

MIFPA/ICWA

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JAMIE CORK, DISTRICT COURT JUDGE, FIRST DISTRICT

CASE PROCESS:
CHILD PROTECTION REPORT RECEIVED BY THE SOCIAL SERVICES AGENCY

- ALWAYS ASK THE QUESTION:

**IS THERE ANY NATIVE AMERICAN
HERITAGE?**

- WHEN DO YOU ASK THE QUESTION?
 - IF POSSIBLE, AT SCREENING/INTAKE
 - IF NOT POSSIBLE, ONCE ASSIGNED TO WORKER (AT FA OR INV)

CASE PROCESS:

REPORT IS SCREENED IN

- IF THE ANSWER IS YES TO THE PREVIOUS QUESTION: MIFPA/ICWA APPLIES
 - OBTAIN LINEAGE AND COMPLETE THE GENOGRAM
- "INDIAN CHILD", CONSISTENT WITH SECTION 260.755, SUBDIVISION 8, MEANS AN UNMARRIED PERSON WHO IS UNDER AGE 18 AND IS:
 - (1) A MEMBER OF AN INDIAN TRIBE; OR
 - (2) ELIGIBLE FOR MEMBERSHIP IN AN INDIAN TRIBE."

MINN. STAT. SECTION 260C.007, SUBD. 21

CASE PROCESS

- IF THE CASE MAY INVOLVE AN INDIAN CHILD, MIFPA NOTICE IS REQUIRED

- WHO GETS MIFPA NOTICE?
 - WHAT IF THERE IS NO IDENTIFIED TRIBE?

- WHEN IS MIFPA NOTICE SENT?

SOCIAL SERVICES AGENCY 24-HOUR NOTICE: FAMILY ASSESSMENT OR INVESTIGATION

- WHEN THE AGENCY HAS INFORMATION THAT A **FAMILY ASSESSMENT OR INVESTIGATION IS BEING CONDUCTED** THAT MAY INVOLVE AN INDIAN CHILD, THE AGENCY SHALL NOTIFY THE INDIAN CHILD'S TRIBE OF THE FAMILY ASSESSMENT OR INVESTIGATION
 - ❖ THE NOTICE MUST BE BY PHONE **AND** EMAIL OR FAX
 - ❖ THE NOTICE MUST BE "IMMEDIATE" - **WITHIN 24 HOURS**
 - ❖ THE AGENCY SHALL REQUEST THAT THE TRIBE OR DESIGNATED TRIBAL REPRESENTATIVE PARTICIPATE IN:
 - ✓ EVALUATING THE FAMILY'S CIRCUMSTANCES
 - ✓ IDENTIFYING FAMILY AND TRIBAL COMMUNITY MEMBERS
 - ✓ DEVELOPING CASE PLANS

MIFPA § 260.761, SUBD. 2(A); MINN. STAT. 626.556, SUBD. 10(B)(5)

SOCIAL SERVICES AGENCY 7-DAY NOTICE: CHILD RECEIVING SERVICES

- WHEN THE AGENCY HAS INFORMATION THAT A **CHILD RECEIVING SERVICES** MAY BE AN INDIAN CHILD, THE AGENCY SHALL **NOTIFY ALL TRIBES** TO WHICH THE CHILD MAY HAVE TRIBAL LINEAGE OF:
 - ❖ CHILD'S FULL NAME AND DATE OF BIRTH
 - ❖ BIOLOGICAL PARENTS' FULL NAMES AND DATES OF BIRTH
 - ❖ GRANDPARENTS' AND INDIAN CUSTODIANS' FULL NAMES AND DATES OF BIRTH, IF KNOWN (IF NOT KNOWN, MUST CONTINUE TO REQUEST INFO AND MUST PROVIDE TO TRIBE ONCE KNOWN)
- NOTICE MUST BE BY PHONE **AND** EMAIL OR FAX
- NOTICE MUST BE PROVIDED **WITHIN 7 DAYS**
- PURPOSE OF NOTICE IS TO ALLOW TRIBE(S) TO DETERMINE IF CHILD IS ENROLLED OR ELIGIBLE FOR MEMBERSHIP AND PARTICIPATE IN SERVICES

MIFPA § 260.761, SUBD. 2(B)

MIFPA

- MIFPA NOTICE IS SENT BEFORE COURT PROCEEDINGS ARE INITIATED
- MIFPA APPLIES TO ALL TRIBES, NOT JUST MN TRIBES
- WHEN PROVIDING NOTICE, EACH TRIBE IDENTIFIED REQUIRES NOTICE BY PHONE CALL, FAX, AND/OR CERTIFIED LETTER. (EX.: 3 TRIBES = 3 CONTACTS)
- INCLUDE THE GENOGRAM WITH THE MIFPA NOTICE
- MIFPA NOTICE FORM IS FOUND IN SSIS

CASE PROCESS – DOES ICWA APPLY?

IF A CHIPS PETITION IS FILED

IF THE PARENT WANTS TO EXECUTE A VOLUNTARY PLACEMENT AGREEMENT

IF GRANDPARENT FILES A THIRD PARTY CUSTODY ACTION

IF PARENT FILES FOR CUSTODY

IF THE CHILD IS SUBJECT TO DELINQUENCY PETITION

WHEN ICWA APPLIES

THE REQUIREMENTS OF ICWA APPLY WHENEVER AN INDIAN CHILD IS THE SUBJECT OF ANY OF THE FOLLOWING STATE COURT PROCEEDINGS:

