

5/4/13

210
IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ Case No. _____

Year of Birth _____ A ☐ male ☐ female

**INDIAN CHILD WELFARE ACT NOTICE OF THE PROCEEDING
TO PARENTS, INDIAN CUSTODIANS, AND TRIBE**

Pursuant to K.S.A. 38-2203(a), 25 U.S.C. § 1912(a) and 25 CFR 23.11

TO:

(Show Names, ~~and~~ Addresses, and Telephone Numbers)

Comment [LN1]: Regulation 23.111(d)(5)(vii)
Requires the address and telephone number of the
court and "all parties to the proceeding" and
"individuals notified under this section"

Parents: _____

Indian Custodian: _____

Tribe (Designated agent for service): _____

Secretary of the Interior/Bureau of Indian Affairs Area Director: _____

Notice is hereby given pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 *et seq.*, that a petition involving the child named above has been filed in the captioned county and court alleging that the child is within the jurisdiction of this court. - A copy of the petition is attached. -It is further alleged that the child is a member of or eligible for membership in the named ~~tribe~~ Tribe, and that the Indian Child Welfare Act applies to this child custody proceeding.

1. Information on the child is as follows:

(Indicate whether any information is unknown or does not apply. Do not use the abbreviation "N/A")

- a. Name of child: _____
- b. D.O.B.: ____/____/____
- c. Current Residence: _____
- d. Place of birth: _____
- e. Where child was taken into custody: _____

f. Tribe(s) in which child is enrolled or may be eligible for enrollment: _____

g. Tribal Census or Enrollment Number: _____

(Attach a copy of the child's birth certificate and any Tribal registration card, if available.)

2. Information on the parents is as follows:

(Indicate whether any information is unknown or does not apply. Do not use the abbreviation "N/A")

Comment [LN2]: Made categories of information for parents match the categories of information in the BIA's sample notice form

a. Mother's name: _____ maiden name: _____

aliases: _____

(1) ~~Permanent~~ Current Address: _____

(2) ~~Current~~ Former Address: _____

(3) Place of Birth: _____

(4) Date of Birth: ____/____/____

(5) Tribal Affiliation: _____

(6) Tribal Enrollment or Census Number: _____

(7) If deceased, date and place of death: _____

(8) Additional information: _____

b. Father's name: _____ aliases: _____

(1) ~~Permanent~~ Current Address: _____

(2) ~~Current~~ Former Address: _____

(3) Place of Birth: _____

(4) Date of Birth: ____/____/____

(5) Tribal Affiliation: _____

(6) Tribal Enrollment or Census Number: _____

(7) If deceased, date and place of death: _____

(8) Additional information: _____

3. The counsel for Petitioner in this proceeding is:

a. Name: _____

b. Address: _____

c. Phone: _____ FAX: _____

d. Title: ☐ County/District Attorney ☐ Assistant County/District Attorney

☐ Other _____

4. The social worker for the Secretary in this proceeding is:

- a. Name: _____
 b. Address: _____
 c. Phone: _____ FAX: _____

5. The contact information for the District Court for _____ County, Kansas, is:

- a. Address: _____
 b. Phone: _____ FAX: _____

Comment [LN3]: Guidelines D.3 pg 33
 Reg: 25 CFR 23.111(d)(6)(vii)
 The guidelines require the address and phone number
 be given regardless of whether a hearing is set or not.

56. The petition has been filed in the District Court for _____ County,
 State of Kansas. -A _____ hearing is scheduled for this matter on
 _____, _____ at _____ ☐ a.m. ☐ p.m. before Judge
 _____. ~~The address of the Court is~~
 _____. ~~The phone number of the~~
~~Clerk of the Court is~~ _____.

76. If the natural parents or Indian custodians are unable to afford counsel, counsel will
 be appointed to represent them.- The parents or Indian custodians have the right to be
 represented by an attorney at every stage of this proceeding.- The Court has appointed a
 guardian *ad litem*, _____, phone: _____, address:
 _____, to represent the best interest of
 the child in this proceeding.

87. The Tribe, the natural parents, and any Indian custodians of the above named child
 have the right to:

- intervene and be made a party in this proceeding under the Indian Child Welfare Act.
- be granted an additional twenty (20) days to prepare for this proceeding if the
 additional time is requested. Such request may be made by motion in writing, or by
 calling the Clerk of the Court.
- examine all documents or other material which may be used to make a decision in this
 matter if a request to do so is made. Such request shall be made in writing to the Clerk
 of the Court, or to the Court at the time of the hearing.
- petition the Court to transfer the jurisdiction of the matter to the tribal court. Such
 petition shall be in writing and presented to the Clerk of the Court or orally to the Court
 at the scheduled hearing. The petition shall be granted in the absence of good cause to
 the contrary or the objection of either parent.

98. A decision in this matter may affect the future custodial rights of the Tribe, the natural parents, and the Indian custodians of the above named minor child, and may result in the temporary or permanent removal of the child from the child's home, the termination of parental rights to the child, and the permanent placement or adoption of the child.

