

Judicial Checklist: Protecting Kin Relationships, Tribal Connections, and Cultural Identity in ICWA Cases

The Indian Child Welfare Act (ICWA) recognizes that the best interests of Indian children are served not only by ensuring their safety, but also by protecting their relationships with their families, Tribe, and cultural identity. Judges play a critical role in safeguarding these interests by ensuring meaningful Tribal participation, making findings supported by evidence, and promoting timely permanency without unnecessarily sacrificing the child's connection to family, community, and Tribe. This checklist is intended to support judges in complying with ICWA throughout the life of a case, as a companion resource to [*Representing Indian Children: What Judges and Attorneys Should Know About ICWA, Kinship, and Native Culture*](#). This resource provides judicial questions and considerations that promote both legal compliance and better outcomes for Indian children and families.

Initial Hearings

Tribal Identification and Participation

- ☐ Confirm whether the child is an Indian child or may be an Indian child. Ask the following to help make that determination:
 - ☐ Does any courtroom/hearing participant know or have reason to know if the child is an Indian child or may be eligible for Tribal membership?
 - ☐ Has the agency asked all available family members about Tribal membership?
 - ☐ Make any additional inquiries, as necessary.
- ☐ Confirm that the agency has provided notice to every identified Tribe the child may be eligible for membership in.
 - ☐ Are notice efforts documented in the court file?
- ☐ Is the Tribe present, represented, or otherwise actively engaged in the case?
 - ☐ If not, has the court identified any barriers that may limit Tribal participation, such as distance, scheduling or time-zone differences, technology or communication challenges, or incomplete or late information, and asked what the court can do to facilitate meaningful involvement?
 - ☐ Has the court directly invited Tribal representatives to share information, concerns, recommendations, and available resources during the hearing?

Active Efforts

- ☐ Has the agency demonstrated active efforts and not merely reasonable efforts to prevent removal of the child from their home? For example, has the agency:
 - ☐ Assisted the family in obtaining and participating in services rather than providing referrals alone (i.e., identified and referred the family for services, assisted the family in making the appointment, and transported them to the appointment)?
 - ☐ Referred the family to a housing resource, helped them apply for housing assistance, driven them to the appointment, paid rent and/or the security deposit, and helped them set up utilities?
 - ☐ Used all available and appropriate family preservation strategies while facilitating the use of Tribal services?
- ☐ Were active efforts individualized to the family's circumstances and needs?
 - ☐ Do the efforts address the specific safety concerns of this family?
 - ☐ Have active efforts incorporated Tribal services, cultural resources, and family supports when available?
 - ☐ Has the court received input from the Tribe regarding the adequacy of active efforts?
- ☐ Are active efforts documented with sufficient detail in the court order?

Kin Identification

- ☐ Has the agency consulted with the Tribe regarding:
 - ☐ Culturally appropriate definitions of family and kin?
 - ☐ Possible Tribal and kinship connections known to the Tribe?
- ☐ Has the agency conducted and documented a thorough and ongoing search for kin?
 - ☐ Have paternal relatives and extended family members been identified and engaged?
 - ☐ Have the parents and children been asked to identify kinship connections?
- ☐ Are additional relatives available to assist with identifying kinship connections?
- ☐ Have identified relatives and kin received meaningful consideration for placement and as support resources for the family?

Placement Decisions

ICWA Placement Preferences

- ☐ Is the current placement consistent with federal or state, if applicable, ICWA placement preferences?
- ☐ Has the Tribe established a different order of placement preference?
- ☐ If placement is outside the preferred placement order, make findings regarding good cause, and:
 - ☐ Determine that the finding of good cause is supported by clear, case-specific evidence, rather than assumptions, stereotypes, or administrative convenience.
 - ☐ Consider the Tribe's position regarding the proposed placement and any asserted basis for good cause.
 - ☐ Verify that a documented, diligent search was conducted for available preferred placements, including placements identified by the Tribe.
 - ☐ Ensure that any finding of good cause is not based on socioeconomic conditions or solely on bonding that resulted from an earlier non-preferred placement.
 - ☐ Make specific findings on the record identifying the facts supporting the good-cause determination.