- "EMERGENCY PROCEEDING"
- "CHILD CUSTODY PROCEEDING" (UNDER MIFPA IT'S CALLED "CHILD PLACEMENT PROCEEDING"), INCLUDING:
 - ❖ INVOLUNTARY PROCEEDING INVOLVING REMOVAL OF AN INDIAN CHILD OR THAT "COULD RESULT IN REMOVAL"
 - ❖ VOLUNTARY PROCEEDING WHERE A PARENT OR INDIAN CUSTODIAN COULD BE PROHIBITED FROM REGAINING CUSTODY UPON DEMAND
 - ❖ PRE-ADOPTIVE AND ADOPTIVE PLACEMENTS

ICWA § 1903; REGS § 23.103; MIFPA § 260.755, SUBD. 3

WHEN ICWA DOES NOT APPLY

➤ ICWA DOES NOT APPLY IN:

- ❖ TRIBAL COURT PROCEEDINGS
- ❖ DIVORCE OR CUSTODY PROCEEDINGS BETWEEN PARENTS
- ❖ DELINQUENCY PROCEEDINGS
- ❖ CRIMINAL PROCEEDINGS
- ❖ VOLUNTARY PROCEEDINGS WHERE A PARENT OR INDIAN CUSTODIAN CAN REGAIN CUSTODY OF THE CHILD UPON DEMAND

ICWA § 1903; REGS § 23.103; MIFPA § 260.755

PROCEEDINGS WHERE ICWA APPLIES IN MINNESOTA

- INVOLUNTARY FOSTER CARE PLACEMENT (CHIPS)
- 260C VOLUNTARY FOSTER CARE PLACEMENTS IF CHILD NOT RETURNED HOME AFTER 90 DAYS, INCLUDING CHILDREN'S MENTAL HEALTH
- 260D VOLUNTARY FOSTER CARE FOR TREATMENT, IF CHILD CANNOT BE RETURNED ON DEMAND
- STATUS OFFENSE (E.G., RUNAWAY, TRUANCY) (BECAUSE COULD RESULT IN PLACEMENT)
- PROTECTIVE SUPERVISION (BECAUSE COULD RESULT IN PLACEMENT)
- TRIAL HOME VISIT (BECAUSE COULD RESULT IN PLACEMENT)
- TERMINATION OF PARENTAL RIGHTS (TPR)
- TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY (TPLPC)
- PRE-ADOPTIVE PLACEMENT
- ADOPTIVE PLACEMENT
- THIRD-PARTY CUSTODY PROCEEDINGS

ICWA § 1903; REGS § 23.103; MIFPA § 260.755

DETERMINING WHEN ICWA APPLIES

➤ IN DETERMINING WHETHER ICWA APPLIES TO A PARTICULAR STATE COURT "CHILD CUSTODY PROCEEDING," THE JUDGE MUST NOT CONSIDER FACTORS SUCH AS:

- ❖ PARTICIPATION OF THE PARENTS OR CHILD IN TRIBAL CULTURAL, SOCIAL, RELIGIOUS, OR POLITICAL ACTIVITIES
- ❖ THE RELATIONSHIP BETWEEN THE CHILD AND HIS/HER PARENT(S)
- ❖ WHETHER THE PARENT(S) EVER HAD CUSTODY OF THE CHILD
- ❖ THE INDIAN CHILD'S BLOOD QUANTUM

REGS § 23.103(c)

PETITIONER'S NOTICE TO TRIBE, PARENTS, AND INDIAN CUSTODIAN: REGISTERED/CERTIFIED MAIL

(CONTINUED)

- EACH NOTICE MUST INCLUDE THE INFORMATION IN REGULATION 23.111(D), INCLUDING A COPY OF THE PETITION
- NOTICE MUST BE SENT BY REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED
- A COPY OF EACH NOTICE AND EACH RETURN RECEIPT MUST BE FILED IN THE COURT FILE
- NOTICE MAY ALSO BE SENT BY PERSONAL SERVICE OR ELECTRONICALLY, BUT SUCH ALTERNATIVE METHODS DO NOT REPLACE REGISTERED/CERTIFIED MAIL

ICWA § 1912(A); REGS § 23.11(A) AND 23.111(A) – (D)

PETITIONER'S NOTICE TO TRIBE, PARENTS, AND INDIAN CUSTODIAN: REGISTERED/CERTIFIED MAIL

(CONTINUED)

- DHS CREATED A UNIFORM STATEWIDE NOTICE FORM (IN SSIS)
- COURT MUST:
 - ❖ INQUIRE OF PETITIONER AS TO WHETHER PETITIONER PROVIDED NOTICE TO CHILD'S PARENTS, INDIAN CUSTODIAN(S), AND TRIBE(S)
 - ❖ ENSURE NOTICE IS SENT TO CHILD'S PARENTS, INDIAN CUSTODIAN(S), AND TRIBE(S)
 - ❖ ENSURE COPIES OF EACH NOTICE AND EACH RETURN RECEIPT IS FILED WITH COURT SO COURT KNOWS WHETHER IT CAN COMMENCE THE FOSTER CARE PLACEMENT OR TPR PROCEEDING

ICWA § 1912(A); REGS § 23.11(A) AND 23.111(A) – (D)

PETITIONER'S NOTICE TO BIA REGIONAL OFFICE: REGISTERED/CERTIFIED MAIL

- IN EVERY CASE INVOLVING AN INDIAN CHILD, PETITIONER MUST SEND NOTICE OF PROCEEDING TO BIA REGIONAL OFFICE BY REGISTERED/CERTIFIED MAIL:

(ADDRESS IN REGS ON PAGE 38866 IS NOT CORRECT – HERE'S CORRECT ADDRESS)

- BUREAU OF INDIAN AFFAIRS REGIONAL OFFICE
- 5600 W. AMERICAN BOULEVARD, SUITE 500,
- BLOOMINGTON, MN 55437
- PHONE: 612-713-4400

