

### A.3 Considerations in providing access to State court ICWA proceedings

#### Regulation:

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#### § 23.133 Should courts allow participation by alternative methods?

If it possesses the capacity, the court should allow alternative methods of participation in the State-court child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

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#### Guidelines:

Section 23.133 encourages State courts to permit alternative means of participation in Indian child-custody proceedings, such as by phone or video. This enables the court to receive all relevant information regarding the child's circumstances, and also minimizes burdens on Tribes and other parties. Several State court systems permit the use of video-conferencing in various types of proceedings.<sup>15</sup> The Department notes that requesting statements under oath, even by teleconference, as to who is present may provide sufficient safeguards to maintain control over who is present on the teleconference for the purposes of confidentiality. A service such as Skype would be included in "other methods."

This issue may be particularly relevant to a Tribe's participation in a case. A Tribe's members may live far from the Tribal reservation or headquarters and the Indian child's Tribe may not necessarily be located near the State court Indian child custody proceeding. As such, it may be difficult for many Tribes to participate in State court proceedings, particularly where those actions take place outside of the Tribe's State. Allowing alternative methods of participation in a court proceeding can help alleviate that burden.

Another barrier to Tribal participation in State court proceedings is that the Tribe may not have an attorney licensed to practice law in the State in which the Indian child custody proceeding is being held. Many tribes have limited funds to hire local counsel. The Department encourages all State courts to permit Tribal representatives to present before the court in ICWA proceedings regardless of whether they are attorneys or attorneys licensed in that State, as a number of State courts have already done.<sup>16</sup>

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<sup>15</sup> See, e.g., National Center for State Courts Video Technologies Resource Guide (available at [www.ncsc.org/Topics/Technology/Video-Technologiesw/Resource-Guide.aspx](http://www.ncsc.org/Topics/Technology/Video-Technologiesw/Resource-Guide.aspx)).

<sup>16</sup> See, e.g., *J.P.H. v. Fla. Dep't of Children & Families*, 39 So.3d 560 (Fla. Dist. Ct. App.2010)(per curiam); *State v. Jennifer M. (In re Elias L.)*, 767 N.W.2d 98, 104 (Neb. 2009); *In re N.N.E.*, 752 N.W. 2d 1, 12 (Iowa 2008); *State ex rel. Juvenile Dep't of Lane Cty. v. Shuey*, 850 P.2d 378 (Or. Ct. App. 1993).