

ICWA REFERENCE GUIDE FOR ATTORNEYS

Notice for Involuntary Proceedings

- ✓ A parent, Indian Custodian, and the Indian tribe shall be notified by registered mail of the pending proceedings [25 U.S.C. § 1912 (a)]

Initial Meeting/Hearing

- ✓ Is the parent(s), legal guardian, or child associated with or a registered member of a tribe?
 - ⇒ If yes, forward the information to the Court and State CPS
- ✓ Jurisdiction issues [25 U.S.C. § 1911(a)]
 - ⇒ Has the parent or child ever resided or do they currently reside on the reservation?
 - ⇒ Could the child be a tribal ward?
- ✓ Ask the parent, legal guardian, or child for names and contact information for relatives.
 - ⇒ Forward this information to the Court, State CPS, and Tribal Social Services

Temporary Custody/Adjudication/Severance

- ✓ A qualified expert is required to provide testimony for involuntary foster care placement and for the termination of parental rights. [25 U.S.C. § 1912 (e), (f)]
 - ⇒ Foundation for expert witness
- ✓ Burden of providing expert testimony is on the petitioner/party seeking foster care or termination of parental rights.

Issues to Consider Throughout the Child Custody Proceedings

- ✓ Has ICWA applicability been definitively determined?
- ✓ Once ICWA has been determined to be applicable, it applies to the proceeding regardless if the Indian child's tribe intervenes in the case or appears at hearings.
- ✓ Active Efforts [25 U.S.C. § 1912 (d)]
 - ⇒ Is the petitioner providing active efforts to reunify the Indian family?
 - Example: are services appropriate to meet the needs of the parent (or child)?
- ✓ Is placement in accordance with the placement preferences listed in 25 U.S.C. 1915(b)?
 - ⇒ Is there good cause to deviate?
 - Have all named relatives been contacted for placement?
 - Have background checks and home studies been timely performed?

Voluntary Consent to Foster Care or Consent to Relinquish Parental Rights

- ✓ Pursuant to 25 U.S.C. 1913(a), consents must be in writing and recorded before a judge of a court of competent jurisdiction.
 - ⇒ Judge must sign a certification that (1) the terms and consequences of the consent were fully explained in detail to the parent or Indian Custodian; (2) the parent or Indian fully understood the consent; and (3) the parent or Indian Custodian fully understood the explanation in English or the explanation was interpreted into a language understood by the parent or Indian Custodian.
 - ⇒ No notary required
- ✓ Consent given prior to or within ten (10) days after giving birth to an Indian child shall not be valid. [25 U.S.C. 1913(a)]

Transfer of Jurisdiction – 25 U.S.C. § 1911 (b)

- ✓ In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court , in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent, Indian custodian or Indian child’s tribe: Provided, that such transfer shall be subject to declination by the tribal court of such tribe.