- SEND NOTICE TO THIS MINNESOTA REGIONAL OFFICE EVEN IF TRIBE IS IN ANOTHER STATE

- LINK TO CORRECT ADDRESS OF ALL BIA REGIONAL OFFICES:
[HTTPS://WWW.BIA.GOV/REGIONAL-OFFICES/MIDWEST](https://www.bia.gov/regional-offices/midwest)

REGS § 23.11(A) AND 23.111(E)

PETITIONER'S NOTICE TO BIA REGIONAL OFFICE: REGISTERED/CERTIFIED MAIL

• (CONTINUED)

➤ EVEN WHEN THE IDENTITY AND ADDRESS OF A CHILD'S PARENTS, INDIAN CUSTODIAN, AND TRIBE ARE KNOWN, THE AGENCY MUST SEND A COPY OF EACH NOTICE TO THE BIA REGIONAL OFFICE BY PERSONAL DELIVERY OR REGISTERED/CERTIFIED MAIL, RETURN RECEIPT REQUESTED

REGS § 23.11(A)

➤ NOTE: THE COURT HAS ITS OWN SEPARATE NOTICE REQUIREMENTS

Horizontal lines for notes or comments.

CASE EXAMPLE 1

• DURING CONSULTATION, YOU LEARN MATERNAL GRANDMOTHER (MGM) CONTACTED SOCIAL SERVICES. THE CHILD HAS BEEN RESIDING WITH MATERNAL GRANDMOTHER FOR NINE MONTHS BUT SHE CAN NO LONGER CARE FOR THE CHILD (FINANCIAL RESOURCE ISSUE). CHILD IS WELL CARED FOR. MOTHER HAS SPORADIC CONTACT AND IS ABUSING CHEMICALS.

• THE CHILD IS AN INDIAN CHILD.

Horizontal lines for notes or comments.

CASE EXAMPLE 1 CONSIDERATIONS

IS MGM AN INDIAN CUSTODIAN?

"FOR AN INDIAN CHILD, CUSTODIAN MEANS ANY INDIAN PERSON WHO HAS LEGAL CUSTODY OF AN INDIAN CHILD UNDER TRIBAL LAW OR CUSTOM OR UNDER STATE LAW OR TO WHOM TEMPORARY PHYSICAL CARE, CUSTODY, AND CONTROL HAS BEEN TRANSFERRED BY THE PARENT OF THE CHILD, AS PROVIDED IN SECTION 260.755, SUBDIVISION 10."

MINN. STAT. §260C.007, SUBD. 10.

Horizontal lines for notes or comments.

CASE EXAMPLE 1 CONSIDERATIONS

IF MGM IS AN INDIAN CUSTODIAN:

- IS THE MGM LICENSABLE?
- WOULD ACTIVE EFFORTS HELP?
- WOULD YOU FILE A CHIPS PETITION?

CASE EXAMPLE 2

- CHILD RESIDES WITH MATERNAL GRANDMOTHER (MGM), WHO HAS BEEN CARING FOR THE CHILD FOR NINE MONTHS. CHILD PROTECTION REPORT IS MADE ON MGM.
- THE CHILD IS AN INDIAN CHILD.
- THE MGM IS AN INDIAN CUSTODIAN.

CASE EXAMPLE 2 CONSIDERATIONS

- IF A CHIPS PETITION IS FILED, WHO IS LISTED IN THE CAPTION?
- IF INDIAN CUSTODIAN IS LISTED IN THE CAPTION, IS SHE A PARTICIPANT OR A PARTY?
- IF INDIAN CUSTODIAN IS A PARTY, WHAT RIGHTS DOES SHE HAVE?

APPOINTMENT OF COUNSEL: PARENTS OR INDIAN CUSTODIAN

- IF A PARENT OR INDIAN CUSTODIAN INVOLVED IN A REMOVAL, PLACEMENT, OR TPR PROCEEDING IS FOUND TO BE **INDIGENT**, THE COURT **MUST** APPOINT AN ATTORNEY FOR THAT PERSON REGARDLESS OF PARTY OR PARTICIPANT STATUS
- UNDER MINNESOTA LAW, COURT HAS DISCRETION TO APPOINT COUNSEL FOR INDIGENT PARENTS – THIS LAW IS LESS PROTECTIVE OF PARENTS SO IT SHOULD NOT BE FOLLOWED AND INSTEAD ICWA MANDATE FOR APPOINTMENT OF COUNSEL MUST BE APPLIED

ICWA § 1912(B); REGS § 23.111(G)

CASE EXAMPLE 3

- MOTHER IS ABUSING CHEMICALS AND SHOWS UP AT CHILD'S SCHOOL UNDER THE INFLUENCE. CHILD PROTECTION REPORT IS MADE ON MOTHER. INVESTIGATION SHOWS CHILD IS LIVING WITH MATERNAL GRANDMOTHER (MGM) AND WELL CARED FOR.
- THE CHILD IS AN INDIAN CHILD.

CASE EXAMPLE 3 CONSIDERATIONS

- IS THIS CASE TREATED DIFFERENTLY IF MGM IS AN INDIAN CUSTODIAN VERSUS NOT AN INDIAN CUSTODIAN?
- IF MGM IS NON-NATIVE, IS SHE A RELATIVE FOR PURPOSES OF ICWA?

CASE EXAMPLE 4

- VOLUNTARY CASE / PROTECTIVE SERVICES CASE FAILS, SOCIAL SERVICES IS REQUESTING A PETITION AND OUT OF HOME PLACEMENT OF CHILD.
- THE CHILD IS AN INDIAN CHILD.

CASE EXAMPLE 4 CONSIDERATIONS

- IS THERE TRIBAL SUPPORT FOR OUT OF HOME PLACEMENT?
- IS THE PLACEMENT RECOMMENDATION A RELATIVE?
- WHAT SHOULD YOU NOT CONSIDER FOR PLACEMENT PREFERENCES?

