

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 REHEARING OF DISPOSITION

Pursuant to K.S.A. 38-2203(a), 38-2256 and 25 U.S.C. § 1901 *et seq.*

Now on this _____ day of _____, _____, the above-captioned matter comes on for rehearing of disposition before Judge _____, on the Court's own motion on the motion of _____.

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 K.S.A. 38-2254.

- 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 FURTHER FINDS THAT the Court’s previous findings and orders:

- shall remain of full force and effect.
- shall remain of 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)*

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

3. 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.)*

4. 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*) _____

5. THE COURT FURTHER FINDS:

_____.

6. 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.

7. 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.*) _____

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

9. THE COURT THEREFORE ORDERS THAT the above named child(ren) **shall be** **shall 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.

10. THE COURT ORDERS all providers of services, treatment or care of the child and family, even if not specifically referred to herein, to provide information 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 to the child and family. This order encompasses the provisions of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

11. THE COURT FURTHER ORDERS:

12. A restraining order shall be filed against _____.

13. **The Secretary** **Court Services** _____ shall complete reports and submit them to the Court by _____.

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), 38-2256 and 25 U.S.C. § 1901 *et seq.*

Notes on Use

This is the only form for rehearing, complete with a recitation of appearances and space for findings and orders. There is no short form, and a separate journal entry drafted by counsel is neither required nor advised.

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.

The court may enter any dispositional order authorized by the code after notice as required by K.S.A. 38-2254 and a rehearing, subject to ICWA. However, a child support order registered under K.S.A. 38-2279 may only be modified pursuant thereto.

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.

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.*

8/1/07

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.