

APPENDIX - E

CALIFORNIA RULES OF COURT

**CALIFORNIA RULES OF COURT
TITLE FIVE. SPECIAL RULES FOR TRIAL COURTS
DIVISION IC. JUVENILE COURT RULES
CHAPTER 3. GENERAL CONDUCT OF JUVENILE COURT PROCEEDINGS**

(Effective as of January 1, 2001)

Rule 1410. Persons present

(a) [Separate session; restriction on persons present (§§ 345, 675)] All juvenile court proceedings shall be heard at a special or separate session of the court, and no other matter shall be heard at that session. No person on trial, awaiting trial, or accused of a crime, other than a parent, de facto parent, guardian, or relative of the child, shall be permitted to be present at the hearing, except while testifying as a witness.

(b) [Persons present (§§ 280, 332, 335, 347, 349, 353, 656, 658, 677, 679, 681, 700, 25 U.S.C. §§ 1911, 1931-1934)] The following persons are entitled to be present:

(1) The child;

(2) All parents, de facto parents, Indian custodians, and guardians of the child or, if no parent or guardian resides within the state or, if their places of residence are not known,

(A) any adult relatives residing within the county or, if none,

(B) any adult relatives residing nearest the court;

(3) Counsel representing the child or the parent, de facto parent, guardian or adult relative, Indian custodian or the tribe of an Indian child;

(4) The probation officer or social worker;

(5) The prosecuting attorney, as provided in subdivisions (c) and (d);

(6) Any court-appointed special advocate;

(7) A representative of the Indian child's tribe;

(8) The court clerk;

(9) The official court reporter, as provided in rule 1411;

(10) At the court's discretion, a bailiff.

(c) [Presence of prosecuting attorney--§§ 601-602 proceedings (§ 681)] In proceedings brought under section 602, the prosecuting attorney shall appear on behalf of the people of the State of California. In proceedings brought under section 601, the prosecuting attorney may appear to assist in ascertaining and presenting the evidence if:

(1) The child is represented by counsel; and

(2) The court consents to or requests the prosecuting attorney's presence, or the probation officer requests and the court consents to the prosecuting attorney's presence.

(d) [Presence of petitioner's attorney--§ 300 proceedings (§ 317)] In proceedings brought under section 300, the county counsel or district attorney shall appear and represent the petitioner if the parent or guardian is represented by counsel, and the juvenile court requests the attorney's presence.

(e) Others who may be admitted (§§ 346, 676, 676.5) Except as provided below, the public shall not be admitted to a juvenile court hearing. The court may admit those the court deems to have a direct and legitimate interest in the case, or in the work of the court.

(1) If requested by a parent or guardian in a hearing under section 300, and consented to or requested by the child, the court may permit others to be present.

(2) In a hearing under section 602:

(A) If requested by the child and a parent or guardian who is present, the court may admit others.

(B) Up to two family members of a prosecuting witness may attend to support the witness, as authorized by Penal Code section 868.5.

(C) Except as provided in section 676(b), members of the public shall be admitted to hearings concerning allegations of the offenses set forth in section 676(a).

(D) A victim of an offense alleged to have been committed by the child who is the subject of the petition, and up to two support persons chosen by the victim, are entitled to attend any hearing regarding the offense.

(E) Any persons, including the child, may move to exclude a victim or a support person and must demonstrate a substantial probability that overriding interests will be prejudiced by the presence of the individual sought to be excluded. Upon such motion, the court shall consider reasonable alternatives to the exclusion and shall make findings as required under section 676.5.

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CHAPTER 3. GENERAL CONDUCT OF JUVENILE COURT PROCEEDINGS**

(Current through June 1, 2000)

Rule 1412. General provisions--proceedings

(a) [Control of proceedings (§§ 350, 680)] The court shall control all proceedings with a view to the expeditious and effective ascertainment of the jurisdictional facts and of all information relevant to the present condition and welfare of the child.

(b) [Conduct of proceedings (§§ 350, 680)] Unless there is a contested issue of fact or law, the proceedings shall be conducted in a nonadversarial atmosphere.

(c) [Testimony of child in chambers (§ 350)] In a hearing pursuant to section 300 et seq., a child may testify in chambers and outside the presence of the child's parent or guardian if the parent or guardian is represented by counsel who is present, and the court determines that any of the following circumstances exist:

(1) Testimony in chambers is necessary to ensure truthful testimony; or

(2) The child is likely to be intimidated by a formal courtroom setting; or

(3) The child is afraid to testify in front of the parent or guardian. In determining whether there is a basis for the child's in-chambers testimony, the court may consider the petitioner's report or other offers of proof. The parent or guardian may elect to have the court reporter read back the child's testimony.

