
4. NOTICE

Disclaimer: *A Practical Guide to the Indian Child Welfare Act* is intended to facilitate compliance with the letter and spirit of ICWA and is intended for educational and informational purposes only. It is not legal advice. You should consult competent legal counsel for legal advice, rather than rely on the *Practical Guide*.

25 U.S.C. § 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the 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. 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 like manner, who shall have fifteen 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 proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

Disclaimer: The above provision of the Indian Child Welfare Act is set forth to facilitate consideration of this particular topic. Additional federal, state or tribal law may be applicable. Independent research is necessary to make that determination.



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4.1 What is notice?

In general, notice informs a person of a proceeding in which his or her interests may be affected. It may also provide information about his or her rights in the proceeding. *See generally* BLACK'S LAW DICTIONARY (4th ed. 1968).

4.2 In what types of proceedings is notice explicitly required?

At a minimum, § 1912(a) of the Indian Child Welfare Act (ICWA) requires notice “[i]n any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved” and the foster care placement of the child, or the termination of parental rights to the child is sought. *See also* FAQ 16.13, Placement.

4.3 Who must be notified?

At a minimum, at the commencement of the action the parents and Indian custodian, if any, of an Indian child, and the Indian child’s tribe must be given notice. 25 U.S.C. § 1912(a). While the statute says “parent or Indian custodian,” the Bureau of Indian Affairs (BIA) Guidelines point out the desirability, and in most cases the need, to give notice to both parents and custodians. *Indian Child Custody Proceedings*, 44 Fed. Reg. 67,584, 67,589 (Nov. 26, 1979) (guidelines for state courts). Case law and certain state laws also support notice to extended family members in some circumstances. *In re M.E.M.*, 635 P.2d 1313 (Mont. 1981); IOWA CODE § 232B.5 (2003); *cf.* COLO. REV. STAT. § 19-1-126 (2002).

Notice must be given to each tribe in which the child is a member or is eligible for membership. 25 U.S.C. § 1912(a); *In re Desiree F.*, 99 Cal. Rptr. 2d 688 (Ct. App. 2000). The BIA is required to publish annually in the Federal Register a list of tribal entities recognized as eligible to receive services from the BIA. The list is provided at the BIA’s website, which also has addresses for federally recognized tribes and a listing of designated tribal agents. If the website is not accessible, then BIA’s central office in Washington, D.C. should be contacted. The regulations require that copies of these notices be sent to the Secretary and the appropriate Area Director. 25 C.F.R. § 23.11(a) (2007).

4.4 Why is notice required under the Act?

Due process requires that before a person’s rights can be affected in a court proceeding, they be given notice and an opportunity to be heard. Parents have “a fundamental liberty interest,” in the “care, custody, and management” of their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). An “Indian custodian” as defined in § 1903(6) has the right to notice because she stands in the shoes of the parent. Indian tribes have “an interest in the child which is distinct from, but on a parity with the interest of the parents.” *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 52 (1989) (quoting from *In re Halloway*, 732 P.2d 962, 969-70 (Utah 1986)). Notice may also be required to any interested party who has a protectable interest under the act, such as an extended family member. *In re M.E.M.*, 635 P.2d 1313 (Mont. 1981).

4.5 If other applicable federal or state law, provides a more stringent requirement for notice than the ICWA, which standard controls?

Section 1921 specifically provides that “where State or Federal law applicable to a child custody proceeding . . . provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter,” that standard shall be applied. As an example, where Michigan law contained a more stringent requirement than ICWA to ensure that inquiry and notification are performed, that standard applied. *In re Elliott*, 554 N.W.2d 32, 38 (Mich. Ct. App. 1996). *Cherokee Nation v. Nomura*, 2007 OK 40, 160 P.3d 967 holds that § 1921 also makes more stringent state requirements for notice to tribes applicable.

4.6 What purpose does notice to the tribe serve?

Notice enables a tribe or the BIA to investigate and determine whether the minor is an Indian child. Notice also ensures that the tribe will be afforded the opportunity to assert its rights under the Act irrespective of the position of the parents, Indian custodian or state agencies. Specifically, a tribe has the right to intervene in a state court proceeding pursuant to § 1911(c) and may have the right to obtain jurisdiction over the proceeding by transfer to its tribal court pursuant to § 1911(b). *In re Kahlen W.*, 285 Cal. Rptr. 507 (Ct. App. 1991) (certified for partial publication). Without notice, these important rights granted by the Act would be meaningless. *Id.*;

Cherokee Nation v. Nomura, 2007 OK 40, 160 P.3d 967. Notice to the tribe also gives the tribe the opportunity to ensure compliance with the placement preferences of § 1915. Cf. *In re Baby Boy C.*, 805 N.Y.S.2d 313 (App. Div. 2005).

