual or agency to provide active efforts under rule 5.484(c) to secure tribal membership for the child.

**(d) When there is no information or response from a tribe (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst., Code § 224.3(e)(3))**

(1) If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the **Indian Child Welfare** Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.

(2) If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.

(3) The court is not required to delay proceedings until a response to notice is received.

**(e) Intervention (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.4)**

The Indian child's tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings and may, but are not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene.

**(f) Posthearing actions (25 U.S.C. § 1916(b))**

Whenever an Indian child is removed from a guardian, conservator, other custodian, foster home, or institution for placement with a different guardian, conservator, custodian, foster home, institution, or preadoptive or adoptive home, the placement must comply with the placement preferences and standards specified in Welfare and Institutions Code section 361.31.

**(g) Consultation with tribe**

Any person or court involved in the placement of an Indian child must use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference specified in rule 5.484.

Current with amendments received through 7/1/2010