(d) [Burden of proof (§§ 350, 701.1)] In any hearing under section 300 in which the county welfare agency has the burden of proof, after completion of the agency's case, and the presentation of evidence by the child, the court may, on motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof is not met.

In any hearing under section 601 or 602, after the completion of the petitioner's case, the court may, on the motion of any party, or on the court's own motion, order whatever action the law requires if the burden of proof is not met.

If the motion is denied, the child in a section 300 or section 601 or section 602 hearing, or the parent or guardian in a section 300 hearing, may offer evidence.

(e) [De facto parents] Upon a sufficient showing the court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue. The de facto parent may:

(1) Be present at the hearing;

(2) Be represented by retained counsel or, at the discretion of the court, by appointed counsel;

(3) Present evidence.

(f) [Relatives] Upon a sufficient showing the court may permit relatives of the child to:

(1) Be present at the hearing;

(2) Address the court.

(g) [Right to counsel (§§ 317, 633, 634, 700)] At each hearing the court shall advise an unrepresented child, parent, or guardian of the right to be represented by counsel, and, if applicable, of the right to have counsel appointed, subject to a claim by the county for reimbursement as provided by law.

(h) [Appointment of counsel (§§ 317, 633, 634, 700)]

(1) In cases petitioned under section 300:

(A) The court shall appoint counsel for the child if it appears that the child would benefit from the appointment;

(B) The court shall appoint counsel for any parent or guardian unable to afford counsel if the child is placed in out_of_home care, or the recommendation of the petitioner is for out_of_home care, unless the court finds the parent or guardian has knowingly and intelligently waived the right to counsel. The court may also appoint counsel for the petitioner to represent the child unless the court deter-

mines that representation constitutes a conflict of interest. If the court finds a conflict exists, separate counsel shall be appointed for the child.

(2) In cases petitioned under section 601 or section 602:

(A) The court shall appoint counsel for any child who appears without counsel, unless the child knowingly and intelligently waives the right to counsel. If the court determines that the parent or guardian can afford counsel but has not retained counsel for the child, the court shall appoint counsel for the child and order the parent or guardian to reimburse the county;

(B) The court may appoint counsel for a parent or guardian who desires but cannot afford counsel;

(C) If the parent has retained counsel for the child and a conflict arises, the court shall take steps to ensure that the child's interests are protected.

(i) [Tribal representatives (25 U.S.C. §§ 1911, 1931-1934)] The tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on behalf of the tribe. When the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual or agency to appear as the tribe, shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

(2) If the tribe of the Indian child does not intervene as a party, the court may permit an individual affiliated with the tribe, or if requested by the tribe a representative of a program operated by another tribe or Indian organization to:

(A) be present at the hearing;

(B) address the court;

(C) receive notice of hearings;

(D) examine all court documents relating to the dependency case;

(E) submit written reports and recommendations to the court;

(F) perform other duties and responsibilities as requested or approved by the court.

(j) [Advice of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)] The court shall advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

(1) Any right to assert the privilege against self-incrimination;

(2) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner, and the witnesses called to testify at the hearing;

(3) The right to use the process of the court to bring in witnesses;

(4) The right to present evidence to the court.

The child, parent or guardian, and their attorneys have the right (i) to receive probation officer or social worker reports, and (ii) to inspect the documents used by the preparer of the report. Unless prohibited by court order, the child, parent or guardian, and their attorneys also have the right to receive all documents filed with the court.

(k) [Notice] At each hearing under section 300 et seq. the court shall determine whether notice has been given as required by law, and shall make an appropriate finding noted in the minutes.

(l) [Address of parent or guardian--notice (§ 316.1)] At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court shall order the parent or guardian, or both, to provide a mailing address.

(1) The court shall advise the parent or guardian that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.

(2) The court shall advise the parent or guardian that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.

(3) Judicial Council form Notification of Mailing Address/Change of Mailing Address (JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.

(A) The form shall be delivered to the parent or guardian, or both, with the petition.

(B) The form shall be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.

(C) The form shall be printed and made available in both English and Spanish.

(m) [Periodic reports] The court may require the petitioner or any other agency to submit reports concerning a child subject to the jurisdiction of the court.

