INDIAN CHILD WELFARE POLICIES AND PROCEDURES

Chapter 17. Requesting Court Findings About Whether A Child Is An Indian Child In Guardianship and Termination of Parental Rights Cases

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Approved by: Frank Ordway, Chief of Staff

Purpose

The purpose of this policy is to provide guidance when there is reason to know that children are or may be Indian children on how to request court findings during guardianship or termination of parental rights cases to determine:

- Whether children are Indian children.
- Which tribe is the Indian child's tribe.

Scope

This policy applies to caseworkers.

Laws

Chapter 11.30 RCW	Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act
Chapter 13.34 RCW	Juvenile Court Act–Dependency and Termination of Parent-Child Relationship
Chapter 13.38 RCW	Indian Child Welfare Act
25 U.S.C. § 1901-1923	Indian Child Welfare Act

Policy

When there is reason to know children are or may be Indian children, caseworkers must always treat children as Indian children, unless, and until the court has a made a finding based on information provided by the tribes that the child is not an Indian child.

Procedures

Caseworkers must:
Make efforts and obtain the necessary information in order for the court to determine whether a child is an Indian child. This includes:

1. Following the ICWA Notice to Tribes policy regardless of whether ICWA notice was sent in the dependency case.
2. Coordinating with assistant attorneys general (AAG) prior to court hearings to:
    a. Provide the court with all the information obtained and due diligence made to verify the child is an Indian child.
    b. Verify the Indian Child Welfare Act Notice (BIAN) JU 03.0900 was sent and received by the known tribes and BIA at least ten days prior to the proceeding as confirmed by the certified mail, return receipt request located in the online court files.
    c. Allow the following if they determine a continuance is appropriate:

        i. More time for the known tribes to respond to notice.
        ii. Additional opportunities for the caseworker to contact known tribes.

3. Notices Previously Sent
   Once the information has been obtained and prior to or at the court hearing, complete the following if ICWA notices were sent in the dependency case and there is no new information about tribal heritage or Indian ancestry indicating there is reason to know children are or may be Indian children:
   a. Recommending Child Is An Indian Child
      Request the court find that the child is an Indian child for the purposes of the guardianship or TPR hearings based on:
      i. The dependency court previously determining the child to be an Indian child.
      ii. Responses received from the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form indicating:
         A. At least one tribe stating the child is a member or eligible for membership in their tribe.
         B. Multiple tribes stating the child is a member or eligible for membership in their tribe. If this occurs, request the court allow the tribes to determine which tribe is the Indian child's tribe. If the tribes don't agree, request the court determine which tribe is the Indian child's tribe for the purposes of the dependency.
   b. Recommending Child Is Not An Indian Child
      Request the court find that DCYF performed due diligence and the child is not an Indian child for the purposes of the guardianship or TPR hearings if the Bureau of Indian Affairs (BIA) hasn't provided information about tribal heritage or Indian ancestry in response to any Indian Child Welfare Act Notice (BIAN) JU 03.0900 form sent regarding the child and either:
      i. All known tribes have responded to any Indian Child Welfare Act Notice (BIAN) JU 03.0900 form sent regarding the child is not a member or eligible for membership.
      ii. There are no known tribes and due diligence was made to identify a known tribe when tribal heritage or Indian ancestry is reported but the tribe remains unknown.
      iii. Not all known tribes have responded to any of the Indian Child Welfare Act Notice (BIAN) JU 03.0900 forms sent in the dependency, guardianship, or TPR cases and:
         A. Due diligence was made to determine the child is a member for eligible for membership.
         B. Thirty calendar days have passed since the initial Indian Child Welfare Act Notice (BIAN) JU 03.0900 form was sent in the guardianship or TPR case.
         C. The caseworker has been unable to contact the known tribes who haven't responded despite performing due diligence.

4. Notices Not Sent
   If ICWA notices were not sent in the dependency case or there is new information indicating there is reason to know children are or may be Indian children:
   a. Recommending Child is an Indian Child
      Request the court find that the child is an Indian child for the purposes of the guardianship or TPR hearings when any response to the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form are received from:
      i. At least one tribe stating the child is a member or eligible for membership in their tribe.

ii. Multiple tribes stating the child is a member or eligible for membership in their tribe, and request the court whenever possible allow the tribes to determine which tribe is the Indian child's tribe.

b. Recommending Child Is Not An Indian Child
Request the court find for the purposes of the guardianship or TPR hearings that the child is not an Indian child if the Bureau of Indian Affairs (BIA) hasn't provided information about tribal heritage or Indian ancestry in response to any Indian Child Welfare Act Notice (BIAN) JU 03.0900 form sent regarding the child and either:

i. All known-tribes responded to any Indian Child Welfare Act Notice (BIAN) JU 03.0900 form sent regarding the child that the child is not a member or eligible for membership.

ii. There are no known tribes and due diligence was made to identify a known tribe when tribal heritage or Indian ancestry is reported but the tribe remains unknown.

iii. Not all known tribes have responded to any of the Indian Child Welfare Act Notice (BIAN) JU 03.0900 forms sent in the dependency, guardianship, and TPR cases and:

A. Due diligence has been made to determine the child is a member for eligible for membership.

B. Thirty calendar days have passed since the final Tribal Response to ICWA Notice DCYF 09-538 was sent, per the ICWA Notice to Tribes policy to all known tribes.

C. The caseworker has been unable to contact the known tribes who have not responded despite performing due diligence.

5. Follow policies:

a. Chapter 15. ICWA Notice to Tribes and email the court's finding or statement of ICWA determination to the ICW Legal Unit, within three calendar days.

b. Child Welfare Documentation to document all ICW communications and activities.

Forms

Indian Child Welfare Act Notice (BIAN) JU 03.0900
Tribal Response to ICWA Notice DCYF 09-538

Resources

25 CFR Part 23 – Indian Child Welfare Act
Reason to Know policy
ICWA Notice to Tribes policy
Child Welfare Documentation policy