

TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST FOR ICWA CASES

WHO SHOULD ALWAYS BE PRESENT:

- Judge or judicial officer;
- Parents, 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), if there is one;
- Expert witness under 25 U.S.C. § 1912(e);
- Assigned caseworker;
- Caseworker or representative from child's Indian tribe;
- 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;
- Domestic violence advocate for parent;
- Age-appropriate children whose testimony is required;
- Judicial case management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders or the child's extended relatives. 25 U.S.C. § 1903(2)

KEY DECISIONS THE COURT MUST MAKE:

- Whether written notice was provided to the child's tribe by registered mail, return receipt requested. 25 U.S.C. § 1912(a)
- Whether written notice was provided to the parents or Indian custodian by registered mail, return receipt requested. 25 U.S.C. § 1912(a)
- Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. 25 U.S.C. § 1912(d)
- Whether efforts were made to ensure that the parent understood the case plan if the parent does not read English.
- Whether the active efforts were unsuccessful. 25 U.S.C. § 1912(d)
- Whether there is evidence *beyond a reasonable doubt*, including testimony of an expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f)

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

- Specify whether active and reasonable efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. 25 U.S.C. § 1912(d)
- Specify what evidence, including testimony of a qualified expert witness, supports the finding *beyond a*

reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e)

- Specify any other state statutory grounds supporting termination of parental rights, if state law requires satisfaction of dual burden of proof.

THE COURT'S WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE *UNCONTESTED* TERMINATION OF PARENTAL RIGHTS HEARING MUST ALSO INCLUDE:

If the parent was present and consented to termination of parental rights:

- Thoroughly describe the conditions and circumstances under which parental consent to termination of parental rights was obtained. Parental consent *must* be executed in writing in the presence of the judge and must be accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood these terms. 25 U.S.C. § 1913(a)
- Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to termination of parental rights in English, or that it was interpreted into a language that the parent or Indian custodian understood. 25 U.S.C. § 1913(a)
- Certify that the consent to termination of parental rights was not given prior to or within ten days after the birth of the child, as the consent would not be valid under these circumstances. 25 U.S.C. § 1913(a)
- Determine whether the consent was voluntary and informed, that it was not obtained through fraud or duress, and that all alternatives to termination of parental rights were explained. 25 U.S.C. § 1913(d)

If termination of parental rights was uncontested because the parent failed to appear, or appeared but neither contested nor consented to termination, adhere to the checklist for contested terminations listed above.

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
for Juvenile and Family Court Judges”**
PPCD-NCJFCJ
Telephone: (775) 327-5300
Web site: www.pppncjfcj.org
(Contains tribal contact information)