

**SUPERIOR COURT OF THE STATE OF ARIZONA
 _____ COUNTY JUVENILE COURT
 ICWA AND REASON TO KNOW ICWA APPLIES
 PRELIMINARY PROTECTIVE HEARING ORDER**

Case Name: _____

Removal Date: _____

Hearing Date: _____

Scheduled Time: _____

Judicial Officer: _____

1. COURT APPOINTED COUNSEL:

Based on the financial statements, the Court appoints counsel and assesses costs as follows:

Party	Attorney	Appointed (Y/N)	Assessment	Monthly payment
Mother				
Father				
Father				
Child/ren				
Other				

The parties are ordered to give their contact information to their attorneys, and to make good-faith efforts to have regular communications with their attorneys throughout the case, including within a

reasonable time before any substantive hearing. Parent(s) is/are ordered to keep his/her attorney and the DCS caseworker informed of any changes to their address, phone number, or email address.

THE COURT FINDS counsel has complied with their obligations to communicate with their client prior to the hearing

Children: _____

Mother: _____

Mother: _____

Father: _____

Father: _____

Other: _____

2. CLOSED HEARING

The Court asks the parties if there are any reasons the proceedings should be closed to the public.

A closed hearing is requested Yes No

After consideration, the Court finds good cause to close the proceedings because an open hearing:

Is not in the minor(s) best interest.

Would endanger the child's physical or emotional well-being.

Would endanger the safety of any other person.

Detrimently affects the privacy rights of the child, the child's siblings, parents, guardians and caregivers and other persons.

That all parties did not agree to allowing the proceedings to be open.

The minor (if older than twelve) objects to hearing being open.

An open proceeding could cause specific material harm to a criminal investigation.

Other _____.

___ IT IS, THEREFORE, ORDERED that the hearing be closed.

The Court admonishes all attendees that they are prohibited by order of the Court from disclosing outside the hearing personally identifiable information about the child, the child's siblings, parents, guardians, or caregivers and any others mentioned in the hearing.

Personal identifiable information includes name, address, date of birth, social security number, tribal enrollment number, telephone number, driver license number, place of employment, school identification or military identification or any other distinguishing characteristics that tend to identify a particular person.

A person who knowingly and voluntarily remains in the courtroom after the admonishment submits to the jurisdiction of the Court and shall abide by the orders of the Court prohibiting disclosure of that information. Failure to abide by the orders shall be deemed contempt of Court.

Those found in contempt of Court could be fined or incarcerated at the _____ County Jail.

3. SERVICE:

___ Mother ___ Mother ___ Father ___ Father ___ Child(ren)'s attorney ___ Other: _____
___ Tribe ___ Tribe received notice or waives 10-day notice of hearing.

4. DOCUMENTS REVIEWED:

___ DCS case report _____ Admitted _____ DCS case plan filed pursuant to A.R.S. §8-823(D)

___ Other _____

5. JURISDICTION:

THE COURT FINDS:

(a) State:

___ it has jurisdiction over the persons and subject matter pursuant to A.R.S. § 8-202(B); or

___ it has temporary emergency jurisdiction pursuant to the UCCJEA A.R.S. §§25-1004 & 25-1034.
(Including ICWA cases when a Tribal Court has issued a custody order for a child.)

(b) ICWA:

Exclusive Jurisdiction for Tribe/Nation, based on residence/domicile.

___ **The Court was advised that the** Indian Tribe may have jurisdiction or has exclusive jurisdiction because:

___ the Indian child's parent/s is/are married and reside or are domiciled on the reservation.

OR

___ because the Indian child's parent/s is/are not married, and the custodial parent resides or is domiciled on the reservation pursuant to § 1911(a) and 25 U.S.C. § 23.2.

___ **THEREFORE, THE COURT FINDS** that it has temporary emergency jurisdiction pursuant to A.R.S. §25-1034; and

___ **IT IS ORDERED** that the Petitioner shall work with the parties and the tribe/nation to determine whether the tribe/nation has exclusive jurisdiction and advise the Court by the next hearing.

6. ICWA Inquiry:

_____ The Court inquires whether any party or participant knows or has reason to know under 25 C.F.R § 23.107 that any child at issue is an Indian child and is an enrolled member of a Tribe or eligible for membership and a biological parent is a tribal member. (e.g., *Is there any Native American heritage in the family? (Not based solely on a DNA test.) Are there family members enrolled or affiliated with a Tribe? Is there any family who has lived on a Reservation or participated in cultural activities? Are there any family members that had a case in Tribal Court or another Court where ICWA applied? Is there any other reason to believe the child/ren might be an Indian Child?*)

The response was:

Yes (List name/s of Tribe/s) _____ (GO TO (a) & (b) immediately below)

Reason to Know (List name/s of Tribe/s) _____ (GO TO (d) below)

Undetermined (GO TO (e) below.)