PLACEMENT PREFERENCES: FOSTER CARE OR PRE-ADOPTIVE

- IF INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED A DIFFERENT ORDER OR PREFERENCE, THEN PREFERENCE MUST BE GIVEN, IN DESCENDING ORDER, IN ABSENCE OF GOOD CAUSE TO CONTRARY, TO PLACEMENT WITH:
 - ❖ A MEMBER OF INDIAN CHILD'S EXTENDED FAMILY;
 - ❖ A FOSTER HOME LICENSED, APPROVED, OR SPECIFIED BY INDIAN CHILD'S TRIBE;
 - ❖ AN INDIAN FOSTER HOME LICENSED OR APPROVED BY AN AUTHORIZED NON-INDIAN LICENSING AUTHORITY; OR
 - ❖ AN INSTITUTION FOR CHILDREN APPROVED BY AN INDIAN TRIBE OR OPERATED BY AN INDIAN ORGANIZATION WHICH HAS A PROGRAM SUITABLE TO MEET THE INDIAN CHILD'S NEEDS.

ICWA § 1915(B); REGS § 23.131(B); MIFPA § 260.771, SUBD. 7

**PLACEMENT PREFERENCES:
FOSTER CARE OR PRE-ADOPTIVE**

➤ A CHILD PLACED IN FOSTER CARE OR
PREADOPTIVE PLACEMENT SHALL BE PLACED IN
THE LEAST RESTRICTIVE SETTING THAT:

- ❖ MOST APPROXIMATES A FAMILY, TAKING INTO CONSIDERATION SIBLING ATTACHMENT;
- ❖ ALLOWS THE INDIAN CHILD'S SPECIAL NEEDS (IF ANY) TO BE MET; AND
- ❖ IS IN REASONABLE PROXIMITY TO THE INDIAN CHILD'S HOME, EXTENDED FAMILY, OR SIBLINGS.

ICWA § 1915(B); REGS § 23.131(A); MIFPA § 260.771, SUBD. 7

**PLACEMENT PREFERENCES: COURT
DETERMINATION GOOD CAUSE TO DEVIATE**

➤ COURT MUST FOLLOW THE ORDER OF PLACEMENT PREFERENCES
➤ COURT MAY PLACE A CHILD OUTSIDE THE ORDER OF PLACEMENT
PREFERENCES ONLY IF COURT DETERMINES THERE IS GOOD CAUSE BASED
ON THE:

- ❖ REASONABLE REQUEST OF THE INDIAN CHILD'S PARENTS, IF ONE OR BOTH PARENTS ATTEST THAT THEY HAVE REVIEWED THE PLACEMENT OPTIONS THAT COMPLY WITH THE ORDER OF PLACEMENT PREFERENCES;
- ❖ REASONABLE REQUEST OF THE INDIAN CHILD IF THE CHILD IS ABLE TO UNDERSTAND AND COMPREHEND THE DECISION THAT IS BEING MADE
- ❖ TESTIMONY OF A QEW DESIGNATED BY THE CHILD'S TRIBE THAT SUPPORTS PLACEMENT OUTSIDE THE ORDER OF PREFERENCE
- ❖ TESTIMONY BY SOCIAL SERVICES THAT DILIGENT SEARCH HAS BEEN CONDUCTED AND THIS NOT LOCATE ANY FAMILIES WITHIN THE PLACEMENT PREFERENCES

ICWA § 1915; REGS § 23.132; MIFPA § 260.771, SUBD. 7(D) (E)

CASE EXAMPLE 5

- AN ORDER FOR IMMEDIATE CUSTODY IS ISSUED OR A 72 HOUR HOLD IS PLACED ON A CHILD. AN EPC HEARING IS SCHEDULED AND A CHIPS PETITION IS FILED.
- THE CHILD IS AN INDIAN CHILD.
- THE CHILD IS OVER THE AGE OF TEN.

CASE EXAMPLE 5 CONSIDERATIONS

- WHICH NOTICE IS REQUIRED? MIFPA OR ICWA OR BOTH?
- IF ICWA NOTICE IS REQUIRED:
 - WHO GETS NOTICE?
 - WHAT IF THE LOCATION OF THE PARENTS IS UNKNOWN?
- MUST THE CHILD COME TO COURT?

CASE EXAMPLE 5 CONSIDERATIONS

EPC HEARING:

- MOTHER ATTENDS HEARING BUT NO ATTORNEY IS AVAILABLE. CAN YOU HOLD THE EPC HEARING?
- PARTY OR PARTICIPANT STATUS FOR: MOTHER / FATHER / INDIAN CUSTODIAN?
- DO YOU MEET THE STANDARD FOR REMOVAL?
- IS THE REMOVAL STANDARD DIFFERENT THAN IN A NON-ICWA CASE?

