

219.1

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

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

***INDIAN CHILD WELFARE ACT**
PERMANENCY HEARING JOURNAL ENTRY AND ORDER

Pursuant to K.S.A. 38-2203(a), 38-2264, 42 U.S.C. 671 *et seq.* and 25 U.S.C. § 1901 *et seq.*
(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)
(If this is the first order removing custody from a parent or Indian custodian, complete and attach Form 209.)

NOW on this _____ day of _____, 20_____, the above-captioned matters come before the Court **to determine progress being made to achieve the current permanency plan goal(s) of _____.**

THE COURT FINDS jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by law.

☐ The child is 14 years of age or older and has been given notice of the time and place of the permanency hearing.

The Court finds that ☐ **each child named above or** ☐ **the child** _____ is an Indian child as defined by the Indian Child Welfare Act (ICWA) ☐ **the Court has the following reason to know the child is an Indian child:**

and Copies of the petition, reports, other information concerning the child, and notice of this hearing as required by ICWA have been timely provided to the Tribe. The Tribe has been given a full opportunity to participate in this proceeding.

~~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. The Court has received and considered evidence including the testimony of a qualified expert witness as required by ICWA.~~

☐ The petitioner appears by _____ ☐ **County/District Attorney or designee** ☐ **other** _____.

☐ The child appears ☐ **in person**, and ☐ **not in person, but** by the child guardian *ad litem*, _____.

Comment [LN1]: 25 USC 1911(c) &(d), 25 USC 1912(a), 25 CFR 23.111(c)

Comment [LN2]: 25 USC 1911(c) &(d), 25 USC 1912(a)

6/2/2017

- ☐ _____, 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.
- ☐ _____, the ☐ father ☐ putative father of _____, ☐ 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) _____

☐ The _____ Tribe ☐ appears by _____, attorney/representative or ☐ does not appear.

☐ Interested parties appearing are: _____

☐ The Secretary ~~is present~~ appears through: _____

☐ Also present: _____

☐ The _____ Tribe ☐ appears by _____, attorney/representative or ☐ does not appear.

The Court has received and considered evidence.

1. A request to transfer of jurisdiction to the Tribe:

☐ has not been made.

☐ was made on _____ by _____
and the transfer of jurisdiction was declined by the Tribe.

☐ was made on _____ by _____
and the transfer of jurisdiction was denied by the Court because:

☐ the following parent(s) object(s) to the transfer: _____

☐ after receiving arguments from all parties, the Court finds good cause exists
for denying the transfer. (Document specific findings that good cause

Comment [LN3]:
25 USC 1911(b)
25 CFR 23.115 – 23.23.119
BIA Guidelines Section F

exists.)

☐ see findings of fact and conclusion of law in the court's order filed

☐ was made on _____ by _____ and
the transfer to _____ was granted. See
attached Order Transferring Jurisdiction (Form 214).

THE COURT FURTHER FINDS:

2. There is clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(Provide specific findings.)*

4.3. (Select either a., ~~a-b.~~, or c.)

- ☐ a. Appropriate public or private agencies have made **reasonable and active efforts** to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.
(Specify what active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to eliminate the need for out of home placement and whether the efforts were successful.)

Comment [LN4]: 25 USC 1912(d)

OR

- ☐ b. Appropriate public or private agencies have made **reasonable but not active efforts** to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.

OR

- ☐ ~~c.~~ Appropriate public or private agencies **have not made reasonable and-or active efforts** to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.

6/2/2017

~~2.4.~~ 2. The progress of the parents or child to achieve the permanency plan goal(s) of _____ ☐ is ☐ is not adequate.

~~3.5.~~ 3. The child's needs ☐ are ☐ are not being adequately met. (If the child's needs are not being met, explain.) _____

-

~~6.~~ 4. The reasonable and prudent parenting standard ☐ has been ☐ has not been met.

~~4.7.~~ 5. The child ☐ has had ☐ has not had regular, on-going opportunities to engage in age or developmentally appropriate activities. _____

8. -Custody

The above named child ☐ shall be ☐ shall remain placed in the custody of:

☐ _____, a parent. This placement is compliant with ICWA.

