



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 social services agency

- 24-hour notice given to Indian child’s tribe whenever family assessment or investigation started (Minn. Stat. § 260.761, subd. 2(a))
- 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 social services 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 enrolled or eligible)
 - The Indian child’s parents (regardless of party or participant status)
 - The Indian 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 ITV for Indian child’s 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 Indian tribe(s)
 - 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

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 child custody proceeding



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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