109. The information contained in this Notice and the attached Petition is confidential and should be disclosed or revealed only to those persons or agencies necessary for proper notification of the natural parents, Indian custodians or the Tribe of the above named minor child and which is necessary for the exercise of rights under the Indian Child Welfare Act.

~~10. All names known, including maiden, married and former names or aliases, and current and former addresses of the child's maternal and paternal grandparents and great grandparents or Indian custodians, birthdates, places of birth and death, tribal enrollment numbers, and other identifying information are provided below.~~

11. Information on the child's grandparents:

(Indicate whether any information is unknown or does not apply. Do not use the abbreviation "N/A")

a. Mother's Biological Mother's (Child's Maternal Grandmother) name:

maiden name:

Aliases:

(1) Current Address:

(2) Former Address:

(3) Place of Birth:

(4) Date of Birth: / /

(5) Tribal Affiliation:

(6) Tribal Enrollment or Census Number:

(7) If deceased, date and place of death:

(8) Additional information:

b. Mother's Biological Father's (Child's Maternal Grandfather) name:

Aliases:

(1) Current Address:

(2) Former Address:

(3) Place of Birth:

(4) Date of Birth: / /

(5) Tribal Affiliation:

(6) Tribal Enrollment or Census Number:

(7) If deceased, date and place of death:

(8) Additional information:

c. Father's Biological Mother's (Child's Paternal Grandmother) name:

maiden name:

Aliases:

Comment [LN4]: Per 25 CFR 23.111(d)(3)
Also provides same information that is asked for in
the BIA's sample notice form

- (1) Current Address: _____
 (2) Former Address: _____
 (3) Place of Birth: _____
 (4) Date of Birth: ____ / ____ / ____
 (5) Tribal Affiliation: _____
 (6) Tribal Enrollment or Census Number: _____
 (7) If deceased, date and place of death: _____
 (8) Additional information: _____

d. Father's Biological Father's (Child's Paternal Grandfather) name:

Aliases: _____

- (1) Current Address: _____
 (2) Former Address: _____
 (3) Place of Birth: _____
 (4) Date of Birth: ____ / ____ / ____
 (5) Tribal Affiliation: _____
 (6) Tribal Enrollment or Census Number: _____
 (7) If deceased, date and place of death: _____
 (8) Additional information: _____

12. Information on the child's maternal great-grandparents:

(Indicate whether any information is unknown or does not apply. Do not use the abbreviation "N/A")

a. Mother's Biological Grandmother's (Child's Maternal Great-Grandmother) name:

maiden name: _____

- Aliases: _____
 (1) Current Address: _____
 (2) Former Address: _____
 (3) Place of Birth: _____
 (4) Date of Birth: ____ / ____ / ____
 (5) Tribal Affiliation: _____
 (6) Tribal Enrollment or Census Number: _____
 (7) If deceased, date and place of death: _____
 (8) Additional information: _____

b. Mother's Biological Grandfather's (Child's Maternal Great-Grandfather) name:

Aliases: _____

- (1) Current Address: _____

Comment [LN5]: Per 25 CFR 23.111(d)(3)
 Also provides same information that is asked for in
 the BIA's sample notice form

- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

c. Mother's Biological Grandmother's (Child's Maternal Great-Grandmother) name:

_____ maiden name: _____

- Aliases: _____
- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

d. Mother's Biological Grandfather's (Child's Maternal Great-Grandfather) name:

_____ Aliases: _____

- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

13 Information on the child's paternal great-grandparents:

(Indicate whether any information is unknown or does not apply. Do not use the abbreviation "N/A")

a. Father's Biological Grandmother's (Child's Paternal Great-Grandmother) name:

_____ maiden name: _____

Aliases: _____

- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

b. Father's Biological Grandfather's (Child's Paternal Great-Grandfather) name: _____

Aliases: _____

- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

c. Father's Biological Grandmother's (Child's Paternal Great-Grandmother) name: _____

maiden name: _____

- Aliases: _____
- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____
- (5) Tribal Affiliation: _____
- (6) Tribal Enrollment or Census Number: _____
- (7) If deceased, date and place of death: _____
- (8) Additional information: _____

d. Father's Biological Grandfather's (Child's Paternal Great-Grandfather) name: _____

Aliases: _____

- (1) Current Address: _____
- (2) Former Address: _____
- (3) Place of Birth: _____
- (4) Date of Birth: ____ / ____ / ____

(5) Tribal Affiliation: _____

(6) Tribal Enrollment or Census Number: _____

(7) If deceased, date and place of death: _____

(8) Additional information: _____

~~14~~14. This Notice, and the Petition and/or application for *ex parte* order of temporary custody, are being sent via certified mail, return receipt requested, to the Indian parents, Indian custodians, ~~and~~ the child's Tribe, and the Anadarko Regional Director of the BIA this _____ day of _____, _____.