☐ _____, an Indian custodian. This placement is compliant with ICWA.

☐ _____, a member of the child's extended family. (Complete the placement section below.)

☐ _____, an unlicensed person approved or specified by the Tribe with close emotional ties to the child. (Complete the placement section below.)

☐ _____, a youth residential or shelter facility approved or specified by the Tribe or operated by an Indian organization. (Complete the placement section below.)

☐ The Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental or emotional or sexual abuse. (Complete the placement section below.)

(If this is the first order removing custody from a parent or Indian custodian, complete and attach Form 209.)

Placement (Complete either section A, B, or C.)

(If the child is not placed in the custody of a parent or Indian custodian, complete either section A, B, or C. If the child is placed in the custody of the Secretary, ICWA requires the court to determine if and how the Secretary's choice of placement complies with ICWA.)

☐ A. ICWA order of preferred placements

The child:

(Complete each numbered placement option below including and above the placement option where the child is placed.)

(1) ☐ is ☐ is not placed with the following **member of the child's extended family**. If child is not placed with a member of the child's extended family, it is because: (Specific findings of fact must be written here)

(2) ☐ is ☐ is not placed with the following **foster home licensed, approved, or specified by the Indian child's Tribe**. If child is not placed with a foster home licensed, approved, or specified by the Indian child's Tribe it is because: (Specific findings of fact must be written here)

(3) ☐ is ☐ is not placed with the following **Indian foster home licensed or approved by an authorized non-Indian licensing authority**. If child is not placed with an Indian foster home licensed or approved by an authorized non-Indian licensing authority, it is because: (Specific findings of fact must be written here)

(4) ☐ is ☐ is not placed with the following **institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs**. If child is not placed with an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs, it is because: (Specific findings of fact must be written here)

OR

☐ **B. Tribe's order of preferred placement**

The child's Tribe has a different order of placement preferences, which is:

The child is placed _____, pursuant to the child's Tribe's placement preference order.

OR

☐ **C. Child is not in a preferred placement**

The child is placed _____.

The court, after considering evidence and arguments from all parties, finds that there is clear and convincing evidence that there is good cause to deviate from the placement preferences based on one or more of the following considerations:

- ☐ The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
- ☐ The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
- ☐ The presence of a sibling attachment that can be maintained only through a particular placement.
- ☐ The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- ☐ The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located.

(Specific findings of fact must be written here)

6. ~~The Court has considered in state and out of state permanent placement options. The child ☐ is ☐ is not in out of state placement, and such placement ☐ continues ☐ does not continue to be appropriate and in the best interest of the child.~~

- ☐ ~~A grandparent has requested custody and, in evaluating what custody, visitation and residency arrangements are in the best interests of the child, substantial consideration is given to (1) the wishes of the parents, child, and grandparent; (2) the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed; and (3) the physical and mental health of all involved individuals.~~

5.9. 70. ☐ a. Reintegration **continues to be** a viable goal and:

- ☐ the child should not be reintegrated until further order of the Court as returning the child to the custody of the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- ☐ the child may return home ☐ **immediately** ☐ **with a target date of _____ day of _____, 20____, ☐ if the following conditions are met:** _____
- ☐ within 30 days, a new plan for reintegration should be prepared and submitted to the Court with measurable goals, objectives and time frames.
- ☐ the new plan for reintegration shall include a concurrent goal of
- ☐ adoption (consistent with the ICWA adoptive placement preferences).
 - ☐ permanent custodianship.
 - ☐ placement with a relative.

OR

- ☐ b. Reintegration **is no longer** a viable goal as returning the child to the custody of the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and (*Check choice(s).*)
- ☐ the child is in a stable placement with a relative.
- ☐ either adoption or permanent custodianship might be in the best interests of the child; services set out in the permanency plan necessary for the safe return of the child have been made available to the parent(s) with whom reintegration was planned; the County/District Attorney or designee shall file a pleading to terminate parental rights or a pleading to establish a permanent custodianship within 30 days; a new plan should be prepared and submitted to the Court with measurable goals, objectives and time frames to achieve
- ☐ **adoption** ☐ **permanent custodianship.**

