

217b

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

IN THE INTEREST OF

Name \_\_\_\_\_  
DOB xx /xx / \_\_\_ A  male  female

Case No. \_\_\_\_\_

Name \_\_\_\_\_  
DOB xx /xx / \_\_\_ A  male  female

Case No. \_\_\_\_\_

Name \_\_\_\_\_  
DOB xx /xx / \_\_\_ A  male  female

Case No. \_\_\_\_\_

**\*INDIAN CHILD WELFARE ACT**

**COMBINED JOURNAL ENTRY AND ORDER OF DISPOSITION**

Pursuant to K.S.A. 38-2203(a), 38-2253, 38-2255 and 25 U.S.C. §1901 *et seq.*

Now on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the above-captioned matter comes on for disposition before Judge \_\_\_\_\_.

The Court finds that  **each child named above or**  **the child** \_\_\_\_\_ is an Indian child as defined by the Indian Child Welfare Act (ICWA) and notice as required by ICWA has been timely provided. A petition requesting the transfer of jurisdiction to the Tribe  **has not been filed**  **was filed and the transfer of jurisdiction was denied**  **was filed and the transfer of jurisdiction was declined**, and the Court has jurisdiction to proceed.

The Court finds that jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

- The petitioner appears by \_\_\_\_\_  **County/District Attorney or designee**  **other** \_\_\_\_\_.
- The child(ren) appears**  **in person and**  **not in person, but** by the child(ren's) guardian *ad litem*, \_\_\_\_\_.
- \_\_\_\_\_ *Name of Mother*, the mother  **appears in person pro se**  **appears in person, and through her attorney,** \_\_\_\_\_  **appears not in person, but by and through her attorney** \_\_\_\_\_  **does not appear.**
- \_\_\_\_\_ *Name of Father*, the  **father**  **putative father of** \_\_\_\_\_ *Name of child*,  **appears in person pro se**  **appears in person, and through his attorney,** \_\_\_\_\_  **appears not in person, but by and through his attorney,** \_\_\_\_\_  **does not appear.**
- \_\_\_\_\_ *Name of Father*, the  **father**  **putative father of** \_\_\_\_\_ *Name of child*,  **appears in person pro se**  **appears in person, and through his attorney,** \_\_\_\_\_  **appears not in person, but by and through his attorney,** \_\_\_\_\_  **does not appear.**

\_\_\_\_\_ *Name of Father* \_\_\_\_\_, the  **father**  **putative father of** \_\_\_\_\_ *Name of child* \_\_\_\_\_,  **appears in person *pro se***  **appears in person, and through his attorney,** \_\_\_\_\_  **appears not in person, but by and through his attorney,** \_\_\_\_\_  **does not appear.**

(*Other parent appearances*) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Interested parties appearing are:  
\_\_\_\_\_

The Secretary is present through \_\_\_\_\_

Also present is/are: \_\_\_\_\_

The \_\_\_\_\_ Tribe  **appears by** \_\_\_\_\_, **attorney/representative or**  **does not appear.**

1. The Court has received and considered evidence including the testimony of a qualified expert witness, as required by ICWA.

2. The Court finds that each child named above has been adjudicated a Child in Need of Care.

3. THE COURT FURTHER FINDS THAT the Court’s previous findings and orders:  
 shall remain in full force and effect.  
 shall remain in full force and effect to the extent that they are not inconsistent with any findings or orders in the present order, and except that it is now in the best interest of the child(ren) for custody to be placed with \_\_\_\_\_ and that: (*if this is the first order removing custody, complete “reasonable efforts” and “contrary to welfare” findings below* )

4.  Reasonable and active efforts have been made and have failed to maintain the family and prevent the removal of the child(ren) from the child(ren)’s home as follows: (*Specify basis for finding for each child.*) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**or**

Reasonable and active efforts are not required to maintain the child(ren) in the home because an emergency exists which threatens the safety of the child(ren). (*Specify basis for finding for each child.*) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**or**

Reasonable and active efforts are not required because the parent has been found by a court to have:

- committed murder in the first degree, K.S.A. 21-3401, and amendments thereto; murder in the second degree, K.S.A. 21-3402, and amendments thereto; capital murder, K.S.A. 21-3439, and amendments thereto; voluntary manslaughter, K.S.A. 21-3403, and amendments thereto; or violated a law of another state which prohibits such murder or manslaughter; of another child of the parent;
- aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter of another child of the parent as provided above;
- committed a felony battery that resulted in bodily injury to the child or another child of the parent;
- subjected the child to aggravated circumstances as defined in K.S.A. 38-2202(c);
- parental rights of the parent to a sibling have been terminated involuntarily. *(Specify determining factors.)* \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

**or**

- Reasonable and active efforts have not been made. *(Specify basis for finding for each child.)*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**or**