~~(If the identity or location of the Indian parents, Indian custodians or the child's tribeTribe cannot be determined then the BIA Area Director shall receive notice via certified mail, return receipt requested.)~~

Comment [LN6]: 25 CFR 23.11(a) requires the regional director of the BIA to receive copies of these notices via registered or certified mail, regardless of whether the identity and location of the child's parents, Indian custodian, or Tribe can be ascertained.

Name: _____

County/District Attorney ☐ Assistant

Supreme Court Number: _____

Address: _____

Telephone Number: _____

[Fax Number]: _____

[E-mail Address]: _____

Authority

K.S.A. 38-2203(a), 25 U.S.C. § 1912(a) ~~and 25 C.F.R. 23.11~~, and 25 C.F.R. 23.111.

Notes on Use

This ICWA Notice of the proceeding is separate from any notice of hearing requirements under Kansas state law. The Notice of the proceeding must be served on all the required people at the beginning of a CINC case before adjudication and disposition. It must again be served on all the required people before the court terminates parental rights. Compliance with ICWA is jurisdictional. Failure to comply with ICWA may render orders devoid of authority.

ICWA applies to child custody proceedings, which include child in need of care proceedings, ~~but generally not juvenile offender cases nor domestic cases.~~ The purpose of ICWA is to preserve Indian families, culture and heritage to the greatest extent possible, while not threatening the safety and wellbeing of the child.

When a court knows or has reason to believe know a child involved in a child in need of care proceeding is an Indian child, ICWA applies. Notice of the proceedings (Form 210) ~~shall be given, by personal service or registered mail, return receipt requested.~~ must be sent by registered or certified mail with return receipt requested to the parents, Indian custodian, and the Indian child's ~~tribe~~Tribe's designated agent, ~~or, if the tribe cannot be identified,~~ Copies of the notices must be sent via registered or certified mail with return receipt requested to the Department of the Interior by serving Regional Director of the closest area office of the Bureau of Indian Affairs as indicated in 25 C.F.R. 23.11(b) (see address information below). 25 C.F.R. 23.11(a). "Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested." 25 C.F.R. 23.111(c). If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member of eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director. 25 C.F.R. 23.111(e).

Comment [LN7]: Reg 23.111(c)

Comment [LN8]: Reg 23.11(a) requires the BIA Regional Director to receive copies of all Notices even if the child's designated Tribe has been identified.
See Guidelines pg 30.

The circumstances under which a court ~~has~~ knows or has reason to ~~know~~ believe a child is an Indian child include, but are not limited to, the following: any party to the case, Indian ~~tribe~~Tribe, or agency informs the court that the child is an Indian child; any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child; the child gives the court reason to believe he or she is an Indian child; the residence of the child, parent(s), or custodian is known to be on a reservation or a predominantly Indian community; a parent of the child is enrolled in a ~~tribe~~Tribe; or an officer of the court has knowledge that the child may be an Indian child. 25 C.F.R. 23.107. "ICWA does not apply simply based on a child or parent's Indian ancestry. Instead, there must be a political relationship to the Tribe." BIA Guidelines for Implementing the Indian Child Welfare Act, B.1, pg. 9 (2016).

Notice of the proceedings should be given as early as possible. A Tribe may petition to transfer jurisdiction, ~~and is required to do so promptly after receipt of notice~~. Late notice may delay a Tribe's petition to transfer jurisdiction and result in a disruption of the proceedings and placement. Late notice may deny the Tribe an opportunity to influence the proceedings.

~~Source: Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.~~

~~Notice of the proceedings should be given as early as possible, and if~~ Incomplete service information should not cause service to be delayed; notice can be given again when more complete information is obtained, if service previously failed.

~~No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the BIA). Each parent, Indian custodian, and Tribe have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.~~ 25 C.F.R. 23.112(a).

For proceedings in Kansas, notice for the Department of the Interior shall be sent to the BIA area office: **Anadarko Area Regional Director, BIA, P.O. Box 368, Anadarko, OK 73005.** 25 CFR 23.11(b)(4). The designated agents of the different Tribes are published annually in the Federal Register. The website at the time of the publication of these forms is <https://www.bia.gov/regional-offices>.

~~<http://www.doi.gov/bia/ICWA%20Tribal%20Agents%2008-02.pdf>~~

~~"If there is a reason to know that the parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal Laws."~~ 25 C.F.R. 23-111(f).

Comments

~~When the court has reasonable grounds to believe a child involved in the proceeding is or may be an Indian child, the court must comply with ICWA. *In re H.D.*, 11 Kan. App. 2d 531, 729 P.2d 1234 (1986).~~

~~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).~~

~~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).~~

~~Once a court is faced with evidence that the child is an Indian child, the court is bound to apply ICWA, and to comply with its requirements. *In re S.M.H.*, 33 Kan. App. 2d 424, 103 P.3d 976 (2005).~~