- ☐ adoption and permanent custodianship have been considered but are not in the child's best interest at this time, and a new plan should be prepared and submitted to the Court with measurable goals, objectives and time frames to achieve another planned permanent living arrangement of (*Identify*) _____

~~6.10.~~ 8. ☐ **The child is 14 years of age** or older and the court finds that the Secretary has made the following efforts to help the child prepare for the transition from custody to a successful adulthood. _____

~~7.11.~~ 9. The previous orders of this Court ☐ **shall continue in full force and effect** ☐ **except as hereby modified** ☐ **are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-2255:** _____

THE COURT FURTHER FINDS:

THE COURT ORDERS:

THE COURT FURTHER ORDERS all providers of services including educational services, treatment, education or care of the child and family, even if not specifically referred to herein, to provide information including any and all educational records 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, care and services to the child and family. This order encompasses and complies with the provisions of the Family Education Rights and Privacy Act (20 U.S.C. 1232g; 34 C.F.R. 99 and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

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

6/2/2017

THE COURT FURTHER ORDERS this matter set for _____ hearing
before ☐ **the Court** ☐ **the CRB** on the _____ day of _____, 20____, at
____:____ ☐ **a.m** ☐ **p.m.**

IT IS SO ORDERED THIS _____ day of _____, 20_____.

Judge of the District Court

Authority

~~_____~~ K.S.A. 38-2203(a), 38-2264, 42 U.S.C. 671 *et seq.*, ~~and~~ 25 U.S.C. § 1901 *et seq.*, ~~and~~ 25 C.F.R. 23.

Notes on Use

~~_____ No other journal entry is required nor advised. This form is complete in and of itself, reciting appearances and allowing space for findings and orders of the court.~~

Supreme Court Rule 174 requires the use of this form or another form approved by the Supreme Court as meeting Adoption and Safe Families Act (ASFA) requirements. “An additional order or supplemental affidavit may be attached to a form.” Kansas Supreme Court Rule 174(b). Failure to make and properly document the findings required by ASFA will result in the loss of federal funding. Federal funding is not available when the court finds reasonable efforts have not been made. The loss of federal funding continues until the court finds reasonable efforts have been made and the court’s findings are properly documented.

If this is the first order relieving a parent of custody and authorizing out-of-home placement or the first order of removal after a previously removed child has been home for six months or longer (as in an informal supervision), Form 209 must be used. Failure to make and properly document the findings required by ASFA in the initial order authorizing out-of-home placement will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case.

Timing of permanency hearing

A permanency hearing shall be held within 12 months of the date the child entered out-of-home placement, and at least every 12 months thereafter. If the court finds at any time other than during a permanency hearing (as in a review hearing) that reintegration may not be a viable goal, then a permanency hearing shall be held within 30 days of that determination. A permanency hearing may be conducted by the court or by a citizen review board. 25 U.S.C. 1912(f) requires any decision other than custody to a parent or Indian custodian be supported by the testimony of qualified expert witnesses. The purpose of the permanency hearing is to determine progress toward the goals of the permanency plan, as defined by K.S.A. 38-2263.

Notice

Notice of a permanency hearing is dictated by K.S.A. 38-2265 ~~and 25 U.S.C. 1912(a)~~. If the permanency hearing is for a child 14 years of age or older, the court shall require notice of the time and place of the permanency hearing be sent to the child. K.S.A. 38-2265(a)(2). The notice shall request the child’s participation in the hearing by attendance or by report to the court. A sample report form may be obtained on the Kansas Judicial Council website or through the Office of Judicial Administration.

Identifying the Tribe(s)

The court must determine whether the child's Tribe has been identified and whether the Tribe has been afforded a full opportunity to participate in the proceedings. If so, the court must determine whether the agency provided the child's Tribe with copies of the petition, reports, and information concerning the child in a timely manner. 25 U.S.C. 1911(c) & (d); 25 U.S.C. 1912(a).

Continued placement outside the home

The court shall make findings as to why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the clear and convincing evidence that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. 25 U.S.C. 1912(e). The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child. 25 C.F.R. 23.121(c). Without the causal relationship, evidence that shows only the existence of community or family poverty, single parenthood, custodian age, crowded or inadequate house, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. 25 C.F.R. 23.121(d).