4.7 Who is responsible for compliance with notice requirements?

The burden of providing notice is on “the party seeking the foster care placement of, or termination of parental rights to, an Indian child . . .” 25 U.S.C. § 1912(a); *In re E.S.*, 964 P.2d 404, 409 (Wash. Ct. App. 1998). This is often a state agency such as a department of social services. *In re Desiree F.*, 99 Cal. Rptr. 2d 688 (Ct. App. 2000). Some courts have found that the duty also extends to the courts. *In re J.T.*, 693 A.2d 283, 288 (Vt. 1997); *In re H.A.M.*, 961 P.2d 716 (Kan. Ct. App. 1998) (holding trial court required to notify); *In re Levi U.*, 92 Cal. Rptr. 2d 648 (Ct. App. 2000).

4.8 How is compliance with the notice requirement shown?

The BIA Guidelines provide that the “original or a copy of each notice sent” under the Act shall be filed with the court together with any return receipts or other proof of service. Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,588 (Nov. 26, 1979) (guidelines for state courts). See *In re E.S.*, 964 P.2d 404 (Wash. Ct. App. 1998).

4.9 How should notice be served?

Section 1912(a) provides that notice shall be sent by “registered mail, with return receipt requested.” The regulations governing the ICWA differ from the language of the statute as to the form of service. The regulations specify certified mail, return receipt requested. 25 C.F.R. § 23.11(a), (d) (2007) (or personal service on the appropriate Area Director). Registered mail is a stricter standard than certified mail. Under § 1921, the higher standard of protection should apply, so notice should be sent registered mail, return receipt requested. In addition, state law may well require personal service and that would be required by § 1921.

4.10 What should be included in the notice?

The Act requires notice of the pending proceedings and the right of intervention of the parents, Indian custodian, and the Indian child’s tribe. 25 U.S.C. § 1912(a). The Guidelines specify what information should be included in the notice. Indian

Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,588 (Bureau of Indian Affairs Nov. 26, 1979) (guidelines for state courts). The regulations concerning notice under ICWA, contained at 25 C.F.R. § 23.11 (2007) provide for detailed information which does not in all respects match the Guidelines. The regulations provide for the same information to be given to the Secretary as to parents, Indian custodians or tribes.

Practice Tip:

The practitioner should note that the regulations and BIA Guidelines are not the same in all respects, and are encouraged to include all of the information specified in both the regulations and BIA Guidelines. A model form is included in the appendix but state law should be consulted as to additional notice requirements. See also 25 C.F.R. § 23.11(d)(3) (2007) for additional information to include if known. It is also helpful to contact the tribe and inquire as to what information is useful.

4.11 Where must notice be sent when the identity or location of the Indian child’s parents or Indian custodian and tribe are unknown?

Section 1912(a) requires that notice in such circumstances is to be given to the Secretary of the Interior “in like manner,” i.e., registered mail, return receipt requested. The regulations specify that this is to be done by sending notice by “certified mail, return receipt requested” to the appropriate Area Director or by personal service on the Area Director. 25 C.F.R. § 23.11(b), (d) (2007). The regulations contain a list of the Area Directors and their designated geographical areas. 25 C.F.R. 23.11(c)(1)-(12). To conform to both the Act and the regulations, the notice should be sent to both the Secretary and the appropriate Area Director and should contain the information specified in the regulations. In addition, the statute requires service by registered mail, not certified mail. Since registered mail is the higher standard, that should govern. 25 U.S.C. § 1921.

Practice Tip:

This notice is not a substitute for contacting all tribes that have a potential affiliation with the child.

4.12 When should notice be provided?

While § 1912(a) does not specify a time for service of notice, it does require notice of a pending child custody proceeding, “where the court knows or has

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reason to know that an Indian child is involved.” 25 U.S.C. § 1912(a). It further provides that “no foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the Tribe or the Secretary.” *Id.* In addition, the parent, or Indian custodian or the tribe, “shall, upon request, be granted up to twenty additional days to prepare for such a proceeding.” *Id.* Good practice dictates that notice be given as soon as possible so that interested persons and entities can protect their rights. Delay in giving notice could allow inequities to develop. For example, parties should not be able to successfully argue that there is good cause not to transfer a proceeding to tribal court because the proceedings are at an advanced stage when that situation resulted from a failure to give prompt notice. *See* BIA Guidelines, “Permitting late transfer requests by persons and tribes who were notified late may cause some disruption. It will also, however, provide an incentive to the petitioners to make a diligent effort to give notice promptly in order to avoid such disruptions” Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,590 (Nov. 26, 1979) (guidelines for state courts).

4.13 What might give the court “reason to know that an Indian child is involved”?

The BIA Guidelines list the most common circumstances giving rise to a reasonable belief that a child may be Indian.

