

Arizona Superior Court for Maricopa County

ICWA Court -Goals and Plans



Goal of ICWA 25 U.S.C. §1901



- Enacted in 1978 to address to a crisis affecting Native children, families and tribes. Studies reviewed that huge numbers of native children were removed from their family and community by state agencies and large numbers were placed outside their communities even when fit relatives were available.
- The rights of the tribe - a separate government
- The preservation of tribes and native culture
- The child's right to political identity

Goal of Maricopa County ICWA Court



- Create Standard Practice in ICWA Cases
- Stakeholder Discussion and Input
 - State Agencies, attorneys, judges, professors, tribes...
- Goal: More effective Court hearings and better outcomes while protecting best interest of Indian children.
- Goal: Promotion of excellence by using technology and data to manage and evaluate performance and identify areas needing improvement

Court Procedure



- Assign all ICWA cases to ICWA Court
- Standard: If child is member or likely eligible, Admin will assign case to ICWA Court
- If it is later determined that ICWA applies, transfer to ICWA Court
- PPH- Complete hearing and then transfer to ICWA judge
 - Set Temporary Custody hearings (r. 333) with ICWA Court
- Motion to Transfer to Tribal Court -R.322 -Send to ICWA judge

Court Procedure at PPH



- Rule 332 Preliminary Protective & 333 Temporary Custody
 - Active Efforts no longer required (notwithstanding bench book ref to old R.51).
 - QEW (Qualified Expert Witness) not required at PP5
 - Must find 25 U.S.C. 1922 provisions regarding “emergency removal...to prevent imminent physical damage or harm to the Child” applies.
- In-Home cases do not require QEW or active efforts
 - But In-home cases that end up w/ removal...
- Order that the Tribe, Parents, Guardian be served as required by ICWA
- Adjudication Hearings & Report and Review: ICWA applies.
 - “Active Efforts to Prevent the breakup of the Indian Family”

Advocacy by Attorneys



- Adhere to Placement Preferences (R.P.J.C. 321, 25 U.S.C. §1915)
 - Extended family
 - Tribal approved foster home
 - Indian foster home
- Depart from Placement Preferences for Good Cause -321(b)
- Work with tribal social service team
 - Many tribes have unique placement preferences
- Contact child's extended family
- “Active Efforts“ vis-à-vis “reasonable efforts”

Current Events



- 44 years after enactment, ICWA is in SCOTUS
- Haaland v. Brackeen (5th Cir.) -SCOTUS oral argument in November
- 5th Cir. (en banc) Struck down portions of ICWA
 - Found 10th amend. violation because ICWA Commandeers State officials (by requiring DCS to enforce federal law re active efforts, and QEW requirements)
 - Denied Equal Protection challenge by ruling that ICWA is based on political classifications and foster preferences are not based on race. But in non-precedential portion found “Indian foster home” violated equal protection.

End



Please send your feedback, suggestions, questions.

Contact:

Justine Grabowsky, Dep Juv. Dept Admin

Justine.Grabowsky@JBAZMC.Maricopa.Gov

Judge Lori Bustamante, Presiding Judge for Juv. Div.

Lori.Bustamante@JBAZMC.Maricopa.Gov