CALIFORNIA

**CALIFORNIA RULES OF COURT
TITLE FIVE. SPECIAL RULES FOR TRIAL COURTS
DIVISION IC. JUVENILE COURT RULES
CHAPTER 8. CASES PETITIONED UNDER SECTION 300
PART II. INDIAN CHILD WELFARE ACT**

(Effective as of January 1, 2001)

Rule 1439. Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)

(a) [Definitions; 25 U.S.C. § 1903] As used in this rule, unless the context or subject matter otherwise requires:

(1) “Indian child” means an unmarried person under the age of 18 who:

(A) is a member of an Indian tribe, or

(B) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(2) “Indian child’s tribe” means:

(A) the Indian tribe in which the child is a member or is eligible for membership; or

(B) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

(3) “Indian custodian” means any Indian who has:

(A) legal custody of an Indian child under tribal law or custom, or under state law; or

(B) temporary physical care, custody, and control of an Indian child whose parent or parents have transferred custody to that person.

(4) “Parent of an Indian child” means the biological parent of an Indian child or any Indian person who has lawfully adopted a child, including adoptions under tribal law or custom. (This definition does not include a non-Indian adoptive parent, or an unwed alleged father where paternity has not been determined or acknowledged.)

(5) “Custody” means legal or physical custody or both as provided under state law or tribal law or custom.

(6) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.

(7) “Extended family” means those persons defined by the law or custom of the Indian child’s tribe, or in the absence of such law or custom, an adult grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-law, niece, nephew, first or second cousin, or step-parent of the Indian child.

(8) “Child custody proceeding” means and includes a proceeding at which the court considers foster care placement, appointment of a guardian, termination of parental rights, preadoptive placement, or adoptive placement.

(9) “Foster care placement” means any temporary placement from which a child may not be removed by the parent or Indian custodian upon demand, including a shelter care home, foster home, institution, or the home of a guardian or conservator.

(10) “Qualified expert witness” means a person qualified to address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious physical or emotional damage to the child. Persons most likely to be considered such an expert are:

(A) a member of a tribe with knowledge of Indian family organization and child rearing; or

(B) a lay expert with substantial experience in Indian child and family services and extensive knowledge of the social and cultural standards and child-rearing practices of Indian tribes, specifically the child’s tribe, if possible; or

(C) a professional person with substantial education and experience in Indian child and family services and in the social and cultural standards of Indian tribes, specifically the child’s tribe, if possible; or

(D) a professional person having substantial education and experience in the area of his or her specialty.

(11) “Act” means the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(12) “Tribal court” means a court with jurisdiction over child custody proceedings, identified as a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings. If applicable, the tribal court has met the requirements for resumption of jurisdiction over child custody proceedings as approved by the Department of the Interior.

(b) [Applicability of rule; 25 U.S.C. §§ 1911, 1912] This rule applies to all proceedings under section 300 et seq., including detention hearings, jurisdiction hearings, disposition hearings, reviews, hearings under section 366.26, and subsequent hearings affecting the status of the Indian child.

(c) [Jurisdiction; 25 U.S.C. § 1911]

(1) If the Indian child resides or is domiciled on an Indian reservation that exercises exclusive jurisdiction under the Act over child custody proceedings, the petition under section 300 must be dismissed. At present, no California tribe is authorized under the Act to exercise exclusive jurisdiction.

(A) If the Indian child is temporarily off a reservation that exercises exclusive jurisdiction, the juvenile court shall exercise temporary jurisdiction if there is an immediate threat of serious physical harm to the child.

(B) Absent extraordinary circumstances, temporary emergency custody shall terminate within 90 days, unless the court determines by clear and convincing evidence, including the testimony of at least one qualified expert witness, that return of the child is likely to cause serious damage to the child.

(C) The child shall be returned immediately to the parent or Indian custodian when the emergency placement is no longer necessary to prevent serious harm to the child.

(2) If the Indian child is not domiciled or residing on a reservation that exercises exclusive jurisdiction, the tribe, parent, or Indian custodian may petition the court to transfer to the tribal jurisdiction, and the juvenile court shall transfer jurisdiction to tribal jurisdiction unless there is good cause not to do so.

(A) Either parent may object to the transfer.

(B) The tribe may decline the transfer of jurisdiction.

(3) If the tribe does not intervene or the tribal court does not request transfer to tribal jurisdiction, or if there is no response to the notice, the court should proceed to exercise its jurisdiction under section 300 et seq., in accordance with the procedures and standards of proof as required by the Act.

(d) [Inquiry] The court and the county welfare department have an affirmative duty to inquire whether a child for whom a petition under section 300 is to be, or has been, filed is or may be an Indian child.