- Reasonable and active efforts  **have been made**  **have not been made** to facilitate the permanency plan. *(Specify basis for finding for each child.)*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. THE COURT FURTHER FINDS THAT  **the child(ren) is likely to sustain harm if not immediately removed from the home;**  **remaining in the home or returning home would be contrary to the welfare of the child(ren);** and/or  **immediate placement is in the best interest of the child(ren),** specifically: *(Specify basis for finding for each child.)*

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

and

there is clear and convincing evidence that remaining in the custody of the parent or Indian custodian is likely to result in serious emotional or physical damage to the named child

*(Specify basis for finding for each child)* \_\_\_\_\_

\_\_\_\_\_

6. The Court  **approves and adopts the proposed permanency plan as the plan for permanency in the present matter or**  **does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.**

7.  THE COURT FURTHER FINDS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

8. The placement of the child(ren) is  the least restrictive setting which most approximates a family;  within reasonable proximity to the child(ren)'s home;  appropriate to the child(ren)'s special needs.

9. The Court has considered ICWA placement preferences, in order of preference, as follows:  
 Placement with extended family (*List considered placements or efforts to identify placements.*) \_\_\_\_\_

Foster home licensed, approved or specified by the Tribe (*List considered placements or efforts to identify placements.*) \_\_\_\_\_

Indian foster home licensed by non-Indian authority (*List considered placements or efforts to identify placements.*) \_\_\_\_\_

Placement approved by Tribe or operated by Indian organization (*List considered placements or efforts to identify placements.*) \_\_\_\_\_

10.  Good cause exists not to follow the placement preference: (*Specify basis for finding for each child.*) \_\_\_\_\_

11. THE COURT THEREFORE ORDERS THAT the above named child(ren)  **should be**

**should remain** placed in the custody of:

The Secretary, or

\_\_\_\_\_.

and

A child support order shall issue.

Each parent shall submit information to the child support office for a child support order to be prepared, or present documentation of a current child support order within \_\_\_\_\_ days.

12. THE COURT FURTHER ORDERS all providers of services including educational services, treatment, education or care of the child and family, even if not specifically referred to herein, to provide information including any and all educational records to the secretary, any entity providing services to the child and family, counsel for the parties including the county or district attorney, appointed CASA, Citizen Review Board members, the court, and each other to the extent needed to ensure the safety of the child, prevent further abuse or neglect, and to provide appropriate treatment, care and services to the child and family. This order encompasses and complies with the provisions of the Family Education Rights and Privacy Act (20 U.S.C. 1232g; 34 C.F.R. 99 and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

13.  THE COURT FURTHER ORDERS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

14. THE COURT FURTHER ORDERS all previous orders entered by this Court shall remain in effect except as herein modified.

15.  A restraining order shall be filed against \_\_\_\_\_.

THE COURT FURTHER ORDERS this matter set for review hearing before  **the Court**  **the CRB** on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_:\_\_\_\_  **a.m.**  **p.m.** and for permanency hearing before  **the Court**  **the CRB** on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_:\_\_\_\_  **a.m.**  **p.m.**

IT IS SO ORDERED THIS \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge of the District Court

## Authority

K.S.A. 38-2203(a), 38-2247, 38-2253, 38-2255 and 25 U.S.C. §1901 *et seq.*

## Notes on Use

This is the long form and no other journal entry is required nor advised. This form is complete in and of itself, reciting appearances and allowing space for findings and orders of the court.

If the court, in issuing this order, removes the child from the home, and if it is the first order removing the child from the home or the first order of removal when the child has been home for six months or longer (as in an informal supervision), Supreme Court Administrative Order No. 155 applies and requires the use of this form or another form approved by the Supreme Court as meeting ASFA requirements. Failure to make and properly document the findings required by ASFA will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case. Federal funding is not available when the court finds reasonable efforts have not been made unless the court also finds the efforts were not required. Finding that reasonable efforts were not made does not bar the court from removing the child and failure to make these findings does not bar the court from removing the child.

K.S.A. 38-2253 requires that an order of disposition be entered within 30 days following adjudication. Dispositional hearings shall be closed except the parties, the guardian *ad litem*, interested parties, officers of the court, CASA and the custodian may attend. Other persons may be permitted to attend by consent of the parties or order of the court, if the court determines that their attendance would be in the best interests of the child or the conduct of the proceedings. The court may impose limitations as appropriate. In addition, the court shall permit the attendance of up to two people who have been designated by the parent as allies, if they have participated in a parent ally orientation program approved by the judicial administrator. An ally may be removed if the ally becomes disruptive or has been disruptive in a prior proceeding. K.S.A. 38-2247.

K.S.A. 38-2255(a) sets out the considerations that the court must make prior to entering a dispositional order. In addition to entering a custody order, the court may impose terms and conditions which may include participation by the parent and child in programs and treatment for the child. The dispositional hearing may serve as a permanency hearing, if the requirements of K.S.A. 38-2265 have been met. Those requirements are notice requirements.

