

## ICWA Notice Requirements and Commencement of Admit/Deny Hearings

November 2019

### NOTICE REQUIREMENTS

**Under the ICWA, BIA Regulations, and 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 commenced ([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 custodian(s), and tribe(s) whenever voluntary foster care placement ([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 TPR to an Indian child, the petitioner must serve notice as follows:

- ✓ by registered/certified mail 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 return receipt requested to: ([BIA Regulations § 23.11\(a\)](#)) (page 38866)
  - ❖ BIA Regional Office
- ✓ A copy of each notice and a copy of each return receipt must be filed in the court file (*MNCIS has specific case events for each*)

**3. Notices by court administration**

a. 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
  - ❖ 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 prior to EPC hearing so judge 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 and COMMENCEMENT OF ADMIT/DENY HEARINGS**

**BIA Regulations § 23.111(e) and § 23.112(b)** (pages 38870 and 38871)

1. With the 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
  - ✓ 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; and
      - 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
  - ✓ 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 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 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, 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