(1) Section 1(l) or 1(m) of the Juvenile Dependency Petition (Version One) (JV-100) or section 1(i) or 1(j) of the Juvenile Dependency Petition (Version Two) (JV-110) must be checked if there is reason to know the child may be a member of or eligible for membership in a federally recognized Indian tribe or if there is reason to believe the child may be of Indian ancestry.

(2) The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following:

(A) A party, including the child, an Indian tribe, an Indian organization, an officer of the court, or a public or private agency, informs the court or the welfare agency or provides information suggesting that the child is an Indian child;

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

(e) [Proceedings; 25 U.S.C. § 1912] If section 1(l) of the Juvenile Dependency Petition (Version One)(JV-100) or section 1(i) of the Juvenile Dependency Petition (Version Two) (JV-110) is checked, or if, upon inquiry, or based on other information, the court has reason to know the child may be an Indian child, the court shall proceed as if the child is an Indian child and shall proceed with all dependency hearings, observing the Welfare and Institutions Code timelines while complying with the Act and this rule. A determination by the identified tribe or the Bureau of Indian Affairs (BIA) that the child is not an Indian child shall be definitive. If section 1(m) of the Juvenile Dependency Petition (Version One) (JV-100) is checked and section 1(l) is not, or section 1(j) of the Juvenile Dependency Petition (Version Two) (JV-110) is checked and section 1(i) is not, notice of the proceedings to the Bureau of Indian Affairs and further inquiry regarding the possible Indian status of the child are the only requirements.

(f) [Notice; 25 U.S.C. § 1912] The parent and Indian custodian of an Indian child, and the Indian child’s tribe, must be notified of the pending petition and the right of the tribe to intervene in the proceedings. If at any time after the filing of the petition the court knows or has reason to know that the child is or may be an Indian child, the following notice procedures must be followed:

(1) Notice must be sent by registered or certified mail with return receipt requested, and additional notice by first class mail is recommended.

- (2) Notice to the tribe shall be to the tribal chairman unless the tribe has designated another agent for service.
 - (3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership.
 - (4) If the identity or location of the parent or Indian custodian or the tribe cannot be determined, notice shall be sent to the specified office of the Secretary of the Interior, which has 15 days to provide notice as required.
 - (5) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter unless and until it is determined that the child is not an Indian child.
- (g) [Determination of status; 25 U.S.C. § 1911 (Welf. & Inst. Code, § 360.6 (c)] Determination of tribal membership or eligibility for membership is made exclusively by the tribe.
- (1) A tribe's determination that the child is or is not a member of or eligible for membership in the tribe is conclusive.
 - (2) Information that the child is not enrolled in the tribe is not determinative of status as an Indian child.
 - (3) The tribe must be a federally recognized tribe, group, or community as defined by the Bureau of Indian Affairs (BIA) of the Department of the Interior as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native Villages as defined by section 1602(c) of title 43 of the United States Code.
 - (4) Absent a contrary determination by the tribe, a determination by the BIA that a child is or is not an Indian is conclusive.
 - (5) The Indian Child Welfare Act applies when a tribe determines that an unmarried minor is:
 - (A) A member of an Indian tribe; or
 - (B) Eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe.
- (h) [Proceedings after notice; 25 U.S.C. § 1911] If it is determined that the Act applies, the juvenile court hearing shall not proceed until at least 10 days after those entitled to notice under the Act have received notice. If requested, the parent, Indian custodian, or tribe shall be granted a continuance of up to 20 days to prepare for the proceeding. The tribe may intervene at any point in the proceeding.
- (1) The indigent parent and indigent Indian custodian have a right to court-appointed counsel.
 - (2) All parties, including the parent, Indian child, Indian custodian, and tribe, and their respective attorneys, have the right to examine all court documents related to the dependency case.
- (i) [Required procedures, findings and orders for foster care placement and guardianships; 25 U.S.C. § 1912] The court may not order foster care placement of an Indian child, or establish a guardianship of an Indian child unless the court finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.
- (1) Testimony by a qualified expert witness is required.
 - (2) Stipulation by the parent or Indian custodian or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.
 - (3) Failure to meet non-Indian family and community child-rearing standards, or the existence of other behavior or conditions that meet the removal standards of section 361 will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.
 - (4) In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.
 - (A) The court shall consider all available information regarding the prevailing social and cultural conditions of the Indian child's tribe.
 - (B) Efforts to provide services shall include attempts to utilize the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.
- (j) [Placement of an Indian child in a foster care placement; 25 U.S.C. § 1912] If it is determined that the Act applies, the court may

not order foster care placement of an Indian child unless the court finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage.

(1) Testimony by a qualified expert witness is required.

