

1439(e)(3)(B). When there is no determinative response to the notice within 60 days, the court may determine that ICWA does not apply unless further evidence is received later. [Cal Rules of Ct 1439\(f\)\(6\)](#).

5. [§100.56] After Determining That ICWA Applies

The child's tribe has a right to intervene at any time in an Indian child custody proceeding. See 25 USC §1911(c); [Cal Rules of Ct 1412\(i\)](#), [1439\(h\)](#). If the state fails to comply with certain provisions of the ICWA, the proceedings may be dismissed on petition of the parent or the tribe. 25 USC §1914; [Cal Rules of Ct 1439\(n\)](#). In *In re Samuel P.* (2002) 99 CA4th 1259, 1267, 121 CR2d 843, it was reversible error to fail to notify the tribe that a dependency proceeding was underway when there had been clear indications of Indian ancestry.

If the child is to be placed in foster care or adoption, the court must place the child with the child's extended family, another Indian family, or the tribe, unless good cause is shown for another placement. 25 USC §1915; [Cal Rules of Ct 1439\(j\)–\(k\)](#).

Under [Cal Rules of Ct 1439\(e\)\(3\)](#), if the court has reason to know that the child is an Indian child, the court must proceed with all dependency hearings, observing the timelines of the Welfare and Institutions Code, while complying with ICWA.

IV. SAMPLE FORMS

A. [§100.57] Script: Conduct of Initial or Detention Hearing

(1) Introduction

[Mr./Ms.] [name of clerk], please swear all persons who may wish to speak during the proceedings.

Note: Often this step is omitted because in most counties parents speak through their attorneys, and social workers rarely testify at detention hearings.

(2) Appointment of attorney for parent(s) or guardian(s)

[If parents are unrepresented by counsel]

You have a right to be represented by an attorney during this detention hearing, and during all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

- **JUDICIAL TIP:** Judges often explain to the parents the importance of hiring an attorney with experience in juvenile court.

[Or]

The court has reviewed the financial declaration of [*name of parent or guardian*] and finds that [*he/she*] is entitled to appointment of counsel. At this time, the court appoints [*name of attorney*] to represent [*him/her*].

[*If parents waive counsel*]

This is a serious and important matter. If the court finds that grounds for detention exist, this hearing could result in [*name of child*] being placed [*with [name of parent or guardian]/in a foster home/in the shelter*] from today until the jurisdiction hearing on [*date*]. Ultimately parental rights may be terminated and the child may be placed for adoption. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

- JUDICIAL TIP: Many judges also inform parents of the applicable time frames and emphasize the complexity of the law and the difficulty of the procedure before accepting a waiver.

[*When applicable, add*]

The court now finds that the parents have intelligently waived their right to counsel at this hearing.

(3) *Attorney for child*

The court has read and considered the documentary material submitted by the Department of Social Services (the Department) for the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on this issue?

[*After hearing evidence, if any, on issue of child's need for attorney*]

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints [*name of attorney*] as the child's CAPTA guardian-ad-litem to represent the child.

[Or]

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because [*give reason*].

- JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple

siblings are involved) and, if so, to appoint separate counsel for siblings. See discussion in §100.20.

(4) *Paternity inquiry, if applicable*

The court needs to know the name and address of the child's father, as well as names and addresses of any men who might claim to be fathers.

- **JUDICIAL TIP:** It is important to question the mother with as much delicacy as possible, possibly beginning with the question of whether she is or was married to the father.

[If no answers appear to be forthcoming, the court may ask the mother or other participant who might know the answers (see [Cal Rules of Ct 1441\(b\)\(1\)–\(6\)](#))]

1. Has there been a paternity judgment?
2. Were you [*the mother*] married or did you believe yourself to be married, at the time of conception?
3. Were you [*the mother*] living with a man at the time of conception?
4. Did you [*the mother*] receive support or promises of support during the pregnancy?
5. Has a man formally acknowledged paternity?
6. Have paternity tests been administered and, if so, what were the results?

(5) *Explanation of procedure*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings.

First, there will be an initial or detention hearing. That is what is happening here today.

[If child is detained]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court, as well as for the court to decide whether [*name of child*] should remain in protective custody [*in the shelter*] from today until the date of the jurisdiction hearing, which has been set for [*date*]. The jurisdiction hearing may be similar to a trial. It is the hearing at which the court decides whether what the petition says is true.

