211

**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 INTERVENTION**

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

The \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe intervenes in this proceeding as the Indian Tribe of the child named above.

DATED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

For the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, General Counsel

Name

Supreme Court Number

Address

Telephone Number

[Fax Number]

[E-mail Address]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Associate Counsel/ Authorized Representative

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

At any stage in the proceedings, regardless of whether notice has been given, the Tribe has the right to participate as a party in the child in need of care proceedings. The Kansas statutes governing the intervention of a party in a case do not apply to the child’s Tribe. ICWA controls and gives the child’s Tribe the right to intervene in the case at any time regardless of whether the Tribe has participated before or ever motioned the court to intervene. The Tribe is **not required** to make a written or oral motion to intervene; however, if a Tribe does wish to intervene the Tribe may use this form. 25 U.S.C. 1911(c).

The Indian Child Welfare Act and associated regulations and guidelines are silent on whether an attorney is required to represent a Tribe in court. An attorney can be helpful in an ICWA proceeding, but an attorney is not mandated by federal law. The Oregon Court of Appeals held that due to economic and procedural barriers, requiring a Tribe to obtain legal counsel effectively burdens the intervention rights of the Tribe and essentially den[ies] that right in many cases. *In re Shuey*, 850 P.2d 378 (Or. Ct. App. 1993). The court reasoned that [t]he states interest in requiring attorney representation is not as substantial as the tribal interests in ICWA proceedings. *Id*. at 381. If it is economically feasible, an attorney versed in the ICWA should be consulted.

If an Indian child is a member of more than one Tribe or is eligible for membership in more than one Tribe, the court must provide the opportunity for the Tribes to determine which Tribe should be designated as the Indian child’s Tribe for the purposes of ICWA. If the Tribes reach an agreement, the agreed-upon Tribe should be designated as the Indian child’s Tribe. 25 C.F.R. 23.109. If the Tribes are unable to reach an agreement, the court must make a determination pursuant to the factors provided in 25 C.F.R. 23.109.