- (i) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child.
- (ii) Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.
- (iii) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.
- (iv) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.
- (v) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,586 (Nov. 26, 1979) (guidelines for state courts).

4.14 Must notice be sent to newly recognized tribes?

Yes. Notice must be given to tribes which have been federally recognized by the United States. Since 1978, the Department of the Interior has been implementing a process by which a government-to-government relationship is established with previously unrecognized tribes.

4.15 If the child might be eligible for enrollment in more than one tribe, must notice be sent to all tribes?

Yes. Notice to one tribe does not protect the interests of a tribe not given notice, so all tribes in which the minor may be eligible for enrollment must be notified. *In re Desiree F.*, 99 Cal. Rptr. 2d 688 (Ct. App. 2000).

4.16 Is notice required in a voluntary proceeding involving a foster care placement of, or termination of parental rights to, an Indian child?

The only explicit requirement of notice is that in § 1912(a), relating to involuntary proceedings. *Cherokee Nation v. Nomura*, 2007 OK 40, 160 P.3d 967, while dealing with a state statute requiring notice in voluntary proceedings also noted that the purposes of the federal act cannot be met without notice to the tribe in voluntary proceedings. *But see Navajo Nation v. Superior Court*, 47 F. Supp. 2d 1233 (E.D. Wash. 1999), *aff’d on other grounds sub nom. Navajo Nation v. Norris*, 331 F.3d 1041 (9th Cir. 2003); *Catholic Soc. Servs., Inc. v. C.A.A.*, 783 P.2d 1159 (Alaska 1989) (no notice to tribe required of proceeding for voluntary termination of parental rights). In addition, the BIA Guidelines indicate that notice is not required in voluntary proceedings. Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,586 (Nov. 26, 1979) (guidelines for state courts).

The better practice is to provide such notice. Indian tribes and extended family members have substantial rights under the ICWA even in voluntary proceedings. See also FAQ 17, Voluntary Proceedings. A practitioner who does not provide notice runs the risk that a tribe will learn about the proceeding at a later date and object at that time, perhaps arguing that the child was a resident of or

domiciled on the reservation or is a ward of the tribal court and that jurisdiction was exclusively in the tribal court. Providing notice to a tribe will also allow the tribe to identify if there are good tribal or family placements available for a child and will lessen the risk of a child being transferred to a new placement after an extended time in an initial placement—an event that can be difficult for all concerned. For these reasons, several states have enacted more stringent requirements and require notice be given to tribes in both voluntary and involuntary Indian child custody proceedings. *See, e.g.,* IOWA CODE § 232B.5(8) (2003) (providing notice to tribes in voluntary proceedings); MINN. STAT. § 260.761(3) (1999) (providing notice to tribes in voluntary adoptive and pre-adoptive proceedings); OKLA. STAT. tit. 10, § 40.4 (2006) (providing notice to tribes in voluntary proceedings). *See also* FAQ 17.4, Voluntary Proceedings and FAQ 18.11, Adoption.

Practice Tip:

The decisions that have ruled against notice in voluntary proceedings have not fully considered the due process issues pertaining to such notice. Parents have a liberty interest in the care, custody, and management of their children which is protected by the due process clause of the United States Constitution. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). The protection of a tribe's interest in any Indian children "is at the core of the ICWA, which recognizes that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 52 (1989) (quoting from *In re Holloway*, 732 P.2d 962, 969-70 (Utah 1986) (noting findings of Congress as to the importance of children to tribes' continued existence, and prerogatives of tribes under the ICWA and concluding they "must be seen as a means of protecting . . . the interests . . . of the tribes themselves"). Once a right has been recognized, the process that is due before it can be adversely affected is a consideration separate from, and not governed by, the source of the right. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). Thus, the failure of Congress to specifically provide for notice in voluntary proceedings, may not obviate the need for notice in such proceedings. For notice to be required, it is sufficient that the person or entity whose rights may be adversely affected may become a party, they need not actually be a party. *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 488 (1988). While the precise notice required in involuntary proceedings would not necessarily be required in voluntary

proceedings, notice reasonably calculated to provide actual notice under the circumstances may be required. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). That requires mailing where the entity is reasonably ascertainable as is the case with tribes. *Id.*