(2) Stipulation by the parent, Indian custodian, or tribe or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently, and voluntarily waived them.

(3) If it is determined that the Act applies, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of section 361 will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

(k) [Standards and preferences in placement of an Indian child; 25 U.S.C. § 1915] Foster and adoptive placements of Indian children must follow a specified order in the absence of good cause to the contrary. Placement standards shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family member resides, or with which the parent or extended family member maintains social and cultural contacts. The foster or pre-adoptive placement must be in the least restrictive setting, within reasonable proximity to the Indian child's home, and capable of meeting any special needs of the Indian child.

(1) In a foster or pre-adoptive placement, preference must be given in the following order:

(A) to a member of the Indian child's extended family;

(B) to a foster home licensed or approved by the Indian child's tribe;

(C) to a state- or county-licensed or certified Indian foster home;

(D) to a children's institution approved by the tribe or operated by an Indian organization and offering a program to meet the Indian child's needs;

(2) In an adoptive placement, preference must be given in the following order:

(A) to a member of the Indian child's extended family;

(B) to other members of the Indian child's tribe;

(C) to other Indian families.

(3) An Indian child may be placed in a non-Indian home only if the court finds that a diligent search has failed to locate a suitable Indian home.

(4) The court may modify the preference order only for good cause, which may include the following considerations:

(A) the requests of the parent or Indian custodian;

(B) the requests of the Indian child;

(C) the extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness;

(D) the unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.

(5) The burden of establishing good cause for the court to alter the preference order shall be on the party requesting that a different order be considered.

(6) The tribe, by resolution, may establish a different preference order, which shall be followed if it provides for the least restrictive setting.

(7) The preferences and wishes of the Indian child and the parent shall be considered, and weight given to a consenting parent's request for anonymity.

(l) [Reasonable efforts; 25 U.S.C. § 1912] In addition to the findings required under section 361, in order to place an Indian child out of the custody of a parent or Indian custodian, or to issue orders under section 366.26, the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful.

(1) The court shall consider all available information regarding the prevailing social and cultural conditions of the Indian child's tribe.

(2) Efforts to provide services shall include attempts to utilize the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.

(m) [Termination of parental rights; 25 U.S.C. § 1912] The court may not terminate parental rights to an Indian child unless there is proof beyond a reasonable doubt that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(1) The evidence must be supported by the testimony of a qualified expert witness.

(2) Stipulation by the parent or Indian custodian or failure to object may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently and voluntarily waived them.

(3) Consent to a voluntary termination of parental rights, relinquishment of parental rights, or consent to adoption shall be executed in writing and recorded before a judicial officer of competent jurisdiction. The court must certify that the terms and consequences of the consent were explained in detail, in the language of the parent or Indian custodian, and fully understood by the parent or Indian custodian. If confidentiality is requested or appropriate, the consent may be executed in chambers.

(4) In order to terminate parental rights to an Indian child the court must find that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts were unsuccessful. Stipulation by the parent or Indian custodian or failure to object may waive the requirement of this finding only if the court is satisfied that the party has been fully advised of the requirements of the Act, and has knowingly, intelligently and voluntarily waived them.

(n) [Petition to invalidate orders of removal or termination of parental rights; 25 U.S.C. § 1914] If it is determined that the Act applies, the Indian child, a parent, an Indian custodian, or the child's tribe may petition any court of competent jurisdiction to invalidate a foster placement or termination of parental rights.

(1) If the Indian child is a dependent child of the juvenile court or the subject of a pending petition, the juvenile court is the only court of competent jurisdiction with the authority to hear the petition to invalidate the foster placement or termination of parental rights.

(2) If a final decree of adoption is set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may petition for a return of custody of the Indian child.

(A) The court shall grant the petition for return unless there is a showing that return is contrary to the best interests of the Indian child.

(B) The hearing on the petition to return shall be conducted in accordance with the Act and the relevant sections of this rule.

(o) [Post-hearing actions; 25 U.S.C. § 1916] Whenever an Indian child is removed from a foster home or institution for placement in a different foster home, institution, or pre-adoptive or adoptive home, the placement shall be in accordance with the Act and the relevant sections of this rule.

(p) [Recordkeeping; 25 U.S.C. § 1951]

(1) Upon granting a decree of adoption of an Indian child, the court shall provide the Secretary of the Interior with a copy of the decree and other information needed to show:

(A) the name and tribal affiliation of the Indian child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) the agency maintaining files and records regarding the adoptive placement.

(2) If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court shall provide the affidavit to the Secretary of the Interior, who shall ensure the confidentiality of the information.