If the court removes the child from the home, in addition to the findings related to reasonable efforts required by ASFA and Kansas law, the Indian Child Welfare Act (ICWA) requires the court to determine if active efforts to prevent the removal of the Indian child from the home were made. ICWA also requires the court to determine by clear and convincing evidence that continued custody with the child's parents or Indian custodian is likely to result in serious physical or emotional damage to the child. In making that determination, the court shall consider the testimony of one or more experts qualified to address that issue. Source: Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.

If the court makes the required findings and removes the child from a parent's custody,

the court may award custody of the child to a relative, to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or to the secretary, subject to ICWA. If the child is removed from the home, ICWA requires a placement in the least restrictive setting which most approximates a family, in which the child's special needs may be met, and which is in reasonable proximity to the child's home. ICWA also provides placement preferences which must be considered by the court and shall be followed by the court or agency unless good cause is found to not follow them. The mandatory ICWA placement preferences are given in the order of priority in this form. Good cause not to follow the ICWA preferences may be based on the request of the child (when the child is of sufficient age) or the child's biological parents, extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness, or the unavailability of suitable families meeting the preference criteria after a diligent search. *Id.* In making a placement recommendation or a custody order, the court should make and record specific findings relating to the ICWA placement preferences. The findings should be based on the evidence presented in reports and testimony.

Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority.

If the court awards custody of the child to the secretary then the secretary shall have the authority to place the child, and the court may make placement recommendations. The court shall provide the secretary with a copy of any orders entered. The court may determine, after notice and hearing, that the secretary's placement is contrary to the welfare or best interests of the child, considering the health and safety needs of the child and the resources available. If the court determines that the placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

The court may enter an order for one or both parents to pay child support if the child is placed with a person other than a parent, and shall enter a child support order if the secretary is granted custody of the child. The court shall issue an income withholding order, regardless of whether a payor/employer has been identified. The parent shall be given notice that the order may be registered pursuant to K.S.A. 38-2279, that the withholding order may be served on the parent's employer without further notice, and the child support order may be enforced by any method allowed by law. K.S.A. 38-2256 provides that a child support order that has been registered under K.S.A. 38-2279 may only be modified pursuant to that statute.

If the court awards custody of the child to a person other than a parent, the custodian shall notify the court in writing at least 10 days prior to any planned placement with a parent, stating the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare of the child. The court may set the proposed placement with a parent for hearing to determine if the child should be allowed to return home. If the matter is set for hearing, the custodian shall not return the child home without the written consent of the court (Form 165). K.S.A. 38-2255(d)(2)

The court may enter a restraining order (Form 134) against any alleged perpetrator of physical, sexual, mental or emotional abuse of the child. There is a provision in this form directing that a restraining order issue pursuant to K.S.A. 38-2255(d)(4).

When the term "or" stands alone between optional findings/orders, more than one choice may be checked. Each choice checked must be justified as instructed, e.g. *specify basis for finding.*

This form has been drafted to reflect the language of ASFA in the exception to the requirement for reasonable efforts in cases of murder, attempted murder, etc. The specific language of ASFA is used, which limits the application of the exception.

#### Comments

The findings required in a dispositional order after the court makes the child in need of care determination are examined. *In re A.B.*, 12 Kan. App. 2d 391, 746 P.2d 96 (1987).

The purpose and intent of ICWA are discussed, and the meaning of “domicile” clarified in this case. *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30, 109 S.Ct. 1597 (1989).

An adjudication hearing is required when a party files a CINC petition and no stipulation has been entered. *In re K.W.*, 24 Kan. App. 2d 724, 953 P.2d 229 (1998).

On the facts specific to this case, if the provisions of ICWA are not initially followed, subsequent remedial acts may bring the case into compliance with the act, such as the tribe’s intervention and participation in the case. *In re H.A.M.*, 25 Kan. App. 2d 289, 961 P.2d 716 (1998).

An adjudication hearing is required when a party files a CINC petition and no stipulation has been entered. *In re K.W.*, 24 Kan. App. 2d 724, 953 P.2d 229 (1998).

A court may order that a child be counseled by a specific counselor. *In re T.D.*, 27 Kan. App. 2d 331, 3 P.3d 590 (2000).

A court is not required to determine whether reintegration with the custodial parent is a viable alternative before placing the child with the noncustodial parent. *In re T.S.*, 276 Kan. 282, 74 P.3d 1009 (2003).

In a case involving an Indian child, ICWA dictates placement preferences, in the absence of good cause to the contrary. The best interest of the child remains the paramount consideration and good cause can be based on parental preference. *In the Matter of the Adoption of B.G.J.*, 281 Kan. 552, (2006).

\* This form has been approved by the Judicial Administrator pursuant to Supreme Court Administrative Order No. 155, first entered September 22, 2000.