EMERGENCY REMOVAL: STANDARD

➤ ANY EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD MUST TERMINATE IMMEDIATELY WHEN THE REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL DAMAGE OR HARM TO THE INDIAN CHILD

ICWA § 1922; REGS § 23.113(A); MIFPA § 260.761

EMERGENCY REMOVAL: HEARING AND FINDINGS

➤ THE DISTRICT COURT JUDGE MUST:

- ❖ MAKE A FINDING ON THE RECORD REGARDING WHETHER EMERGENCY REMOVAL OR PLACEMENT IS NECESSARY TO PREVENT IMMINENT PHYSICAL DAMAGE OR HARM TO CHILD
- ❖ PROMPTLY HOLD A HEARING ON WHETHER EMERGENCY REMOVAL OR PLACEMENT CONTINUES TO BE NECESSARY WHENEVER NEW INFORMATION INDICATES EMERGENCY SITUATION HAS ENDED
- ❖ IMMEDIATELY TERMINATE EMERGENCY PROCEEDING ONCE COURT OR AGENCY POSSESSES SUFFICIENT EVIDENCE TO DETERMINE THAT EMERGENCY REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL DAMAGE OR HARM TO CHILD

ICWA § 1922; REGS § 23.113(B); MIFPA § 260.761

EMERGENCY REMOVAL: TERMINATING EMERGENCY PROCEEDING

➤ AN EMERGENCY PROCEEDING SHOULD NOT BE CONTINUED FOR MORE THAN 30 DAYS, UNLESS THE COURT MAKES THE FOLLOWING FINDINGS:

- ❖ RESTORING THE CHILD TO THE PARENT OR INDIAN CUSTODIAN WOULD SUBJECT THE CHILD TO IMMINENT PHYSICAL DAMAGE OR HARM;
- ❖ THE COURT HAS BEEN UNABLE TO TRANSFER PROCEEDINGS TO THE JURISDICTION OF THE APPROPRIATE INDIAN TRIBE; AND
- ❖ IT HAS NOT BEEN POSSIBLE TO INITIATE A 'CHILD CUSTODY PROCEEDING'

ICWA § 1922; REGS § 23.113(E); MIFPA § 260.761

CASE EXAMPLE 5 CONSIDERATIONS

- IF YOU ARE UNSURE WHETHER ICWA APPLIES, DO YOU TREAT THE CASE AS AN ICWA CASE?

ADMIT/DENY HEARING:

- IF FATHER IS NON-CUSTODIAL IN AN ICWA CASE, DOES HE HAVE TO ADMIT OR DENY THE CHIPS PETITION?
- WHEN DO YOU SCHEDULE THE ADMIT/DENY HEARING?

ADMIT/DENY HEARING

- WITH THE EXCEPTION OF AN EPC HEARING, NO CHIPS OR TPR ADMIT/DENY HEARING MAY 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 PARENT OR INDIAN CUSTODIAN OR TRIBE 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 PARENT OR INDIAN CUSTODIAN OR TRIBE UNKNOWN TO PETITIONER) IF A PARENT, INDIAN CUSTODIAN, OR TRIBE HAS REQUESTED UP TO 20 ADDITIONAL DAYS TO PREPARE FOR THE CHILD CUSTODY PROCEEDING

ICWA § 1912(A); REGS § 23.112 AND 23.114; MIFPA § 260.761, SUBD. 3

CASE EXAMPLE 5 CONSIDERATIONS

- AT 30 DAY ADMIT/DENY HEARING, YOU DO NOT HAVE THE GREEN CARDS* BACK. WHAT DO YOU DO?
 - IF RESPONSES ARE RECEIVED THAT CHILD IS NOT ELIGIBLE OR ENROLLED, WHAT DO YOU DO?
 - IF PARENTS WANT TO ENTER AN ADMISSION TO THE CHIPS PETITION, CAN THEY ENTER THAT ADMISSION (IF GREEN CARDS* ARE NOT BACK)?
 - HAS THE EMERGENCY REMOVAL PLACEMENT ENDED?
- *SIGNED CERTIFIED MAIL RETURN RECEIPTS

CONTINUED ADMIT/DENY HEARING: MAKE A RECORD

THE COURT MAY DECIDE TO PROCEED WITH THE ADMIT/DENY HEARING EVEN IF AN INDIAN CHILD'S PARENT(S), INDIAN CUSTODIAN(S), OR TRIBES(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, AND
- ✓ THE COURT MAKES A RECORD OF PETITIONER'S EFFORTS TO SERVE NOTICE AND CURRENT STATUS OF SERVICE FOR EACH PARENT, INDIAN CUSTODIAN, AND TRIBE AND FINDS THAT THOSE EFFORTS ARE ACTIVE EFFORTS; AND
- ✓ THE 10-DAY AND/OR 30-DAY TIME LIMITATIONS HAVE EXPIRED, AND
- ✓ 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

RECOMMENDED BEST PRACTICE

**QUALIFIED EXPERT WITNESS:
WHEN TESTIMONY REQUIRED**

- TESTIMONY OF AT LEAST ONE QUALIFIED EXPERT WITNESS (QEW) IS REQUIRED BEFORE COURT MAY ORDER:
 - ❖ REMOVAL OF AN INDIAN CHILD FROM HIS/HER PARENT OR INDIAN CUSTODIAN
 - ❖ TERMINATION OF PARENTAL RIGHTS
- TESTIMONY OF A QEW NOT REQUIRED FOR AN EMERGENCY REMOVAL
- COURT MAY ALLOW QEW TO TESTIFY BY ALTERNATIVE METHODS, SUCH AS IN PERSON, OR BY PHONE, SKYPE, ITV, OR AFFIDAVIT
- PETITIONER MUST PRESENT THE TESTIMONY OF A QEW TO SUPPORT THE PETITION; OTHER PARTIES MAY ALSO PRESENT TESTIMONY OF QEW'S; THE JUDGE WILL NEED TO WEIGH THE TESTIMONY

ICWA § 1912(E), (F); REGS § 23.121 & 23.122; MIFPA § 260.771, SUBD. 6

**QUALIFIED EXPERT WITNESS:
QUALIFICATIONS**

- A QEW:
 - ❖ MUST BE QUALIFIED TO TESTIFY REGARDING WHETHER CHILD'S CONTINUED CUSTODY BY PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO CHILD
 - ❖ SHOULD BE QUALIFIED TO TESTIFY AS TO PREVAILING SOCIAL AND CULTURAL STANDARDS OF INDIAN CHILD'S TRIBE
- **MN SUPREME COURT DECISION 5-16-18:** IN A TPR PROCEEDING INVOLVING AN INDIAN CHILD, "A DISTRICT COURT CANNOT TERMINATE PARENTAL RIGHTS UNLESS IT DETERMINES THAT EVIDENCE SHOWS, BEYOND A REASONABLE DOUBT, THAT CONTINUED CUSTODY OF THE CHILD IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD. SUCH DETERMINATION MUST BE SUPPORTED BY QUALIFIED EXPERT WITNESS TESTIMONY."

