



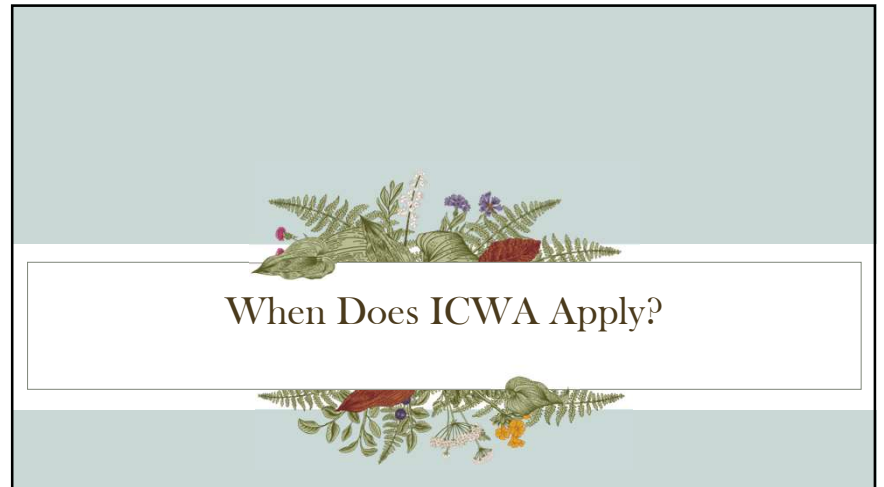
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- ICWA applies to any “child custody proceeding” involving an “Indian Child,”
- If the court “knows or has reason to know that an Indian child is involved.”
- Definition of “Indian Child”
 - An unmarried person under age 18 who is either a member of an Indian tribe or
 - Eligible for membership and the biological child of a member

ICWA

5

5

How Are ICWA Cases Identified?

- During Investigation
- By the Parties/Attorneys/Family Members
- ICWA Questionnaire
- During Court Proceedings (hopefully not at trial)
- By the Tribe
 - A tribe's determination regarding the child's status is conclusive and a “state court may not substitute its own determination regarding a child's membership or eligibility for membership in a Tribe or a parent's membership in a Tribe.”

ICWA

6

6

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Reason to Know an Indian Child is Involved in the Case

- Any party, Tribe, or agency informs DFPS or court that the child is an Indian child;
- Any participant, officer of the court or agency involved in the proceedings informs the court it has discovered such information;
- The child gives the court reason to know they are an “Indian child;”
- The domicile or residence of the child, parent or Indian custodian is on a reservation;
- The court is informed the child is or has been a ward of a Tribal court; or
- The court is informed either parent or the child has a Tribal membership card.

ICWA


8

7

8

What Changes if ICWA applies?


- Pleadings
- Tribal and State Jurisdiction
- Exclusive Jurisdiction on the Reservation
- Emergency Exception
- Concurrent Jurisdiction Off the Reservation
- Notice
- Burden of Proof (Removal/Initial hearing and Termination)
- Placement



ICWA 9

9

Active Efforts vs Reasonable Efforts




- Active Efforts - The agency must consult with the tribe, and use available tribal services, when making a placement of an Indian child. **Family Finding**
- The tribe may establish a different order of placement preference by resolution. *Another reason increased communication/ collaboration necessary.*
- If a child is not placed according to the placement preferences, the agency must prove "good cause", including proof by clear and convincing evidence of a diligent search for a suitable Indian home including utilizing the social and cultural standards of the tribe in determining and approving a suitable placement.

ICWA 10

10

Termination




- Burden of Proof is Beyond a Reasonable Doubt
- Qualified Expert Witness Required (someone other than the caseworker)
- A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness* who is knowledgeable regarding the social and cultural standards of the Indian child's tribe.

ICWA 11

11

What does this mean for me?



- Ask questions of the parents, family members, child if old enough
- Pass along any information you receive to caseworker, court (report)
- If Tribe involved, keep in contact

ICWA 12

12

Does ICWA Apply?

Case #1

- Mom not a tribe member
- Maternal GP are tribe members
- 3 kids with 3 different fathers, none are tribe members

Case #2


- Maternal GF is a tribe member
- Mom and baby girl are eligible for enrollment
- Father is not a tribe member

Case #3

- Mom testifies at trial
- States that one of her four children has a grandfather who is a member of a tribe, she doesn't know his name or the tribe

ICWA 13

13




Summary


- ICWA is extremely important.
- Failure to comply with ICWA can delay permanency for a child/children.
- If you receive information pass it along.
- If you have questions, get with caseworker or attorney representing the Department/Agency

ICWA 14

14



Thank you



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ICWA 15

15