

REVIEW HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents whose rights have not been terminated, including any putative father who has *acknowledged* paternity, even if he has not yet legally established paternity;
- Indian custodian, 25 U.S.C. § 1903(6), or other custodial adults;
- Extended relatives, as defined by child's tribe, 25 U.S.C. § 1903(2), or other tribal members or Indian families who may serve as a placement for the child;
- Foster parents;
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney(s) for parent(s);
- Attorney for child's Indian tribe;
- GAL/CASA or legal advocate for the child;¹
- Court reporter; and
- Security personnel.

WHO MAY ALSO BE NEEDED:

- Interpreter;
- Age-appropriate children;
- Adoptive parents;
- Domestic violence advocate for parent, if any;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including extended relatives, tribal members or elders.

SUBMISSION OF REPORTS TO THE COURT:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them.
- A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization.
- A description of services to be provided to ensure the child's ongoing connection to his/her culture while placed outside of his/her family, including attendance at significant cultural events.
- A description of actions to be taken by the parents to correct the identified problems, and of the parents' compliance with the case plan thus far.

AFFIDAVIT DOCUMENTING ACTIVE EFFORTS:

When the agency recommends continued foster placement, an affidavit documenting active efforts made must be submitted. The following are some of the requisite elements of the affidavit:

- A description of the active efforts made to reunify the family since the last disposition or review hearing and, if those efforts were not successful, an explanation why. 25 U.S.C. § 1912(d)
- A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation why these services were unsuccessful.
- An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family. 25 U.S.C. § 1912(e)
- An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child, or, if family members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.
- Efforts made by agency to ensure child's visitation with extended family, or, if none is available, with other tribal members, to ensure the child's ongoing participation in his/her culture.
- Efforts made by agency to coordinate with the child's tribe and family to make arrangements for child to attend significant cultural and important familial events.

KEY DECISIONS THE COURT MUST MAKE:

- Whether there is a need for continued placement of the child.
- Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and, if so, whether the services were successful. 25 U.S.C. § 1912(d)
- Whether efforts were made to ensure that the parent understands the case plan if the parent does not read English.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.

- Whether the child is placed according to the placement preferences in the ICWA, and, if not, whether the child should not be moved into a preference placement. 25 U.S.C. § 1915(b)
- Whether the terms of visitation need to be modified.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be established for goals to achieve reunification or other permanent plan for each child.

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD:

- Indicate whether the agency has identified the child's tribe.
- Specify whether the agency sent proper notice of the hearing and a copy of the petition and advice of rights to the parent(s), Indian custodian (if any), and child's tribe by registered mail, return receipt. 25 U.S.C. § 1912(a)
- Specify whether the tribe has been afforded a full opportunity to participate in the proceedings and, if so, whether the agency provided the child's tribe with copies of the petition, reports, and information concerning the child. 25 U.S.C. § 1911(c and d) and § 1912(a)
- Set forth findings as to why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the *clear and convincing evidence* that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)
- Set forth findings as to whether family reunification and an end to court supervision continues to be the long-term case goal, and why.
- Set forth detailed findings of fact and conclusions of law as to whether the agency has made active efforts to provide remedial services and rehabilitative programs designed to eliminate the need for placement of the child outside the home of the parent or Indian custodian and whether the efforts were successful. 25 U.S.C. § 1912(d)
- Set forth detailed findings as to whether the agency has made ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already within a preference placement. 25 U.S.C. § 1915(b)
- Set forth orders for the agency to make additional

efforts necessary to meet the needs of the family and move the case toward completion, including culturally relevant services that may be available with assistance from the tribe or local Indian/native organization.

- Be written in easily understandable language that allows the parent(s) or Indian custodian to fully understand what action they must take to have the child returned to their care (interpreter should be provided for parent or Indian custodian whose first language is not English).
- Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review.
- Identify an expected date for final reunification or other permanent plan for the child.
- Where the state's case plan conflicts with or does not meet the requirements of the ICWA, disapprove or modify the agency's proposed case plan to conform to the requirements of the ICWA.
- Make any necessary orders to resolve the problems that are preventing reunification or the completion of another permanent plan for the child.
- Set date and time for next hearing, if needed.

¹ The court should make every effort within its discretion to appoint an advocate for the child who is either a member of the child's tribe, or who is familiar with and respectful of the child's cultural needs.

Indian Child Welfare Act Checklists for Juvenile and Family Court Judges

“These Indian Child Welfare Act Checklists were created to assist juvenile and family court judges in assuring that the necessary inquiries are being made to determine as early as possible in every case whether the Indian Child Welfare Act applies. These checklists will help judges ensure that the necessary parties have been notified and are present in all cases where the ICWA may be applicable.

It is in the best interests of the child that the required inquiries be made from the time of the initial removal hearing, and that the inquiries continue throughout every stage of the case. Failure to make the necessary inquiries, notify the necessary parties, and follow the standards established within the ICWA can result in the case having to start over from the beginning, to the obvious detriment of the child. The checklists are designed to help avoid this result by assisting judges on a step-by-step basis in meeting the ICWA requirements at each hearing stage.

Leadership by the court is essential to ensure ICWA compliance. These children should not be subject to their placements and permanency plans being disrupted well into the final stages of the case. Because this affects cases in every state, the checklists have been drawn from the RESOURCE GUIDELINES and formatted so that they can be used by courts throughout the country, whether in a state with no tribes within its borders and small Native American populations, or states such as Alaska, where 60 percent of the children in the state dependency system are Alaska Natives for whom the ICWA applies.

Much has been written in recent years about the impact to affected children if the requirements of the ICWA are not met, most notable the significant delay in achieving permanency for these children as well as widespread non-compliance with the requirement that a qualified expert testify at hearings including the initial removal hearing. Because there are disproportionately high numbers of Native American and Alaska Native children in juvenile dependency systems in every state in the country, no court can overlook the requirement to make the necessary ICWA inquiries. The NCJFCJ Permanency Planning for Children Department hopes that you will find these new checklists to be useful to you in assuring compliance with the ICWA on all cases that come before your respective courts.”

Honorable Dale R. Koch, Multnomah County Circuit Court, Portland, Oregon



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**“Native American Resource Directory
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(Contains tribal contact information)