ICWA § 1912(E), (F); REGS § 23.121 & 23.122; MIFPA § 260.771, SUBD. 6

ACTIVE EFFORTS REQUIRED

- "ANY PARTY SEEKING TO EFFECT A FOSTER CARE PLACEMENT OF, OR TERMINATION OF PARENTAL RIGHTS TO, AN INDIAN CHILD SHALL SATISFY THE COURT THAT:
 - ❖ ACTIVE EFFORTS HAVE BEEN MADE TO PROVIDE REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS DESIGNED TO PREVENT THE BREAKUP OF THE INDIAN FAMILY; AND
 - ❖ THESE EFFORTS HAVE PROVED UNSUCCESSFUL."
- **PRIOR TO ORDERING AN INVOLUNTARY FOSTER-CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS,** COURT MUST CONCLUDE THAT ACTIVE EFFORTS HAVE BEEN MADE TO PREVENT THE BREAKUP OF THE INDIAN FAMILY AND THAT THOSE EFFORTS HAVE BEEN UNSUCCESSFUL.

ICWA § 1912(D); REGS § 23.120; MIFPA § 260.762

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

- MIFPA REQUIRES THAT A COURT SHALL NOT ORDER OUT OF HOME PLACEMENT OR PERMANENCY PLACEMENT FOR AN INDIAN CHILD UNLESS THE COURT FINDS THE SOCIAL SERVICES AGENCY MADE ACTIVE EFFORTS TO THE CHILD'S FAMILY
- IN DETERMINING WHETHER THE AGENCY MADE ACTIVE EFFORTS, THE COURT MUST MAKE FINDINGS REGARDING WHETHER THE FOLLOWING ACTIVITIES WERE APPROPRIATE AND WHETHER THE LOCAL SOCIAL SERVICES AGENCY MADE APPROPRIATE AND MEANINGFUL SERVICES AVAILABLE TO THE FAMILY BASED UPON THAT FAMILY'S SPECIFIC NEEDS

MIFPA § 260.762, SUBD. 3

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

- COURT MUST MAKE A FINDING ABOUT WHETHER SOCIAL SERVICES AGENCY:
 - ❖ MADE EFFORTS AT EARLIEST POINT POSSIBLE TO:
 - ✓ IDENTIFY WHETHER A CHILD MAY BE AN INDIAN CHILD, AND
 - ✓ IDENTIFY AND REQUEST PARTICIPATION OF INDIAN CHILD'S TRIBE AT EARLIEST POINT POSSIBLE AND THROUGHOUT INVESTIGATION OR ASSESSMENT, CASE PLANNING, PROVISION OF SERVICES, AND CASE COMPLETION
 - ❖ REQUESTED THAT A TRIBALLY DESIGNATED REPRESENTATIVE WITH SUBSTANTIAL KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-REARING PRACTICES WITHIN TRIBAL COMMUNITY EVALUATE CIRCUMSTANCES OF INDIAN CHILD'S FAMILY AND ASSIST IN DEVELOPING A CASE PLAN THAT USES TRIBAL AND INDIAN COMMUNITY RESOURCES

MIFPA § 260.762, SUBD. 3

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

- COURT MUST MAKE A FINDING ABOUT WHETHER SOCIAL SERVICES AGENCY :
 - ❖ PROVIDED CONCRETE SERVICES AND ACCESS TO BOTH TRIBAL AND NONTRIBAL SERVICES TO MEMBERS OF THE INDIAN CHILD'S FAMILY, INCLUDING BUT NOT LIMITED TO:
 - ✓ FINANCIAL ASSISTANCE,
 - ✓ FOOD,
 - ✓ HOUSING,
 - ✓ HEALTH CARE,
 - ✓ TRANSPORTATION,
 - ✓ IN-HOME SERVICES,
 - ✓ COMMUNITY SUPPORT SERVICES,
 - ✓ SPECIALIZED SERVICES

MIFPA § 260.762, SUBD. 3

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

➤ COURT MUST MAKE A FINDING ABOUT WHETHER SOCIAL SERVICES AGENCY :

- ❖ PROVIDED SERVICES IN AN ONGOING MANNER THROUGHOUT THE AGENCY'S INVOLVEMENT WITH THE FAMILY, TO DIRECTLY ASSIST THE FAMILY IN ACCESSING AND UTILIZING SERVICES TO MAINTAIN THE INDIAN FAMILY, OR REUNIFY THE INDIAN FAMILY AS SOON AS SAFETY CAN BE ASSURED IF OUT-OF-HOME PLACEMENT HAS OCCURRED
- ❖ NOTIFIED AND CONSULTED WITH CHILD'S EXTENDED FAMILY MEMBERS, AS IDENTIFIED BY THE CHILD, THE CHILD'S PARENTS, OR THE TRIBE

MIFPA § 260.762, SUBD. 3

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

➤ COURT MUST MAKE A FINDING ABOUT WHETHER SOCIAL SERVICES AGENCY :

