

==AIRBORNE EXPRESS==

Adoption and the Indian Child Welfare Act

The Client Services office at Fort Campbell provides assistance in the preparation of adoption documents for Soldiers and their dependants. The most common type of adoption is a step-parent adoption, in which a parent's new spouse adopts a child from a previous partner.

What does this have to do with the Indian Child Welfare Act?

There is a Federal Law called the Indian Child Welfare Act (ICWA) that was enacted in 1978. The goal of the law was to keep American Indian children with American Indian families. The ICWA lays out specific procedural guidelines that must be followed when a proposed adoption involves a child of Native American descent. The ICWA applies both in voluntary and involuntary proceedings. If the child is an Indian Child, the provisions of this law must be followed before proceeding with any type of adoption or foster placement. The ICWA defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" (25 U.S.C. § 1903).

What does this mean for me?

Because this is a federal law, it applies in all states and thus must be considered in all adoption proceedings. As a legal practitioner or paralegal it is important to be aware of the ICWA. For example, the Petition for Adoption by Step Parent with Consent in Tennessee must specifically contain a clause stating that the child's adoption either is or is not subject to the provisions of the Indian Child Welfare Act. Simply inserting that clause in a Soldier's adoption paperwork without knowing for sure if the ICWA applies could cause serious complications for the Soldier and his family down the road. If the adoption is subject to those provisions, the proper notification requirements to the parent terminating his or her rights must be followed. Failure to do so can mean lengthy court proceedings years after the fact and could result in the adoption being vacated.

How do I know if a child is eligible for tribal membership?

There are over 500 federally recognized tribes in the US. The easiest and most obvious way is to ask the child's family if they are aware of any tribal affiliation. Find out if a parent or grandparent has a tribal enrollment card. You can also develop a family tree indicating the mother's and grandmother's maiden names and the names of the father and paternal grandparents. Finally, you can call the tribal office directly. Different tribes have different requirements for eligibility. They might ask for something in writing with the child's, father's, and mother's names, dates of birth and places of birth. They will then let you know if the ICWA is implicated.

The ICWA applies to my adoption, now what?

The ICWA mandates that the biological parent who is terminating his or her rights will need to sign the affidavit of consent to adoption in front of a judge and then mail it back to the petitioner. The petitioner will then have 10 days to file this, along with the rest of the required documents, with the court. At this time the court will schedule a hearing and there are certain tribal notification procedures that need to be followed to ensure compliance with the ICWA.

The Bureau of Indian Affairs (BIA), the child's tribe or both will have to receive notification. If a parent claims they have Native American heritage, but are unable to name a specific tribe, a letter must be sent to the BIA to document diligent efforts to identify the tribe. If the BIA is able to identify a specific tribe, they will provide the results in writing which will determine the next steps.

If a parent claims affiliation with a specific tribe, the BIA and tribe must be notified in writing through registered mail. This notice must be received at least 10 days prior to an initial hearing. The notified party may then request additional time to prepare for a hearing (up to 20 days).

The contents of the notification of the child custody proceeding must include all of the following information:

- The child's name, date of birth and place of birth;
- The child's tribal affiliation, if known;
- The names of the child's parents, places of birth of the child's parents, the child's mother's maiden name;
- A copy of the petition filed with the court;
- A statement of the rights of the biological parents/custodians to intervene in the proceedings;
- A statement of right under federal law to court appointed counsel; and
- The location, mailing address and telephone number of the court.

Notice must be provided by either registered mail, return receipt requested or by personal service. The original or a copy of each notice along with return receipts or other proofs of service must be filed with the court.

How will this affect a voluntary step parent adoption?

If it is a voluntary proceeding involving a step parent adoption, most likely the tribe will choose not to intervene. They will document this in writing and the adoption will go forward. The important thing is that the ICWA has been complied with and so the biological parent who terminated his or her rights and/or the tribe will not be able to invalidate the adoption later on. – CPT Victoria Salibi

Who should I contact if I have questions? Legal Assistance office at 270-798-4432

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