Cal.Rules of Court, Rule 7.1015

WEST'S ANNOTATED CALIFORNIA CODES

CALIFORNIA RULES OF COURT

TITLE 7. PROBATE RULES

CHAPTER 21. GUARDIANSHIPS

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)

(a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

(1) "Act" means the Indian Child Welfare Act (25 United States Code sections 1901-1963).

(2) "Petitioner" means and refers to a petitioner for the appointment of a guardian of the person of a child or a petitioner for the appointment of a conservator of the person of a formerly married minor child.

(b) Applicability of this rule and rules 5.480 through 5.487

(1) This rule applies to the following proceedings under division 4 of the Probate Code when the proposed ward or conservatee is an Indian child, within the meaning of the act:

(A) A guardianship of the person or the person and estate in which the proposed guardian of the person is not the proposed ward's natural parent or Indian custodian within the meaning of the act;

(B) A conservatorship of the person or the person and estate of a formerly married minor in which the proposed conservator is not a natural parent or Indian custodian of the minor and is seeking physical custody of the proposed conservatee.

(2) Unless the context otherwise requires, rules 5.480 through 5.487 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.487 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of the person of an Indian child and to an Indian child's appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a temporary or general guardian or conservator of the person of the child involved in a proceeding listed in (1), the duties and responsibilities of a petitioner under this rule are transferred to and become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner has concerning the child to the appointed guardian or conservator.

(c) Notice

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and Institutions Code section 224.3(b), that an Indian child is involved, the petitioner and the court must notify the child's parents or legal guardian and Indian custodian, and the Indian child's tribe, of the pending proceeding and the right of the tribe to intervene, as follows:

(1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed *Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.

(2) The petitioner and his or her attorney, if any, must complete the *Notice* and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the *Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.

(3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the *Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030) in the manner described in (1) and sign the declaration of mailing on the *Notice*.

(4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve the *Notice* in the manner described in (1) and sign the certificate of mailing on the *Notice*.

(5) The original of all *Notices of Child Custody Proceeding for Indian Child* (form **ICWA**-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.

(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

(7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the *Notice*, the additional tribes or bands may be listed on an *Attachment to Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030(A)).

(8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first hearing unless and until it is determined that the act does not apply to the proceeding.

(9) If, after a reasonable time following the service of notice under the act-- but in no event less than 60 days--no determinative response to the *Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030) is received, the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.

(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of Child Custody Proceeding for Indian Child* (form **ICWA**-030) is no longer required and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.

(11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.

(d) Duty of inquiry

(1) The court, a court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, a petitioner, and an appointed temporary or general guardian or conservator of the person of a minor child each have an affirmative and continuing duty to inquire whether the child involved in the matters identified in (b)(1) is or may be an Indian child.

(2) Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents or any other legal guardian, whether the child is or may be an Indian child, and must complete the *Indian Child Inquiry Attachment* (form **ICWA**-010(A)) and attach it to his or her petition.

(3) At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form **ICWA**-020) and deliver the completed form to the petitioner.

(4) If the parent, Indian custodian, or guardian does not personally appear at a hearing in a proceeding identified in (b)(1), the court may order the petitioner to use reasonable diligence to find and ask the parent, Indian custodian, or legal guardian to complete and deliver to petitioner a *Parental Notification of Indian Status* (form **ICWA**-020).

(5) If the court or county investigator, petitioner, appointed guardian or conservator, or the attorney for a petitioner or appointed guardian or conservator, knows or has reason to know that an Indian child is involved in the proceeding, he or she must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5) that is required to complete the *Notice of*

Child Custody Proceeding for Indian Child (form ICWA-030);

(B) Contacting the U.S. Department of the Interior, Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership.

(6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.

(7) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or

(C) 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 U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

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