No; therefore, the COURT FINDS ICWA does not apply. (Go to Section 7. *Paternity.*)

(a) **Notification.**

___ **THE COURT FINDS** pursuant to 25 C.F.R. § 23.111(b) (1-3), that Petitioner _____ made efforts **OR** _____ made NO efforts to notify an identified Tribe(s), Parent/s, and Indian Custodian about this proceeding.

(b) **ICWA Applies.**

___ **THE COURT FINDS THAT** ICWA applies for child/ren: _____
_____.

_____ **IT IS ORDERED** that the Petitioner notify the Parent/s, Indian Custodian, the child/ren's Tribe/s, or the Secretary of the Interior by registered or certified mail.

(c) ***Intervention.***

IT IS ORDERED that _____ Tribe/Nation/Indian Community is intervened as a party.

(GO TO (g) *Imminent Harm*)

(d) ***Reason to Know ICWA Applies.***

_____ List name/s of child/ren for which Reason to Know ICWA applies: _____

IT IS ORDERED that the Petitioner notify the Parent/s, Indian Custodian, the child/ren's Tribe/s, or the Secretary of the Interior by registered/certified mail.

The Petitioner must use due diligence to identify and work with all Tribes in which there is reason to know. Petitioner must treat the child as an Indian Child, unless

and until it is determined on the record that the child does not meet the "Indian Child" definition. 25 C.F.R § 23.107(a)(2).

(GO TO (g) *Imminent Harm*)

(e) ***Undetermined.***

_____ **THE COURT FINDS THAT** ICWA _____ is undetermined for _____
_____(children)

_____ **IS FURTHER ORDERED** that the Parent/s or Indian Custodian provide the following information to the Petitioner: _____

_____.

_____ **IT IS ORDERED** that the Petitioner must make diligent efforts to identify and work with all identified Tribes and notify the Tribe/s through certified/registered mail to determine whether the child/ren may be a member, or eligible for membership and obtain verification of the child/ren's Indian status prior to the next hearing. 2016 BIA Guidelines, § B.1.

(FOR UNDETERMINED, GO TO Section 7, *Paternity*)

(f) **Judicial Assignment.** If response was 'Yes' or there is a 'Reason to Know' ICWA applies, and this case is not assigned to an ICWA Judge,

ORDER the case be reassigned to ICWA Court Judge _____.

(g) **Imminent Harm Findings:**

THE COURT FINDS:

_____ The child/ren were not removed from the physical custody of the parent and no imminent harm findings were required.

OR

_____ The child/ren was/were removed from the physical custody of the Parent/s/Indian Custodian after a finding by a court that there was the risk of imminent physical damage or harm to the Indian child/ren, pursuant to the requirements of ICWA 25 U.S.C.A. § 1922, 25 C.F.R. § 23.113, and AZ ST JUV CT Rule 327 and those findings and the child/ren's current placement are affirmed.

OR

____ The child/ren was/were removed on an emergency basis pursuant to 25 C.F.R. § 23.113 AND imminent harm findings were in the temporary orders and those findings and the child/ren's current placement are affirmed.

OR

____ No imminent harm findings were made pursuant to 25 C.F.R. § 23.1134 and

____ **THE COURT FINDS there was probable cause to believe** that emergency removal or placement was necessary to prevent imminent physical damage or harm.

OR

____ **THE COURT FINDS** that return of the child/ren would NOT subject the child/ren to imminent physical damage or harm; and

____ **ORDERS** that the child/ren shall be immediately returned to the parent/s; **OR**

____ **FINDS BY** a preponderance of the evidence that return of the child/ren to the parent would subject the child to substantial and immediate danger or threat of such danger as provided by 25 C.R.F. § 23-114 and now **AFFIRMS** the child/ren's current placement.

____ The Parent/s and Indian Custodian **DOES NOT** contest the finding of imminent physical damage or harm to the Indian child/ren pursuant to 25 C.F.R. §§ 23.113, 23.114:

Mother: _____	Other: _____
Mother: _____	Father: _____
Father: _____	Indian Custodian: _____

____ The Parent/s and Indian Custodian **DO** contest the finding of imminent physical damage or harm to the Indian child/ren pursuant to 25 C.F.R. §§ 23.113, 23.114:

Mother: _____ Other: _____
Mother: _____ Father: _____
Father: _____ Indian Custodian: _____

(If Parent/s or Indian Custodian contest/s that the Indian child/ren may have been improperly removed, pursuant to 25 C.F.R. § 23.114, **GO TO CONTESTED REMOVAL HEARING** Form).

(h) **Placement:**

THE COURT FINDS THAT AS TO _____
_____ (child/ren's name/s)

_____ The finding of whether placement complies with ICWA 25 U.S.C. § 1915 is **deferred**;

OR

_____ **THE COURT FINDS THAT** the placement is in accordance with the placement preference in 25 U.S.C. § 1915; OR

_____ **THE COURT FINDS** by clear and convincing evidence that there is good cause to deviate from the preferences because _____.