

RULE 30. NOTICE RESPONSIBILITIES UNDER THE INDIAN CHILD WELFARE ACT**Rule 30.01. Notice by Petitioner**

Subd. 1. Generally. In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the petitioner commencing a child custody proceeding shall notify the parent, Indian custodian, and the Indian child's tribe of the pending proceedings and of the right of intervention. Notice shall be pursuant to Indian Child Welfare Act, 25 U.S.C. section 1912(a), and the Indian Child Welfare Act regulations, 25 C.F.R. section 23.11. In addition, the court may direct personal service on the parent and Indian custodian. Each notice shall be filed with the court together with any return receipts or other proof of service.

Subd. 2. Identity or Location Unknown. Pursuant to 25 C.F.R. section 23.111(e), if the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Bureau of Indian Affairs Regional Director in like manner, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

Subd. 3. Timing of Proceedings. No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

Rule 30.02. Notice by Court

When a court has reason to believe that a child placed in emergency protective care is an Indian child, the court administrator or a designee shall notify the tribal social services agency of the date, time and location of the emergency protective care hearing as required by the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.761, subdivision 2, paragraph (c).

2019 Advisory Committee Comment

There are multiple notice requirements in Indian Child Welfare Act (ICWA) cases. In addition to the notice requirements listed in the rule above, the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, section 260.761, provides additional notice requirements for local social services agencies.

The petitioner's notice requirement in ICWA, 25 U.S.C. section 1912(a), and the ICWA regulations, 25 C.F.R. section 23.11, while substantially similar, do have inconsistencies. For example, ICWA states that notice shall be by registered mail. The ICWA regulations state that notice shall be by registered or certified mail, and that personal service does not replace the registered or certified mail requirement. See 25 C.F.R. section 23.111. The committee contemplates situations where personal service on a parent is made at an initial hearing, but service on the parent by registered or certified mail is not possible. The committee notes that service by registered or certified mail on a tribe offers protections that personal service may not, including ensuring that service is made on the correct contact. The committee recommends that courts review service issues on a case-by-case basis, and make a clear record of efforts to provide notice in ICWA matters.

The 2016 BIA ICWA regulations, 25 C.F.R. section 23.11(b)(2), provide an incorrect address for the Minneapolis Regional Director of the Bureau of Indian Affairs. The office location is available at www.bia.gov.

The requirement for the petitioner to serve the ICWA notice is separate from the requirement for court staff to serve the summons and petition.

Emergency Protective Care Placement Pending ICWA Notice. While both ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the child custody proceeding, 25 U.S.C. section 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice referred to in Rule 30.01 and meet the timing requirements of 25 U.S.C. section 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 42.09(f) is required under Rule 30.01 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by ICWA may be different due to the notice requirement of Rule 30.01.