- ❖ PROVIDED SERVICES AND RESOURCES TO RELATIVES WHO ARE CONSIDERED THE PRIMARY PLACEMENT OPTION FOR AN INDIAN CHILD, AS AGREED BY THE LOCAL SOCIAL SERVICES AGENCY AND THE TRIBE, TO OVERCOME BARRIERS TO PROVIDING CARE TO AN INDIAN CHILD, INCLUDING:
 - ✓ CHILD CARE ASSISTANCE
 - ✓ FINANCIAL ASSISTANCE
 - ✓ HOUSING RESOURCES
 - ✓ EMERGENCY RESOURCES
 - ✓ FOSTER CARE LICENSING ASSISTANCE AND RESOURCES

MIFPA § 260.762, SUBD. 3

**ACTIVE EFFORTS:
REQUIRED COURT FINDINGS**

➤ COURT MUST MAKE A FINDING ABOUT WHETHER SOCIAL SERVICES AGENCY :

- ❖ ARRANGED FOR VISITATION TO OCCUR, WHENEVER POSSIBLE, IN HOME OF INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR OTHER FAMILY MEMBER OR IN ANOTHER NONINSTITUTIONAL SETTING, TO KEEP CHILD IN CLOSE CONTACT WITH PARENTS, SIBLINGS, AND OTHER RELATIVES REGARDLESS OF CHILD'S AGE AND TO ALLOW CHILD AND THOSE WITH WHOM CHILD VISITS TO HAVE NATURAL, UNSUPERVISED INTERACTION WHEN CONSISTENT WITH PROTECTING CHILD'S SAFETY:
- ❖ CONSULTED WITH TRIBAL REPRESENTATIVE TO DETERMINE AND ARRANGE FOR VISITATION IN MOST NATURAL SETTING THAT ENSURES CHILD'S SAFETY

MIFPA § 260.762, SUBD. 3

DOCUMENTATION OF ACTIVE EFFORTS

- EVERY **SOCIAL WORKER REPORT** TO COURT MUST PROVIDE A DETAILED LIST OF SPECIFIC EFFORTS MADE, STEPS TAKEN BY, AND SERVICES PROVIDED TO CHILD AND FAMILY BY AGENCY
- EVERY **COURT ORDER** MUST:
 - ❖ INCLUDE A DETAILED LIST OF SPECIFIC EFFORTS MADE, STEPS TAKEN BY, AND SERVICES PROVIDED TO CHILD AND FAMILY BY THE AGENCY
 - OR
 - ❖ INCORPORATE BY REFERENCE THE LIST OF SPECIFIC EFFORTS STATED IN THE SOCIAL WORKER REPORT TO COURT (REFER TO PAGE/PARAGRAPH);
- AND
- ❖ MUST INCLUDE A FINDING ABOUT WHETHER THOSE EFFORTS WERE OR WERE NOT ACTIVE EFFORTS UNDER THE CIRCUMSTANCES

REGS § 23.120; MIFPA § 260.762

BIA REGULATIONS DEFINITION OF "ACTIVE EFFORTS"

- UNDER THE REGULATIONS, ACTIVE EFFORTS MEANS **AFFIRMATIVE, ACTIVE, THOROUGH, AND TIMELY EFFORTS** INTENDED PRIMARILY TO MAINTAIN OR REUNITE AN INDIAN CHILD WITH HIS OR HER FAMILY
- ACTIVE EFFORTS MUST INVOLVE **ACTIVELY ASSISTING** PARENTS OR INDIAN CUSTODIAN THROUGH STEPS OF A CASE PLAN AND WITH ACCESSING OR DEVELOPING THE RESOURCES NECESSARY TO SATISFY THE CASE PLAN
- TO THE MAXIMUM EXTENT POSSIBLE, ACTIVE EFFORTS SHOULD BE:
 - ❖ PROVIDED IN A MANNER **CONSISTENT WITH PREVAILING SOCIAL AND CULTURAL CONDITIONS** AND WAY OF LIFE OF INDIAN CHILD'S TRIBE
 - ❖ **CONDUCTED IN PARTNERSHIP** WITH THE INDIAN CHILD, INDIAN CHILD'S PARENTS, EXTENDED FAMILY MEMBERS, INDIAN CUSTODIANS, AND INDIAN CHILD'S TRIBE

REGS § 23.2

MIFPA DEFINITION OF "ACTIVE EFFORTS"

- UNDER MIFPA, ACTIVE EFFORTS MEANS:
 - ❖ A **RIGOROUS AND CONCERTED** LEVEL OF EFFORT
 - ❖ **ONGOING** THROUGHOUT THE INVOLVEMENT OF THE SOCIAL SERVICES AGENCY
 - ❖ **CONTINUOUSLY INVOLVING THE INDIAN CHILD'S TRIBE** ("ASK THE TRIBE") USING THE **PREVAILING SOCIAL AND CULTURAL VALUES, CONDITIONS, AND WAY OF LIFE** OF THE INDIAN CHILD'S TRIBE TO PRESERVE THE INDIAN CHILD'S FAMILY AND PREVENT PLACEMENT OF THE CHILD
 - ❖ IF PLACEMENT OCCURS, TO **RETURN THE INDIAN CHILD** TO THE CHILD'S FAMILY AT THE EARLIEST POSSIBLE TIME

MIFPA § 260.755

MIFPA DEFINITION OF "ACTIVE EFFORTS"

(CONTINUED)

- UNDER MIFPA, ACTIVE EFFORTS INCLUDES "ACKNOWLEDGING TRADITIONAL HELPING AND HEALING SYSTEMS OF AN INDIAN CHILD'S TRIBE AND USING THESE SYSTEMS AS THE CORE TO HELP AND HEAL THE INDIAN CHILD AND FAMILY"
- ACTIVE EFFORTS SETS HIGHER STANDARD THAN REASONABLE EFFORTS TO PRESERVE FAMILY, PREVENT BREAKUP OF FAMILY, AND REUNIFY FAMILY
- ACTIVE EFFORTS INCLUDES REASONABLE EFFORTS AS REQUIRED BY TITLE IV-E OF SOCIAL SECURITY ACT, SO IF COURT MAKES A FINDING THAT ACTIVE EFFORTS HAVE OCCURRED THAT IS SUFFICIENT FOR TITLE IV-E