[If child is not detained]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court.

[*Continue*]

When you appear in court on [date], for the jurisdiction hearing, the court will decide whether the statements contained in the petition that has just been read are true. If the court finds them to be not true, the court will dismiss the petition. If the court finds them to be true, the court will conduct a disposition hearing.

The purpose of a disposition hearing is to decide what action, if any, the court should take in view of what has been found to have happened. If [name of child] is not able to be returned home at the disposition hearing, there may be later hearings that may culminate in the termination of parental rights.

If the court sustains the petition at the jurisdiction hearing and if [name of child] is declared a dependent of the court and removed from the custody of [his/her] parent or guardian, court-ordered reunification services may not be provided for more than 12 months for a child who is over three years old at the time of removal or six months for [a child who was/all the children if there was any one child who was] under three years old at the time of removal if [the parent or guardian does/you do] not participate regularly in a court-ordered treatment program.

Note: Very often, the attorney for the parent(s) or guardian(s) will state that he or she has explained these matters to the parent or guardian and will waive formal advisement. Many judges encourage attorneys who appear in their courts to take this responsibility because it can be helpful in streamlining judicial proceedings.

(6) *Notice*

(a) *One parent not present:*

[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]

The court finds that notice has been given as required by law. The [mother/father/guardian] has failed to appear.

(b) *Both parents present:*

The court finds that the [mother/father/guardian(s)], the child, and all counsel were notified of this hearing and served with the petition as required by law.

(c) *One or both parents or guardian(s) not present and notice attempted:*

The court finds that the following attempts were made to locate the [mother/father/guardian(s)]: [List attempts.] The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [parent(s)/guardian(s)] were reasonable.

(d) *Insufficient attempts at notice:*

The court finds that the Department has not used due diligence in attempting to locate the [parent(s)/guardian(s)]. The case is therefore continued for one day. The Department must take the following steps to locate the [parent(s)/guardian(s)]: [List them, e.g., check with Department of Corrections, check with child's school].

Note: Only rarely will a judge need to dictate to the DSS the search efforts that are needed.

(7) *Waiver of reading of petition and advisement of rights*
[To each counsel]

Does your client waive reading of the petition and advisement of rights?

(8) *Reading the petition*
[If not waived, read the petition]

Do each of you understand the petition just read, or do you have any question about it you would like to have answered by the court?

Are there any changes to names, addresses, or ages in the petition that should be corrected?

(9) *Advisement re addresses under [Welf & I C §316.1](#) and [Cal Rules of Ct 1412\(k\)](#)*

The address that [is in the petition/you have given the court today] will be used by the court and the social worker for all further notices unless you advise the court and the social worker in writing of any changes in address. [There is a form available in the courtroom for this purpose.]

(10) *Advisement of rights*

As you are aware, [name of child] has been placed in protective custody because of the circumstances stated in the petition that was just read to you.

You have certain rights at this hearing. You have the right to:

1. Be represented by counsel as already explained;
2. See, hear, and question all witnesses who may be examined at this hearing;
3. Cross-examine, which means ask questions of, any witness who may testify at this hearing; and
4. Present to the court any witnesses or other evidence you may desire.

In the case of reports submitted by the Department of Social Services, you also have the right to cross-examine the social worker who prepared the reports. Further, you have the right to present evidence and to use the court's subpoena power to bring witnesses to court to testify on your behalf. Finally, you have a right against self-incrimination, which means that no one can force you to say anything that might be used against you as the basis for, or in connection with, criminal proceedings. I would advise you, however, that you also have "use immunity" for any testimony you give in these proceedings. This means that your testimony here cannot be used in a criminal proceeding against you.

If you have any questions regarding immunity, I suggest that you discuss the issue further with your attorney. Now, do you understand each of these rights that I have explained to you?

(11) *Evidence*

[Court reads any written reports, which the parties should have had an opportunity to review, and states for the record all material read by the court.]

The court receives into evidence the report of *[date]*.

Note: The term for the social worker's report varies from county to county. Whatever the local usage is, the court must indicate which documents it is relying on.

[Court should orally examine child, if present, and parents or other persons for relevant knowledge bearing on grounds for detention. (Child is often not present at a detention hearing.) Court allows cross-examination of any witness who may testify.]

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether *[name of child]* should remain in protective custody.