INDIAN CHILD WELFARE POLICIES AND PROCEDURES

Chapter 16. Requesting Court Findings about Indian Children for Dependency Cases

Original Date: January 2, 2024
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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 dependency cases to:

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

Scope

This policy applies to caseworkers.

Laws

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 made findings on the child's Indian status as determined by their tribes.

Procedures

1. In order for the courts to determine whether children are Indian children, caseworkers must follow these policies:
    a. Tribal Inquiry
    b. Indian Child Welfare Act (ICWA) Notice to Tribes
2. Caseworkers must coordinate with assistant attorneys general (AAG) to:
    a. Request the court's findings on the child's Indian status.
    ~~b.~~ Provide the court with all the information about due diligence.
    c. Complete the following:
        i. When responses are received from:
            A. At least one tribe stating the child is a member or eligible for membership in their tribe, request the court find that the child is an Indian child.
            B. Multiple tribes stating the child is a member or eligible for membership in their tribe, request the court:
                I. Find that the child is an Indian child as determined by the tribes.

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II. 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 child's Indian tribe for purposes of the dependency.

ii. Request the court find DCYF performed due diligence and the child is not an Indian child if any of the following occur:

A. Responses

I. All known tribes responded to either form that the child is not a member or eligible for membership:

i. Inquiry to Indian Tribe DCYF 09-539

ii. Indian Child Welfare Act Notice (BIAN) JU 03.0900

II. The BIA hasn't provided information in response to either the:

i. Inquiry to Indian Tribe DCYF 09-539

ii. Indian Child Welfare Act Notice (BIAN) JU 03.0900

B. There are no known tribes and due diligence was performed when tribal heritage or Indian ancestry is reported but the tribe remains unknown and the Bureau of Indian Affairs (BIA) hasn't provided information in response to the:

I. Inquiry to Indian Tribe DCYF 09-539

II. Indian Child Welfare Act Notice (BIAN) JU 03.0900

C. All of the following are met, unless, after staffing with the AAG a request for a continuance is determined to be more appropriate:

I. Not all known tribes have responded to either the:

i. Inquiry to Indian Tribe DCYF 09-539

ii. Indian Child Welfare Act Notice (BIAN) JU 03.0900

II. 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.

III. The caseworker has been unable to contact the known tribes who haven't responded despite performing due diligence.

IV. The BIA hasn't provided information in response to either the:

i. Inquiry to Indian Tribe DCYF 09-539

ii. Indian Child Welfare Act Notice (BIAN) JU 03.0900

3. 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

Tribal Response to ICWA Notice DCYF 09-538 form
Inquiry to Indian Tribe DCYF 09-539
Indian Child Welfare Act Notice (BIAN) JU 03.0900

Resources

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

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