Automatic Reversal Rule

If the Department's initial inquiry is deficient, that defect necessarily infects the juvenile court's ICWA findin g and reversal is automatic and required.

Under this test, reversal is required no matter how "slim" the odds are that further inquiry on remand might lead to a different ICWA findi ng by the juvenile court.

Substantial Evidence Test

ICWA error should be reviewed under a hybrid substantial evidence/abuse of discretion standard. If the record is insufficient, then there is not substantial evidence to support the ruling and the court abused its discretion. The focus of the analysis should be whether the agency's ICWA inquiry has yielded reliable information about a child's possible tribal affiliation.

Readily Obtainable Information Rule

If the Department's initial inquiry is deficient, that defect is harmless unless "the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child" and that "the probability of obtaining meaningful information is reasonable"

Reason to Believe Rule

An agency's failure to conduct a proper initial inquiry into a child's American Indian heritage is harmless unless the record contains information suggesting a reason to believe that the child may be an "Indian child" within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the juvenile court's ICWA finding.

Presumptive Affirmance Rule

If the Department's initial inquiry is deficient, that defect will be treated as harmless unless the parent comes forward with a proffer on appeal as to why further inquiry would lead to a different ICWA finding

Reasoning Notes

Duty/Burden

The duty to develop information concerning whether a child is an Indian child rests with the court and the Agency, not the parents. (*Antonio R.* (2022) 76 Cal.App.5th 421) The so-called burden on the Agency (to satisfy its responsibilities) cannot justify the potential to break up Indian families given the country's history of doing just that. (*Antonio R.* 76 Cal.App.5th 421) It is unreasonable to require a parent to make an affirmative representation of Indian ancestry where the Agency's failure to conduct an adequate inquiry deprived the parent of the very knowledge needed to make such a claim. (*In re Y.W.* (2021) 70 Cal.App.5th 542, 556.)	Duty is on all parties. (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1010.)	A parent "acting as a surrogate for the tribe" has no obligation to gather information. (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 742.)	The "reason to believe" rule, by focusing on what is in the record rather than what is not in the record, largely sidesteps the "how can we know what we don't know" and burden of proof conundrums that animate the automatic reversal and presumptive affirmance rules. (*In re Dezi C.* (2022) 79 Cal.App.5th 769, 782.)	Appellant has the burden of producing an adequate record that shows reversible error. (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1070.)

Parents having ancestry information

It is not uncommon for parents to mistakenly disclaim <or claim> Indian ancestry. (*In re J.C.* (2022) 77 Cal.App.5th 70)	Because tribal membership typically requires an affirmative act by the child or her parent, a child's parents will, in many cases, be a reliable source for determining whether the child or parent may be a tribal member. (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1010.)	If a parent must claim the child has Indian ancestry, then Mother could make that claim based only on knowledge of Father's ancestry, which she has no legal duty or necessary logical reason to know. (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 745.)	Because tribal membership typically requires an affirmative act by the enrollee or her parent, a child's parents will, in many cases, be a reliable source for determining whether the child or parent may be a tribal member. (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1010.)	When the parent can make no good faith claim that the child has Indian ancestry, the possibility that an inquiry would nevertheless show that the child is an Indian child is *de minimis.* (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1071 [280 Cal.Rptr.3d 526].)

Finality/Permanency

The delay is not significant. (*In re A.R.* (2022) 77 Cal.App.5th 197.) Leaves case vulnerable to attack if Native American heritage is later discovered. (*In re A.R.* (2022) 77 Cal.App.5th 197.)	The failure to conduct sufficient inquiry leaves a case vulnerable to collateral attack in the event Native American heritage is later discovered. While the likelihood of such an attack may be minimal, in any one case, the very possibility would be devastating to the concepts of finality and permanency. (*In re K.H.* (2022) 84 Cal.App.5th 566, 619.)	We must keep in mind that a collateral attack on a juvenile court judgment based on later discovered information can wreak havoc on a child's stability if the child turns out to have been an Indian child all along. (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 745.)	The "reason to believe" rule removes the incentive to use ICWA as a thirteenth-hour delay tactic and, by allowing parents to cite their proffers on appeal as well as the juvenile court record, still sends a "message" to agencies that ICWA's mandates are not to be ignored because remand will be ordered in any case where there is reason to believe the failure to inquire mattered. (*In re Dezi C.* (2022) 79 Cal.App.5th 769, 782.)	Considering postjudgment evidence will expedite the proceedings and promoting the finality of the juvenile court's orders and judgment. (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1072.)

Postjudgment Evidence

If any party should be expected to provide an offer of proof, it is the Agency that is statutorily required to conduct the inquiry at issue. (*In re A.R.* (2022) 77 Cal.App.5th 197.) Whether the Agency complied with its duty under ICWA should be considered by the juvenile court in the first instance. (*In re E.V.* (2022) 80 Cal.App.5th 691 While reviewing courts are free to take judicial notice of the existence of a document in a court file, they may not take judicial notice of the truth of hearsay statements in those documents. Additionally, section 366.26(i)(1) expressly deprives the juvenile court of jurisdiction to modify or revoke an order terminating parental rights once it is final to that court. (*In re M.B.* (2022) 80 Cal.App.5th 617, 627.)	A general disapproval of reliance on postjudgment evidence to resolve claims of error under ICWA. Nevertheless, because there may be occasional cases that present exceptions, the inquiry is fact specific. (*In re E.C.* (2022) 85 Cal.App.5th 123, 148-149.)	While a court may take judicial notice of the existence of declarations, it may not consider the truth of the matters asserted in the declarations. (*In re Ricky R.* (2022) 82 Cal.App.5th 671, 681.) "Augmentation does not function to supplement the record with materials not before the trial court. (*In re Ricky R.* (2022) E078646 (8/25/22)) The juvenile court should consider in the first instance whether the Agency discharged its duties under ICWA and related state law. (*In re Ricky R.* (2022) E078646 (8/25/22))	For this purpose, the "record" includes both the record of proceedings in the juvenile court and any proffer the appealing parent makes on appeal. (*In re Dezi C.* (2022) 79 Cal.App.5th 769, 779.)	Makes an exception to the general rule regarding postjudgment evidence (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1073.) Rather than taking judicial notice of a parent's statement that they do not have Indian ancestry, we are relying on a parent's telling failure to state that they do; however, these seem like two sides of the same coin. Consideration of the father's silence on this point to affirm the judgment promotes finality and prevents further delay. (*In re A.C.* (2021) 65 Cal.App.5th 1060, 1073.)