MIFPA § 260.755; TSA § 1(E)(4)

**MIFPA ACTIVE EFFORTS REQUIREMENTS:
ASK THE TRIBE**

MIFPA REQUIRES SOCIAL SERVICES AGENCIES TO:

- ❖ **WORK WITH INDIAN CHILD'S TRIBE AND FAMILY TO DEVELOP ALTERNATIVE PLAN TO OUT-OF-HOME PLACEMENT**
- ❖ **BEFORE MAKING A DECISION THAT MAY AFFECT AN INDIAN CHILD'S SAFETY AND WELL-BEING OR WHEN CONTEMPLATING OUT-OF-HOME PLACEMENT OF AN INDIAN CHILD, SEEK GUIDANCE FROM INDIAN CHILD'S TRIBE ON FAMILY STRUCTURE, HOW FAMILY CAN SEEK HELP, WHAT FAMILY AND TRIBAL RESOURCES ARE AVAILABLE, AND WHAT BARRIERS THE FAMILY FACES AT THAT TIME THAT COULD THREATEN ITS PRESERVATION**
- ❖ **REQUEST PARTICIPATION OF INDIAN CHILD'S TRIBE AT EARLIEST POSSIBLE TIME AND REQUEST TRIBE'S ACTIVE PARTICIPATION THROUGHOUT CASE**

MIFPA § 260.762, SUBD. 3

ACTIVE EFFORTS: EXAMPLES

ACTIVE EFFORTS ARE TO BE TAILORED TO THE FACTS AND CIRCUMSTANCES OF THE CASE – THE TSA PROVIDES THE FOLLOWING EXAMPLES:

- ❖ **CONDUCTING A COMPREHENSIVE ASSESSMENT OF THE CIRCUMSTANCES** OF THE INDIAN CHILD'S FAMILY, WITH A FOCUS ON SAFE REUNIFICATION AS THE MOST DESIRABLE GOAL
- ❖ **IDENTIFYING APPROPRIATE SERVICES AND HELPING THE PARENTS TO OVERCOME BARRIERS**, INCLUDING ACTIVELY ASSISTING THE PARENTS IN OBTAINING SUCH SERVICES
- ❖ **IDENTIFYING, NOTIFYING, AND INVITING REPRESENTATIVES OF THE INDIAN CHILD'S TRIBE TO PARTICIPATE** IN PROVIDING SUPPORT AND SERVICES TO THE FAMILY AND IN FAMILY TEAM MEETINGS, PERMANENCY PLANNING, AND RESOLUTION OF PLACEMENT ISSUES

MIFPA § 260.762, SUBD. 3

ACTIVE EFFORTS: EXAMPLES

(CONTINUED)

❖ CONDUCTING OR CAUSING TO BE CONDUCTED A DILIGENT SEARCH FOR THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS, AND CONTACTING AND CONSULTING WITH EXTENDED FAMILY MEMBERS TO PROVIDE FAMILY STRUCTURE AND SUPPORT FOR THE INDIAN CHILD AND THE INDIAN CHILD'S PARENTS

❖ OFFERING AND EMPLOYING ALL AVAILABLE AND CULTURALLY APPROPRIATE FAMILY PRESERVATION STRATEGIES AND FACILITATING THE USE OF REMEDIAL AND REHABILITATIVE SERVICES PROVIDED BY THE CHILD'S TRIBE

❖ TAKING STEPS TO KEEP SIBLINGS TOGETHER WHENEVER POSSIBLE;

MIFPA § 260.762, SUBD. 3

Horizontal lines for notes or examples.

ACTIVE EFFORTS: EXAMPLES

(CONTINUED)

❖ SUPPORTING REGULAR VISITS WITH PARENTS OR INDIAN CUSTODIANS IN THE MOST NATURAL SETTING POSSIBLE AS WELL AS TRIAL HOME VISITS OF THE INDIAN CHILD DURING ANY PERIOD OF REMOVAL, CONSISTENT WITH THE NEED TO ENSURE THE HEALTH, SAFETY, AND WELFARE OF THE CHILD

❖ IDENTIFYING COMMUNITY RESOURCES INCLUDING HOUSING, FINANCIAL, TRANSPORTATION, MENTAL HEALTH, SUBSTANCE ABUSE, AND PEER SUPPORT SERVICES AND ACTIVELY ASSISTING THE INDIAN CHILD'S PARENTS OR, WHEN APPROPRIATE, THE CHILD'S FAMILY, IN UTILIZING AND ACCESSING THOSE RESOURCES

❖ MONITORING PROGRESS AND PARTICIPATION IN SERVICES

MIFPA § 260.762, SUBD. 3

Horizontal lines for notes or examples.

ACTIVE EFFORTS: EXAMPLES

(CONTINUED)

❖ CONSIDERING ALTERNATIVE WAYS TO ADDRESS THE NEEDS OF THE INDIAN CHILD'S PARENTS AND, WHERE APPROPRIATE, THE FAMILY, IF THE OPTIMUM SERVICES DO NOT EXIST OR ARE NOT AVAILABLE


❖ PROVIDING POST-REUNIFICATION SERVICES AND MONITORING

MIFPA § 260.762, SUBD. 3

Horizontal lines for notes or examples.

ACTIVE EFFORTS START WITH
THE FIRST CONTACT WITH THE FAMILY

**WHEN IN DOUBT
ABOUT HOW TO
PROCEED,
"ASK THE TRIBE"**



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