

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ Case No. _____
 Year of Birth _____ A ☐ male ☐ female

INDIAN CHILD WELFARE ACT
PETITION FOR TRANSFER OF JURISDICTION

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

The _____ ☐ Tribe ☐ parent ☐ Indian custodian, through _____, ☐ counsel ☐ authorized representative, petitions the Court to transfer jurisdiction of this matter to the _____ Tribal Court in the city and state of _____, _____, and, upon receiving the Tribe's order accepting jurisdiction, to terminate jurisdiction in the captioned matter. The grounds for this transfer are as follows:

1. The minor child named above is an "Indian child" as defined by the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. §1903(4), in that the child is under eighteen years of age, born _____, and the child is a member of the _____ Tribe or eligible for membership therein.

2. The _____ Tribe is an "Indian ~~tribe~~Tribe" as defined by the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. §1903(8).-

3. The _____ Tribe is an "Indian child's ~~tribe~~Tribe" as defined by the Indian Child Welfare Act, 25 U.S.C. Sec. §1903(5), in that the child is a member of or eligible for membership in the _____ Tribe.

4. This is a "child custody proceeding" as defined by the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. §1903(1), in that it involves foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement.

5. The Indian Child Welfare Act of 1978, 25 U.S.C. Sec. §1911(b), requires that the state court transfer a child custody proceeding involving an Indian child to the jurisdiction of the ~~tribe~~Tribe, in absence of good cause to the contrary, ~~or~~ objection by either parent, or if the tribal court declines the transfer. ~~when the Indian child's tribe petitions the state court.~~

6. Good cause does not exist to deny transfer of this proceeding.

7. The _____ Tribal Court ☐ seeks to ☐ should take jurisdiction of this proceeding, and to provide planning and placement for the above-named child.

8. The _____ Tribe and its Tribal Court should continue to have access to the records of the Secretary of DCF and should be told of any abuse and neglect reports regarding the above-named child as long as the child remains in the state of Kansas and the Tribal Court case is pending in the Tribal Court of the _____ Tribe.

WHEREFORE, the _____ Tribe-petitioner requests the Court transfer jurisdiction of the above-captioned proceeding to the Tribal Court of the _____ Tribe in the city and state of _____, _____; to terminate jurisdiction over the matter in the state court proceeding involving the above-named Indian child; to order the Kansas Department for Children and Families (DCF) to freely share information in DCF records and reports relating to the current case and any abuse and neglect reports that arise regarding this child with the _____ Tribe and its Tribal Court while the Tribal Court continues to exercise jurisdiction and the child remains in Kansas; and to grant such other relief as the Court deems just and proper.

DATED this ____ day of _____, _____.

_____,
_____, General Counsel
Supreme Court Number
Address
Telephone Number
[Fax Number]
[E-mail Address]

Local Counsel:

Attorney's Name
Supreme Court Number
Address
Telephone Number
[Fax Number]
[E-mail Address]

Authority

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

Notes on Use

Either parent, the Indian custodian or the ~~tribe~~Tribe may request that the proceedings be transferred to the tribal court. ICWA does permit an oral request, which the court should make a part of the record and file. 25 C.F.R. § 23.115. The request ~~should be made promptly after the tribe receives notice, but~~ may be made at any point in the proceeding. ~~However, the court may refuse the request for good cause, and failure to make the request promptly after receipt of notice may be grounds for refusing the request, particularly if the delay would result in disruption to a placement that serves the child's best interest, and if the delay is a result of negligence or obstructionist tactics.~~

~~_____The court shall grant the petition to transfer unless either parent objects, the tribal court declines jurisdiction, or the court determines that good cause exists to deny the transfer. 25 C.F.R. § 23.117. Any party, or the court, may object to transfer on the basis of good cause. A hearing must be held upon the filing of an objection to the petition for transfer if the objection is made by other than a parent or the tribe.~~

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

_____The court's reasons for finding good cause to deny a transfer must be stated on the record, and any party must have the opportunity to provide the court with their views on whether good cause to deny the transfer exists. In determining whether good cause exists, the court must not consider any of the following: whether the proceeding is at an advanced stage if the parent, Indian custodian or Tribe did not receive notice until an advanced stage; whether there have been prior proceedings involving the child for which no petition for transfer was filed; whether transfer could affect the placement of the child; the child's cultural connections with the Tribe or its reservation; or socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems. 25 C.F.R. § 23.118. The good cause determination should address which court is best positioned to adjudicate the child-custody proceeding, not predictions about the outcome of that proceeding. BIA Guidelines for Implementing the ICWA F. 5, pg 49 (2016).