Reasonable and Active Efforts Findings

The Court must decide whether the appropriate public or private agencies have made (1) reasonable efforts *and* (2) active efforts to assist and support the family to accomplish the current permanency goal(s). Federal funding is tied to whether the agency is providing reasonable efforts. ICWA requires the agency to provide active efforts. The Court may decide that the efforts provided were reasonable and active, reasonable but not active, or neither reasonable nor active.

"Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case. 25 C.F.R. 23.2. The court shall make detailed findings about whether reasonable and active efforts have been provided to assist the family, what the active efforts were, and whether the efforts have been successful.

Preferred Placement

The Court must document where the child is placed. If the child is in the custody of someone other than a parent or Indian custodian, the Court must complete section A, B, or C under the "Placement" section. The Court must consider each category of preferred placement

individually in descending order. Starting with the first preferred placement category (a member of the child's extended family), if the child is not in that category of preferred placement, the Court must make specific findings explaining why the child is not placed within that category of preferred placement before moving to the next category of preferred placement. For example, if a child is placed in an Indian foster home that is licensed by a non-Indian licensing authority (placement category #3), the court must first make finding explaining why the child is not placed with a member of the child's extended family (placement category #1). Then, the court must make findings explaining why the child is not placed in a foster home that is licensed by the child's Tribe (placement category #2).

An Indian child must be placed in the least-restrictive setting that: (1) most approximates a family, taking into consideration sibling attachment; (2) allows the Indian child's special needs (if any) to be met; and (3) is in reasonable proximity to the Indian child's home, extended family, or siblings. 25 C.F.R. 23.131(a). Unless the child's Tribe has established a different order of preference, preference to placement of the child with the following people must be given, in descending order as listed below:

- (1) A member of the Indian child's extended family;
- (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs. 25 U.S.C. 1915; 25 C.F.R. 23.131(b).

The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent. 25 C.F.R. 23.131(d).

If a party argues there is good cause to deviate from the placement preferences, the court must allow for all parties to provide evidence and make arguments to the court regarding whether there is good cause to deviate. The court must make findings on the record or in writing about whether the party seeking the departure from the placement preferences has proven this through clear and convincing evidence. 25 C.F.R. 23.132(b). As set out in section C, the court's finding of good cause should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; and/or
- (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none have been located. The standard for determining whether a

placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parents or extended family maintains social and cultural ties. 25 C.F.R. 23.132(c).

A placement may not depart from the preferences based on socioeconomic statutes of any placement relative to another placement; or based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA. 25 C.F.R. 23.132(d) and (e). The court should make detailed findings as to whether the agency has made an ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already with a preferred placement pursuant to 25 U.S.C. 1915(b); 25 C.F.R. 23.130 and 23.131.

Permanency Goals

Upon finding reintegration continues to be a viable goal, the court may rescind prior dispositional orders and enter any dispositional order authorized by the code, or order that a new reintegration plan be prepared. Upon finding that reintegration is no longer a viable goal, the court shall make the considerations and findings set out in the form. If reintegration is not a viable goal and either adoption or appointment of a permanent custodian might be in the best interests of the child, then the county or district attorney shall file a motion to terminate parental rights or a motion to appoint a permanent custodian within 30 days, and the court shall set a hearing on such motion within 90 days of the filing of the motion.

Clarity and Translation

~~— If the court determines reintegration with a parent or Indian custodian is no longer a viable goal, 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 reintegrate the Indian child were made. Prior to termination of parental rights to an Indian child, 25 U.S.C 1912(f) requires the court find custody with the child's parents or Indian custodian is likely to result in serious physical or emotional damage to the child. The finding must be supported by the testimony of qualified expert witnesses. Additionally, the burden of proof necessary for the termination of parental rights of an Indian child is beyond a reasonable doubt. Sources: 25 U.S.C. 1901 *et seq.* and Department of the Interior, BIA Guidelines for State Courts, Indian Child Custody Proceedings.~~

The court should write the order in easily understandable language that allows the parent(s) or Indian custodian to fully understand what action they must take to have the child returned to their care. An interpreter should be provided for a parent or Indian custodian whose first language is not English. 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.*~~