Evaluating Kin and Foster Placements

- ☐ Is the child placed with kin. and if not, why not?
- ☐ Does the proposed placement best meet the child's need to stay connected to their Tribe and family? Determine this connection by asking the following:
 - ☐ Is the caregiver willing to support the child's connection to family, including siblings and extended family/kin, and if so, how?
 - ☐ Is the caregiver willing to support the child's connection to the Tribe, and if so, how?
 - ☐ Did the agency provide the potential caregiver with sufficient information about resources available to support the child's Native identity and culture?
- ☐ Does the caregiver support efforts to reunify the child with their parents?
- ☐ If reunification is unsuccessful, is the caregiver willing and able to provide permanency for the child?
- ☐ Has the agency determined what the proposed caregiver would need to safely care for the child and determined that such resources are available?

Placement Stability

- ☐ Has the child changed placements, and if so:
 - ☐ What factors contributed to placement changes?
 - ☐ What supports can be provided to prevent further placement disruption?
 - ☐ Explore whether additional Tribal or kinship support could strengthen the placement.
- ☐ Has the agency reviewed available resources with the caregiver to ensure they are receiving sufficient financial, practical, and service supports to maintain placement stability?

Ongoing Review Hearings

Child Well-Being and Identity

- ☐ Consider the impact of placement decisions on the child's sense of belonging and identity. To determine the impact, ask:
 - ☐ Is the child's Native identity being affirmed and supported in daily life, and how?
 - ☐ Does the child know their family history and Tribal affiliation?

Maintaining Tribal and Cultural Connections

- ☐ Does the child have meaningful relationships with Tribal relatives and community members?
- ☐ What specific actions have been taken since the last hearing to maintain the child's Tribal connections?
 - ☐ How often and how is the child interacting with Tribal community members, family members, or cultural mentors?
 - ☐ Is the child participating in Tribal events, ceremonies, cultural activities, or community gatherings, when appropriate?
 - ☐ Does the child have access to Tribal language, traditions, stories, or teachings?
- ☐ Has the Tribe identified additional opportunities to strengthen cultural connections?
- ☐ Have active efforts incorporated Tribal services, cultural resources, and family supports when available?

Family and Tribal Engagement

- ☐ Is the agency including and meaningfully engaging the child's family members in planning and decision-making for the child?
- ☐ Has the Tribe been consulted regarding major decisions affecting the child?
- ☐ Was the service plan developed collaboratively with the parents and the Tribe?
- ☐ Has the court created meaningful opportunities for Tribal representatives to participate and be heard during hearings?

Ongoing Active Efforts

- ☐ Does the agency continue to provide active efforts that are individualized, culturally appropriate, and responsive to the family's changing circumstances?
- ☐ Has the agency demonstrated that it is actively partnering with the parents, extended family, and Tribe to reunify this family – not merely offered services or monitored compliance?
- ☐ Have active efforts been modified or expanded in response to new barriers, the Tribe's recommendations, or the family's progress?
- ☐ What additional active efforts are needed before the next hearing to safely advance reunification or another appropriate permanency goal?

Permanency Decisions

- ☐ Does the permanency arrangement promote both stability and ongoing cultural connection?
- ☐ Does the plan promote both legal permanency and relational permanency?
 - ☐ Are there plans to preserve relationships with siblings and extended family?
 - ☐ Does the plan preserve Tribal relationships and community connections?
- ☐ Consider all available kinship permanency options, including guardianship, Tribal customary adoption, or other culturally grounded permanency options identified by the Tribe.
- ☐ Has the Tribe been consulted regarding the permanency recommendation?
- ☐ Before closing the case, inquire:
 - ☐ What supports will remain available to the child and caregiver after court involvement ends?
 - ☐ Has the family been connected with Tribal services and resources?
 - ☐ Will the child continue to have opportunities to participate in Tribal community life?

Guiding Questions for Every Hearing Involving an Indian Child

1. Is the child safe?
2. Is the child connected to their family?
3. Is the child connected to their Tribe?
4. Do the current services and plan actively support the child's Native identity?
5. Are active efforts moving the family toward reunification whenever safely possible?
6. Is the current placement culturally protective and stable?
7. Does the proposed path forward strengthen the child's long-term relationship with family, Tribe, community, and culture?

A safe child who loses connection to their family, Tribe, community, and cultural identity has not fully received the protections ICWA was designed to provide. Courts should evaluate every decision through the combined lenses of safety, family connection, Tribal connection, cultural identity, and permanency.

The Grandfamilies & Kinship Support Network: A National Technical Assistance Center (Network) helps government agencies and nonprofits in states, Tribes, and territories work across jurisdictional and systemic boundaries to improve supports and services for families in which grandparents, other relatives, or close family friends are raising children whose parents are unable to do so. For more information, please visit www.GKSNetwork.org.

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