

Episode 3 ICWA Notice

Carrie Owen ([00:32](#)):

Hello everyone. I just spoke to you in the Dakota language and I spoke to you in the Dakota language because that's one of the original languages of Minnesota. And what I said was, my native name is Ishta maza win, which means Iron Eyes Woman and I currently live at the Prairie Island Indian Community, one of the 11 reservations in Minnesota. And I'm also a member of the Omaha Tribe, enrolled member of the Omaha Tribe of Nebraska. And I'm a member of the Meskwaki Tribe of Iowa. And I'm also part Dakota. I'm one of the three ICWA Compliance Consultants in the American Indian Wellbeing Unit within the Department of Human Services, Child Safety and Permanency Division. I'm very excited about this podcast. These first six podcasts focus on six major provisions of the Indian Child Welfare Act, also known as ICWA and the Minnesota Indian Family Preservation Act, also known as MIFPA.

([01:33](#)):

It is our hope that these six podcast sessions assist in expanding your knowledge of ICWA and MIFPA implementation and practice application, which we hope to result in increased ICWA MIFPA compliance for county and private agencies who work with Indian children and families within the state of Minnesota. Compliance of these laws equals protection for all our native children and families who reside in Minnesota. Previously, the unit was utilizing webinars called the ICWA Coffee Talks, but we really felt like it was necessary to broaden our network. I also will mention that during the course of these sessions, you may hear our team referenced as the ICWA Unit and the American Indian Wellbeing Unit. Recently we changed our name from the ICWA unit to the American Indian Wellbeing Unit. So you may hear the two being used interchangeably. We made this change to encompass the wide range of services our unit provides beyond ICWA.

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Each podcast will begin with the legal definitions, which can be dry and seem like legal jargon, but please bear with us as the legal language is important and guides the application and practice, which is foundational. Then a team member will go over frequently asked questions and then we'll end each podcast with the story regarding provisions, highlighting the importance that impacts ICWA and MIFPA. In the future, we hope to bring forward other podcast series to bring live personal stories and history of federal state laws along with the agreements. We thought it was important to share a Dakota prayer song at the beginning of each series as you have heard. The Dakota Song sums up our beliefs that creator comes first before anything else and is often sung in the household by women in the morning to start the day. A way of acknowledging our children are sacred and gifts from the creator.

([03:38](#)):

I'd like to also mention I am honored to be on a team with such talented, knowledgeable people. My coworkers, which in native tradition equate to my relatives. Each of them bring their cultural knowledge from their diverse tribal backgrounds. These are things that you cannot learn in any college or higher education setting. It must be lived and they also bring their profound professional knowledge as well. And lastly, I want to say Mitakuye Oyasin, which is a central part of the Dakota worldview, defining our relationship to each other and the land, meaning we are all related. Thank you.

([04:34](#)):

Today we're gonna, the provision we're gonna be going over is the Indian Child Welfare Act Notice. I'm going to be reading the law that's stated in the federal law and I know it can sound kind of dry, but that's kind of how laws are. So, um, please bear with me in this part and then we'll be going over, um, additional information after I read this part. The Indian Child Welfare Act applies to any pending court proceedings. So anytime there's an involuntary proceeding in state court where the court knows or has reason to know that the Indian child is involved, the party seeking foster care placement of or

termination of parental rights to an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right of intervention.

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If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary in the like manner. Who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceedings shall be held at least days after receipt of notice by the parent or Indian custodian and the tribe and the secretary. Provided that the parent or Indian custodian or tribe shall upon request be granted up to 20 additional days to prepare for such proceeding. Now I'm going to turn this over to my coworker Sommer, who will be going over some of the frequently asked questions to ICWA Notice.

Sommer Dey [\(06:24\)](#):

Hey, welcome back to the American Indian Indian Wellbeing Unit podcast. My name is Sommer Dey Rosette and I am the ICWA Training Coordinator here with American Wellbeing Unit. So today I'm gonna go over and just continue with, um, or I'm gonna continue with the ICWA Notice, but I'm gonna kind of jump into some of those frequently asked questions we get here at the American Wellbeing Unit. So one of the first questions that I wanna go over is in what types of proceedings is an ICWA Notice required? So when we think about the ICWA Notice, remember that it's for any involuntary proceedings in a state court where it is known or at least there is reason to know that Indian children are involved in foster care placement or termination of parental rights is sought. Another frequent question we get within the American Wellbeing Unit is who must receive an ICWA Notice?

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So as Carrie mentioned in the law, it states that an ICWA notice must be sent to the parent or parents, Indian custodian, the Indian Child's tribe. They're all sent an ICWA Notice and then copies of those notices must also be sent to the regional office of the Bureau of Indian Affairs or BIA. And if you need a list of those tribes and contact information, please refer to bia.gov and then you can search ICWA and you should be able to find the federal register for all federally recognized tribes along with the contact information. Now, when we think about an ICWA Notice, one of the main questions we get is when should ICWA notices be sent? So what we like to share is that an ICWA Notice should be sent when the court knows or has reason to know that Indian children are involved in a child welfare case.

