



Handout – ICWA Notice Requirements and Timing of Admit/Deny Hearings

Notice Requirements

Under the Indian Child Welfare Act (ICWA), Bureau of Indian Affairs (BIA) Regulations, and Minnesota Indian Family Preservation Act (MIFPA) there are three types of notices:

1. Notices by child-placing agency

- 24-hour notice given to Indian child’s tribe whenever family assessment, investigation, or non-caregiver sex-trafficking assessment (eff. 7-1-24) starts ([Minn. Stat. § 260.761, subd. 2\(a\)](#) and [Minn. Stat. § 260E.18](#))
- 7-day notice given to Indian child’s tribe when agency has information that an Indian child may be receiving services ([Minn. Stat. § 260.761, subd. 2 \(b\)](#))
- 7-day notice given to Indian child’s parents, Indian custodians(s), and tribes(s) whenever voluntary foster care placement happens ([Minn. Stat. § 260.765, subd. 2](#))

2. Notices by petitioner (frequently the child-placing agency)

In any state court child custody proceeding seeking foster care placement or Termination of Parental Rights (TPR) to an Indian child, the petitioner must serve notice as follows:

- By registered/certified mail with return receipt requested to ([BIA Regulations § 23.111\(a\) – \(d\); page 38870 – 38871](#))
 - Each tribe where the child may be a member or eligible for membership (the tribe will determine if the child is a member or eligible)
 - The child’s parents (regardless of party or participant status)
 - The child’s Indian custodian, if applicable
- By personal delivery or registered/certified mail with return receipt requested sent to the BIA Regional Office ([BIA Regulations § 23.11\(a\)](#); page 38866)
- A copy of each notice and a copy of each return receipt must be filed in the court file (*the MN Court Information System (MNCIS) has specific case events for each*)

3. Notices by court administration

a. Emergency Protective Care (EPC) Hearing ([Juv. Prot. Rule 42.02](#)):

- Court administrator or a designee (e.g., social worker) must use whatever methods are available (phone, email, fax, in-person contact) to notify all attorneys, parties, and participants of date, time, and location of EPC Hearing, including:
 - Indian child
 - Indian child’s parents



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- Indian custodians; if any
 - Tribal social services (*contact must be by phone **and** email or fax per MIFPA [Minn. Stat. § 260.761, subd. 2\(c\)](#)*)
 - Must file [EPC Hearing Contact List](#) (or equivalent) in court file before the EPC hearing so the judicial officer may review who has and has not been contacted and determine what more needs to be done for notice
 - Must make efforts to allow appearances by telephone or video conference for parents, Indian custodians, and tribal representatives
- b. Other Hearings
- Court administrator must provide written notice of date, time, and location of all future hearings to all attorneys, parties, and participants including:
 - Indian child
 - Indian child’s parents
 - Indian custodians; if any
 - Child’s tribal social services agency
 - Notice of next hearing may be served personally at close of current hearing or by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

Timing of Admit/Deny Hearings

[BIA Regulations § 23.111\(e\) and § 23.112\(b\)](#) (pages 38870 and 38871)

1. With exception of an EPC hearing, the Admit/Deny Hearing for a foster care proceeding (e.g., CHIPS, Transfer of Permanent Legal and Physical Custody) or TPR proceeding must not be held until:
 - **At least 10 days after receipt of petitioner’s notice** by each parent, Indian custodian, and Indian child’s tribe(s) (or BIA Regional Office where the identity or location of a parent or Indian custodian or Tribe is unknown to petitioner)
 - **At least 30 days after receipt of petitioner’s notice** by each parent, Indian custodian, and Indian child’s tribe(s) (or BIA Regional Office where the identity or location of a parent or Indian custodian or Tribe is unknown to petitioner) if a parent, Indian custodian, or tribe has requested up to 20 additional days to prepare for the Admit/Deny Hearing.



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- If the 10-day and 30-day time limitations have expired and the identity or location of a parent, Indian custodian, or tribe is unknown or if a parent, Indian custodian, or tribe has been served with petitioner’s notice but does not appear in court at the Admit/Deny Hearing:
 - The petitioner should make a record of all steps taken to serve the ICWA notice by registered/certified mail
 - The court should make findings regarding:
 - The adequacy of petitioner’s active efforts to serve the notice by registered/certified mail return receipt requested;
 - The current status of all return receipts; and
 - The court’s decision regarding whether to proceed in the absence of any parent, Indian custodian, or tribe
- The petitioner must continue active efforts to identify, locate, and serve notice on absent parents, Indian custodians, and tribes
- The court may decide to proceed with the Admit/Deny Hearing even if an Indian child’s parent(s), Indian custodian(s), or tribe(s) are not identified or even if they are not present at the hearing, so long as:
 - The petitioner has served the required notices by registered/certified mail, including on the BIA Regional Office,
 - The 10-day and/or 30-day time limitations have expired,
 - A copy of the notice served on the BIA Regional Office is in the court file, along with a copy of the return receipt green card received from the BIA Regional Office, and
 - The court makes a record of petitioner’s active efforts to serve notice and current status of service for each parent, Indian custodian, and tribe