

ADJUDICATION 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 legally established paternity; 25 U.S.C. § 1903(9)
- Indian custodian or other custodial adults; 25 U.S.C. § 1903(6)
- Extended relatives, as defined by child's tribe; 25 U.S.C. § 1903(2)
- Expert witness under 25 U.S.C. § 1912(e);
- Assigned caseworker;
- Tribal caseworker or representative;
- Agency attorney;
- Attorney for parents or Indian custodian;
- Attorney for child's tribe;
- GAL/CASA or 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;
- Judicial caseload management staff;
- Law enforcement officers;
- Services providers; and
- Other witnesses, including tribal members, elders, or child's extended relatives.

KEY DECISIONS THE COURT SHOULD MAKE:

- Whether child is an Indian child under the ICWA. 25 U.S.C. § 1903(4)
- Whether state court lacks jurisdiction because child is already a ward of a tribal court. 25 U.S.C. § 1911(a)
- Which allegations of the petition have been proved or admitted.
- Whether there is a legal basis for continued court and agency intervention.
- Whether the agency made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. If so, were these

efforts successful? 25 U.S.C. § 1912(d)

- Whether parent is able to read English.

ADDITIONAL DECISIONS:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge will need to make temporary decisions at the conclusion of the adjudication, such as:

- Determine where the child is to be placed prior to disposition hearing.
- Order further testing or evaluation of the child, parent(s), or Indian custodian in preparation for the disposition hearing and ensure that all assessments or evaluations are culturally appropriate.
- Make sure the agency is, in preparation for disposition, making prompt and diligent efforts to identify and evaluate extended family or, if no family member is available, other tribal members or other Indian families, as caretaker.
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child.
- Direct the agency to continue its efforts to notify non-custodial parents, including unwed fathers whose paternity has been acknowledged or established. 25 U.S.C. § 1903(9)
- Set terms for visitation, support, and other intra-family communication including parent-child and sibling visits when the child is in foster care prior to disposition.

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

- Specify whether the child is an Indian child under ICWA and, if not known, whether the child's tribe has been provided adequate notice, sufficient information, and an opportunity to determine the child's membership eligibility. 25 U.S.C. § 1903(4)
- Specify what efforts, if any, have been made to identify the child's tribe.
- Specify whether the agency has mailed notice and necessary information to *all* tribes in which the child may be eligible for membership to enable each tribe to ascertain whether child is either a member or eligible for membership. 25 U.S.C. § 1912(a)

- Specify whether written notice was sent to the U.S. Secretary of the Interior if the child's tribe is not yet known. 25 U.S.C. § 1912
- Specify whether child either resides or is domiciled on a reservation, or is already a ward of a tribal court, thereby depriving the state court of jurisdiction. 25 U.S.C. § 1911(a)
- Specify whether the child was in the custody of an Indian custodian at the time of removal. 25 U.S.C. § 1903(6)
- Specify whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the Indian custodian, registered mail, return receipt. 25 U.S.C. § 1912
- Specify whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the child's Indian tribe, if known, by registered mail, return receipt. 25 U.S.C. § 1912
- Ascertain whether the child's tribe seeks to intervene in the proceedings and, if so, grant that request. 25 U.S.C. § 1911(c) If the child is eligible for membership in more than one tribe, ascertain which tribe is the child's tribe for purposes of the ICWA. 25 U.S.C. § 1903(5)
- Ascertain whether the child's Indian custodian, if there is one, seeks to intervene in the proceedings and, if so, grant that request. 25 U.S.C. § 1911(c)
- If child's tribe, parent, or Indian custodian requested an additional 20 days in which to prepare for the hearing, grant that request and reschedule the hearing. 25 U.S.C. § 1912(a)
- Specify whether a parent, Indian custodian, or the child's tribe has filed a motion or petition to transfer the case to tribal court. 25 U.S.C. § 1911(b)
- If the court declined to transfer the case, specify whether either parent vetoed the transfer, the tribal court declined to accept jurisdiction, or the reasons, if any, why there is good cause not to transfer the case to the tribal court. 25 U.S.C. § 1911(b)
- Specify whether the court advised the parent(s) or Indian custodian that they have a right to a court-appointed attorney if they are indigent. 25 U.S.C. § 1912(b)
- Provide sufficiently detailed information to justify why the court found by *clear and convincing evidence*, including testimony from 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(e)
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Indicate whether the parent can read English and, if not, what steps will be taken to ensure that the parent understands the court's written order.
- Set date and time of next hearing.

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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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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