

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

IN THE INTEREST OF:

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

Year of Birth \_\_\_\_\_ A ☐ male ☐ female

**INDIAN CHILD WELFARE ACT**  
**ORDER TRANSFERRING JURISDICTION,**  
**RELEASING CHILD FROM DCF CUSTODY,**  
**AND TERMINATING COURT JURISDICTION**

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

~~NOW, e~~On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, this matter comes on before the above-named Court, Judge \_\_\_\_\_ presiding, for consideration of the Petition for Transfer of Jurisdiction filed by the \_\_\_\_\_ ~~Tribe~~ ☐ Tribe ☐ parent ☐ Indian custodian. The Court finds that the Tribe has filed its notice and order accepting transfer of jurisdiction.

~~THEREUPON, h~~Having reviewed the records and files and being otherwise fully informed, the Court releases the child from the care, custody and control of the Secretary, Kansas Department for Children and Families and simultaneously terminates this Court's jurisdiction ☐ effective at \_\_\_\_\_ ☐ a.m. ☐ p.m., on \_\_\_\_\_, \_\_\_\_\_ or ☐ upon the ~~tribe~~ Tribe taking physical custody of the child.

\_\_\_\_\_ ~~The~~ court orders that all legal papers and records be transferred to the Tribe.

Comment [LN1]: 25 CFR 23.119

\_\_\_\_\_ IT IS SO ORDERED.

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

Approved:

\_\_\_\_\_, # \_\_\_\_\_  
County/District Attorney ☐ Assistant

\_\_\_\_\_  
Guardian *ad litem*

\_\_\_\_\_  
Attorney for Mother

\_\_\_\_\_  
Attorney for Father

\_\_\_\_\_  
Attorney/Representative for Tribe

### 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.

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~~Tribe. 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).

The State court should expeditiously provide the Tribal court with all records related to the proceeding, including but not limited to, the pleadings and any court records. 25 C.F.R. 23.119(a).

~~Good cause to deny transfer may lie in: the absence of a tribal court for the tribe; the advanced stage of the proceedings when the petition was received, and the petition to transfer was not filed promptly after the tribe received notice of the proceedings, particularly if the delay is a result of negligence or obstructionist tactics; the child is over 12 years of age and objects to the transfer; a transfer would present a great hardship to the parties or witnesses in presenting the case; or the child is over five years of age and the parents are not available and the child has had little or no contact with the tribe or members of the tribe. Socio-economic conditions and the perceived adequacy of tribal social services or judicial system may not be considered in the determination of good cause. ICWA codifies the policy of preferring tribal control over custody decisions affecting tribal members, and the burden of proving that an exception ought to be made to that policy rests on the party objecting to the transfer.~~

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

#### Comments

~~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).~~

~~Once a transfer of jurisdiction has been requested, in order to comply with ICWA, the trial court must obtain a declination of jurisdiction from the tribal court (not the tribeTribe or counsel for the tribeTribe) or make a finding that good cause exists not to transfer the case to the tribal court before proceeding to exercise jurisdiction over an Indian child. *In re C.Y.*, 22 Kan. App. 2d 941, 925 P.2d 447 (1996).~~

~~The state may show good cause for not transferring a termination of parental rights case involving an Indian child to the tribal court. *In re A.P.*, 26 Kan. App. 2d 268, 961 P.2d 706 (1998).~~

**Comment [LN2]:** Margaret recommended taking these cases out since they are no longer completely accurate now that the new regs are in place.