

## RULES OF JUVENILE PROTECTION:

### SUMMARY OF ICWA RELATED RULES

#### Rule 1.02 Purpose

(g) establishing a system for judicial oversight of case planning and efforts aimed at preventing the need for removal of an Indian child.

#### Rule 2.01 Definitions

(4) "**Child custody proceeding,**" under ICWA.

(6) "**Extended family member,**" under ICWA is defined by the law or custom of the Indian child's tribe.

If no such law or custom exists, then a person eighteen or older and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(9) "**Indian child,**" is any unmarried person who is under age eighteen who is either a member of an Indian tribe or eligible for membership in an Indian tribe.

(10) "**Indian custodian,**" is an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary care has been transferred.

(11) "**Indian child's tribe,**" is the tribe in which the child is a member or eligible for membership.

When the child is a member of or eligible for membership in multiple tribes, the tribe with which the Indian child has the most significant contacts.

(12) "**Indian tribe,**" is a community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

(16) "**Parent**" of an Indian child includes any Indian person who has legally adopted an Indian child (including a person who has adopted a child by tribal law or custom) but does not include an unmarried father whose paternity has not been acknowledged or established.

(21) "**Qualified expert witness,**"

- member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;
- lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or
- professional person having substantial education and experience in the area of the professional person's specialty, along with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community.

(25) "**Relative,**" includes members of the extended family as defined by the law or custom of the Indian child's tribe.

(27) "**Reservation,**" means Indian country as defined in 18 U.S.C. section 1151 and any lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(30) "**Tribal court,**" is a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(32) "**Voluntary foster care of an Indian child,**" there has been participation by a local social services agency or private child-placing agency resulting in the temporary placement of an Indian child away from the home and the parent may have the child returned upon demand.

### **Rule 3.03 Indian Child Welfare Act**

Juvenile protection matters concerning an Indian child shall be governed by the ICWA.

### **Rule 4.03 Subd. 1 (b)(1) and (2)**

Notice and timing of admit/deny hearing where Tribe's identity is known or unknown.

### **Rule 4.03 Subd. 4 (a)(1) and (2)**

Termination of parental rights and other permanent placement matters notice and timing where Tribe's identity is known or unknown.

### **Rule 8.04 Records Not Accessible to the Public or Parties (k)**

Notice of pending court proceedings provided to an Indian tribe by a social services agency is not accessible to the public or parties.

### **Rule 15.02 Service and Notice of Motions Subdivision 1(b)**

Motion to Transfer Juvenile Protection Matter to Jurisdiction of the Indian child's Tribal Court shall also be served upon the child's parents and any Indian child age twelve or older regardless of party status.

### **Rule 18.02 Default Order**

If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.

### **21.01 Party Status Subdivision 1(c)**

Parties to a juvenile protection matter in the case of an Indian child shall include the child's parents, the child's Indian custodian, and the Indian child's tribe through the tribal representative;

### **Rule 25.02 Appointment of Counsel Subdivision 1(c)**

In a juvenile protection matter involving an Indian child, the court may appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

### **Rule 25.02 Appointment of Counsel Subdivision 2(c)**

Each parent, legal custodian, or Indian custodian has the right to effective assistance of counsel. In any juvenile protection matter involving an Indian child, if the child's parent or Indian

custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

### **Rule 30.02 Notice of Hearing**

The court administrator shall inform the child's counsel, guardian ad litem, parent, legal custodian, spouse, Indian custodian, Indian tribe, and school district the time and place of the emergency protective care hearing.

### **Rule 30.08 Protective Care Determinations Subdivision 2**

The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry.

If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.

### **Rule 30.08 Protective Care Determinations Subdivision 3 (a) & (b)**

If the court finds that an Indian child resides on an Indian reservation or that the child is a ward of tribal court but is temporarily located off the reservation, the court may order emergency removal of the child.

If court finds that an Indian child is a ward of tribal court, the court shall order that the child be returned to the jurisdiction of the Indian child's tribe and shall consult with the tribal court regarding the child's safe transition.

### **Rule 30.10 Protective Care Findings and Order (f) & (g)**

Within 3 days of the emergency protective care hearing the court shall issue a written order which shall include (among other things):

- if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe; and
- if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony of a qualified expert witness.

### **Rule 30.06 Evidence**

When an Indian child is involved, the petitioner seeking foster care placement or termination of parental rights shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention.

### **Rule 33.02 Content Subdivision 1 (d), (g), and (j)**

If the child is an Indian child, every petition shall contain (among other things):

- the name, residence, and post office address of the child's legal custodian, if any, and the Indian custodian's tribal affiliation;
- a statement regarding the applicability of the Indian Child Welfare Act;
- if the child is believed to be an Indian child, a statement regarding:
  - ✦ actions that have been taken to prevent the child's removal from the custody of the parents or Indian custodian;

- ✗ whether the residence of the child is on an Indian reservation and, if so, the name of the reservation;
- ✗ whether the child is a ward of a tribal court; and
- ✗ whether the child's tribe has exclusive jurisdiction.

**Rule 34.02 Timing Subdivision 1(d), 1 and 2**

- If the tribe's identity is known the admit/deny hearing child shall not be held until at least ten (10) days after receipt of the notice. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty additional days from receipt of the notice to prepare.
- If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice shall be sent to the Secretary of the Interior who shall have fifteen days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty additional days from receipt of the notice to prepare.

**Rule 34.03 Hearing Procedure Subdivision 1(a), (b) and (j)**

At the beginning of the hearing the court shall on the record (among other things):

- Name the child's tribe.
- Inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified.
- If the child is a ward of tribal court, adjourning the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe.

**Rule 39.04 Standard of Proof Subdivision 2(b)**

In a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

**Rule 39.05 Subdivision 3(b)(2)**

In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings:

- The petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts failed.
- Based upon the testimony of at least one qualified expert witness, 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.

**Rule 39.05 Subdivision 3(b)(4)**

In proceedings with an Indian child, the best interests of the child shall be determined consistent with ICWA

**Rule 42.08 Involuntary and Voluntary Termination of Parental Rights Proceedings Subdivision 3 (a), (b) and (c)**

In procedures to voluntarily terminate parental rights in Matters Governed by the ICWA.

- Consent must be executed in writing, before a judge; and consequences must be explained in detail.
- Cannot have valid consent if the child is ten days old or younger.
- Consent may be withdrawn at any time prior to the time the final order terminating the parent's rights.

#### **Rule 42.09 Guardianship and Legal Custody Subdivision**

Consent to adopt is revocable at any time prior to finalization of the adoption in a case where ICWA applies.

#### **Rule 46.03 Invalidation of Action Under the ICWA**

Any Indian child, parent, Indian custodian, or tribe may seek to invalidate an action for foster care placement or termination of parental rights upon showing that such action violates the ICWA.

#### **Rule 48 Transfer to Child's Tribe**

An Indian child's parent, Indian custodian, or tribe may request transfer of the juvenile protection matter to the Indian child's tribe.

Transfer is required absent objection by parent or good cause finding.

A parent of an Indian child may object to transfer.

A child of party who is not a parent may object to the transfer. The party opposing transfer has the burden of establishing good cause not to transfer.

The district court may rely on communication indicating the tribe has exercised jurisdiction.

The tribal court can decline to accept jurisdiction and then the district court shall proceed.

Also sets out procedures for communications with tribal court regarding Indian children who are wards of tribal court.