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

IN THE INTEREST OF:

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

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

INDIAN CHILD WELFARE ACT

RELINQUISHMENT OF MINOR CHILD TO AGENCY

Pursuant to K.S.A. 38-2203, 38-2268 and 25 U.S.C. §1901 *et seq.*

**NOTICE TO PARENT OR PERSON *IN LOCO PARENTIS*: This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein. You are to receive a copy of this document.**

I, \_\_\_\_\_ (*Name*), (mother, father, Indian Custodian) of \_\_\_\_\_ (*Child's name*), a minor child, state:

1. The child was born on \_\_\_\_\_ (*Date of birth*) at \_\_\_\_\_ (*Place of birth*) at \_\_\_\_\_ :  
 a.m.  p.m.
2. I reside at \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_.
3. I am of the age of \_\_\_\_\_ years and was born on \_\_\_\_\_.
4. I am a member of the \_\_\_\_\_ Tribe of the State of \_\_\_\_\_ and my enrollment number is \_\_\_\_\_. My child is a member of or eligible for membership with the \_\_\_\_\_ Tribe of the State of \_\_\_\_\_ and the child's enrollment number is \_\_\_\_\_. (*If known and applicable.*)
5. I desire to relinquish my parental rights to the child and I do hereby relinquish the child to \_\_\_\_\_ (*Name of agency*), which I understand will have full power and all the rights of a birth parent or legal guardian over the child, including

the power to place the child for adoption and give consent thereto.

6. I  **do**  **do not** request that the placement preferences of the Indian Child Welfare Act are followed, and I prefer that my child be placed with       (State name and relationship.)      .
7. I wish to, and I understand that by signing this relinquishment I do, permanently give up all custody and other parental rights I have to such child, including the right to receive notice of any subsequent adoption proceedings involving the child.
8. I understand that until the court enters a final order of adoption, I may withdraw my consent and may regain custody of my child.
9. I understand I have the right to be notified when the final decree of adoption is granted, set aside or vacated.  I **do not** want to be notified.  I **do** want to be notified and understand I must keep the court informed of my address so the court may find me.
10. I fully understand the consequences of my actions and no threats or promises have been made to induce me to sign this consent.
11. The child named above was born to me more than ten (10) days before my signing this relinquishment.
12. I acknowledge that at the time of the signing of this relinquishment I am not domiciled on or residing upon any Indian reservation.
13. I can read and understand English. I have read and I understand the above and I am signing it as my free and voluntary act.

Dated \_\_\_\_\_, at \_\_\_\_\_ : \_\_\_\_\_  a.m.  p.m.

\_\_\_\_\_  
Signature of Parent/Indian Custodian

**CERTIFICATE OF ATTORNEY FOR RELINQUISHING MINOR PARENT**

I am a licensed attorney representing \_\_\_\_\_.  
I have fully explained that by signing this relinquishment \_\_\_\_\_  
is permanently giving up all parental rights to the child and (she)(he) has stated that such is  
(her)(his) intention and desire. I was present at the execution of this relinquishment.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney  
S.Ct.# \_\_\_\_\_

*(Must be acknowledged before a judge.)*

**ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT**

STATE OF KANSAS )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, Judge of the District Court, \_\_\_\_\_  
Judicial District, hereby certify that \_\_\_\_\_,  
known to me to be the same person whose name is subscribed to the foregoing relinquishment,  
appeared before me this day in person and acknowledged that (she)(he) signed such  
relinquishment as (her)(his) free and voluntary act, for the specified purpose.

I certify that the Parent (Indian Custodian) understands English and I have fully  
explained that by signing such relinquishment (she)(he) is permanently giving up all parental  
rights to such child and (she)(he) has stated that (she)(he) understood the consequence and that  
permanent relinquishment of parental rights is (her)(his) intention and desire.

Dated \_\_\_\_\_, at \_\_\_\_:\_\_\_\_  a.m.  p.m.

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

**ACCEPTANCE OF CHILD BY AGENCY**

I, \_\_\_\_\_, the undersigned, on behalf of (Name of agency) \_\_\_\_\_, do hereby accept custody of \_\_\_\_\_, the above relinquished minor child.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Authority

K.S.A. 38-2203, 38-2268 and 25 U.S.C. 1901 *et seq.*

Notes on Use

With the consent of the guardian *ad litem* and the secretary, a parent may relinquish parental rights. The relinquishment shall be acknowledged before a judge, and it shall be the duty of the court to advise the relinquishing parent of the consequences of the relinquishment. If a parent relinquishes a child to the secretary based on a belief that the other parent would relinquish the child or be found unfit, and neither occurs, the rights of the parent who relinquished based on that belief shall not be thereby terminated.

Leave those items blank, or delete those items, that do not apply in the case at hand.

ICWA requires that the relinquishment certification by the judge include the statement that the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood. 25 U.S.C. 1913(a). Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

Because ICWA is invoked through the status of the child, a non-Indian parent receives

the rights accorded by ICWA. This is the relinquishment form that both an Indian and a non-Indian parent of an Indian child should use. Those sections which are inapplicable, specifically portions of paragraph 4, may be left blank.

ICWA also provides protection for an “Indian Custodian” defined at 25 U.S.C. 1903(6) as “any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control, has been transferred by the parent of such child”. The rights of an Indian Custodian are analogous to parental rights and must be terminated with the same formality.

Relinquishment of an Indian child may be revoked at any time prior to issuance of the final decree of adoption. 25 U.S.C. 1913.

The placement preferences set out in ICWA are binding absent good cause to the contrary. The BIA guidelines include parental preference as an example of good cause along with extraordinary needs of the child as established by a qualified expert witness; and the unavailability of suitable families meeting the preference criteria after a diligent search.

ICWA, at 25 USC 1913(c), provides “In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, . . .”. See *Matter of Kiogma*, 472 N.W.2d 13, *cert. denied*, 112 S.Ct. 952 (1992); *B.R.T. v. Executive Director*, 391 N.W.2d 594 (N.D. 1986); *Matter of J.R.S.*, 690 P.2d 10 (Alaska 1984).

Voluntary relinquishment of parental rights and acceptance by an adoption agency terminates parental rights and obligations, including the obligation to pay child support. *Secretary of SRS v. Clear*, 248 Kan. 109, 804 P.2d 961 (1991). However, a decree of adoption does not relieve a parent of his or her obligation to pay the child support due and owing at the time of the adoption. Child support arrearages which have been reduced to judgment are not extinguished or canceled by termination of parental rights. *Michels v. Weingartner*, 254 Kan. 44, 864 P.2d 1189 (1993).

The relinquishment of a child to an agency for adoption must be accepted in writing by that agency in order to be effective. *In re Baby Boy N.*, 19 Kan.App.2d 574, 874 P.2d 680 (1994) (construing K.S.A. 59-2124(a) which is substantially similar to K.S.A. 38-2268).

If the person cannot read and understand English, specifically state how they were informed of all their rights and the consequences of relinquishment.