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So no foster care placement or termination of parental rights proceedings can even occur until at least 10 days after receipt of notice by parents Indian custodian, um, Indian Child's Tribe and the BIA. So what that means is when you're sending out that ICWA Notice, and I don't know if I mentioned it but I know Carrie did when she went through the law, is that that ICWA Notice must be sent by certified or registered mail with a return receipt and you cannot continue with that foster care placement or termination of parental rights proceedings until at least 10 days after the parents, Indian custodian, Indian Child's tribe and the BIA have all received notice the ICWA Notice, but upon request the parents Indian custodian and tribe, they do have the right to be granted up to 20 additional days from the date an ICWA Notice was received so they can prepare for a hearing.

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I do wanna go in a little bit about how ICWA Notices are served. So let me just share that when you send ICWA Notice, they have to be sent by registered or certified mail, as I mentioned with a return receipt

requested. So when the return receipt or as we call it the green card is returned to the agency best practice is to file in the Minnesota government access system or MGA system. It's important that all green cards are signed and dated by persons being served as the date signed determines if an agency is in compliance with ICWA Notice requirements. Notice can also be sent by a personal service or electronically. However, such methods do not replace the requirement for notices to be sent by registered or certified mail with that return receipt. So what happens if the green card is not dated? We get this question quite a bit as well.

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So if a green card is not dated, the agency should stamp green cards when they come in. Doing so will assist with determining when notice was served. And alternatively, when agency staff sends out notice, the US Postal Service does provide a tracking number. So, um, it's good to use that tracking number to acquire detailed delivery information by USPS online reporting. So that's something the agency can use as well. What if a notice comes back to the agency, return to sender or address unknown? Something we also see from time to time. But if that does occur, an agency should make several attempts to locate the party being served. If service is not possible after several attempts, notice of child custody proceedings have to be or must be sent to the appropriate Bureau of Indian Affairs regional director to find the regional director in your area.

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You would wanna go to bia.gov to establish tribal identity. As much information as is known regarding children's direct lineal ancestors should be provided. What if there is limited information about a tribal affiliation? Well, when we think about tribal affiliation, it's important if the individual or the family you're speaking with, if there tribal nation is known, but the specific tribe is not, you would need to send notices to all known federally recognized tribes in that nation. So for example, if parents state they are Cherokee heritage or of Cherokee heritage, but do not know the specific tribe, you would send ICWA Notices to all three federally recognized Cherokee tribes. So that's all I have for you for frequently asked questions on I notice. Now I'm gonna turn it over to my coworker and colleague Richie Smith. He's also with American Wellbeing Unit and he's gonna share a story with us today.

Speaker 3 [\(11:57\)](#):

Anin. Hello, my name is Richie. I'm an enrolled member of Leech Lake Band of Ojibwe. I'm also, ICWA Compliance Consultant for five years at DHS. I have over 21 years of experience representing American Indian families in the court system and as a I jal and also as a youth intervention specialist from the American Indian Center. My story today is about ICWA Notices. This is really outside the box thinking. Um, this was the ICWA Notice were sent out of course as Sommer Dey had said to the mom, dad, tribe and the BIA, they're all signed, all except the father. What do you do, it was returned to sender address, unknown. No such, no such person, no such zone. Went a little Elvis there, but I'll get back to this story. With due diligence, we found out that the father had been deported back to Mexico.

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What do you do with that ICWA Notice now, instead of sending that ICWA Notice to the BIA requesting for assistance to locate that father, we did a little outside the box thinking and we sent that ICWA Notice to the consulate in Mexico and that consulate was able to locate that father and he was served with that ICWA Notice that is so extreme, this going, that's active efforts. That's you're, you are thinking outside the box, which is great and you're trying to keep that connection to that family and child. So the father did appear by phone at our court hearings and he participated by phone. The children were able to connect with him and eventually this family, we found out the family had a business down in Mexico

and the children eventually moved down to Mexico and they were with the father cuz he had a large family.

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So everything worked out. So that's one way of thinking of the ICWA Notice. The guy was deported and we sent that ICWA Notice to the consulate in Mexico to locate that father. That's active efforts, that's, uh, keeping the child, tribe and the family connected. So that is my story with ICWA Notice. I have one more ICWA Notice I'll share with you cause I know it gets kind of frustrating sometimes. This one was we had a county, um, where they inquired, um, if the family was American Indian. They said, you know, we're from Alaska and that's all they gave 'em. And this, this county social worker tried really hard to, you know, do their due diligence to knock it down to like, cuz I think there's like, there is, there's 227 tribes in Alaska. And she tried really hard to try to knock it down like, okay, are you from this tribe or this tribe?

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But they didn't have that. So what she had to do, she had send all those green cards what Sommer Dey said to those 227 tribes. And you know, what happened? We located, we got hit on one of those things. So we're able to connect the, the child, the family with that tribe. So that's one way to think of it. I always try to, you know, um, give as much information you can so you don't have to send out that many ICWA Notices, but that is like active efforts that is doing your due diligence. So I just want to you know, let you know, ICWA Notices is, it's, it can be hard, but if you, uh, do your best and you do due diligence and if you provide active efforts, um, you can have some really good outcomes. Uh, miigwech and thank you

Speaker 4 [\(15:12\)](#):

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