4.17 Must notice be given to tribes in Public Law 280 states?

Yes. Tribes have the same rights to notice under the ICWA in Public Law 280 states. *In re C.R.H.*, 29 P.3d 849 (Alaska 2001) (holding whatever effect Public Law 280 had on a tribe's jurisdiction, § 1911(b) authorizes transfers and transfer jurisdiction under § 1911(b) is the same in Public Law 280 states as in non-Public Law 280 states). This is consistent with the "longstanding position of the Office of the Solicitor that a tribe in a Public Law 280 state does not have to submit a petition under § 1918 of the ICWA to reassume transfer jurisdiction under § 1911(b)." Memorandum from Robert McCarthy, Field Solicitor, United States Department of the Interior, to Pacific Regional Director, Bureau of Indian Affairs (July 28, 2005) (on file with the Native American Rights Fund) (available on the web site version); *In re M.A.*, 40 Cal. Rptr. 3d 439, 441-43 (Ct. App. 2006) (holding tribes in Public Law 280 states retain concurrent jurisdiction); *Native Village of Tanana v. Alaska*, No. 3AN-04-12194 (Alaska Super. Ct. May 25, 2007) (same). Tribes also have the right to intervene under § 1911(c) and to see that placement preferences are followed under § 1915.

4.18 What are the effects of failure to give notice to a tribe or tribes with an interest in the proceeding?

Some courts hold that failure to give proper notice renders the proceedings null and void. *In re H.D.*, 729 P.2d 1234, 1241 (Kan. Ct. App. 1986); *In re H.A.M.*, 961 P.2d 716, 720 (Kan. Ct. App. 1998); *In re Desiree F.*, 99 Cal. Rptr. 2d 688 (Ct. App. 2000). Some appellate courts have remanded to correct the deficiency, leaving it to the lower court to determine whether the error so prejudiced the proceeding as to require its invalidation. *See, e.g., In re M.S.S.*, 936 P.2d 36 (Wash. Ct. App. 1997) (holding proper notice not given to the BIA or the tribe so remanded with instructions that only if the lack of notice prejudiced the proceedings was the termination proceeding invalid). *See also In re I.E.M.*, 592 N.W.2d 751, 757-58 (Mich. Ct. App. 1999). This approach places the onerous burden on tribes to persuade the lower courts to invalidate an existing decision, and is contrary to § 1914 of the Act, which

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provides for the invalidation of the proceedings when notice is not provided.

Due process also may be violated by a failure to give proper notice under state law. *In re L.A.M.*, 727 P.2d 1057 (Alaska 1986); *Smith v. Tisdal*, 484 N.E.2d 42, 43-44 (Ind. Ct. App. 1985) (relying on state grounds alone).

4.19 Can defects in notice be waived by the tribe?

Possibly. If notice is received, but not in the form required, and the tribe appears at the hearing, that may waive the argument of lack of proper notice. *In Re Krystle D.*, 37 Cal. Rptr. 2d 132 (Ct. App. 1994); *In re J.J.G.*, 83 P.3d 1264 (Kan. Ct. App. 2004) (substantial compliance and tribe already participating in related proceedings through its attorney).

4.20 Can a parent or Indian custodian waive the tribe's right to notice?

No. Since the rights of the tribe and child are distinct from those of the parent, the parent cannot waive the tribe's right to notice. *In re Kahlen W.*, 285 Cal. Rptr. 507 (Ct. App. 1991) (certified for partial publication). *Cf. Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 52-53 (1989).

4.21 May defective notice be raised for the first time on appeal?

Yes. In *In re L.A.M.*, 727 P.2d 1057, 1059 (Alaska 1986), the Supreme Court of Alaska ruled that a claim of defective notice implicates a due process right which is so fundamental that justice required the Court to consider the claim. *See also In re H.D.*, 729 P.2d 1234 (Kan. Ct. App. 1986). *But cf. In re Pedro N.*, 41 Cal. Rptr. 2d 819, 823 (Ct. App. 1995) (appeal from a recent order may not challenge prior order for which appeal time has passed).



** Access to the full-text of opinions and additional materials is at www.narf.org/icwa **

The following list is representative of cases that discuss the topic. The list is not exhaustive. The practitioner should conduct independent research.

FEDERAL CASES

United States Supreme Court

Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)

Circuit Courts of Appeal

Navajo Nation v. Norris, 331 F.3d 1041 (9th Cir. 2003)

District Courts

Navajo Nation v. Superior Court, 47 F. Supp. 2d 1233 (E.D. Wash. 1999)

STATE CASES

Alabama

S.H. v. Calhoun County Dep't of Human Res., 798 So. 2d 684 (Ala. Civ. App. 2001)

Alaska

In re C.R.H., 29 P.3d 849 (Alaska 2001)

Catholic Soc. Servs., Inc. v. C.A.A., 783 P.2d 1159 (Alaska 1989)

D.E.D. v. State, 704 P.2d 774 (Alaska 1985)

In re L.A.M., 727 P.2d 1057 (Alaska 1986)

California

In re A.U., 45 Cal. Rptr. 3d 854 (Ct. App. 2006) (depublished)

In re Alexis H., 33 Cal. Rptr. 3d 242 (Ct. App. 2005)

Alicia B. v. Superior Court, 11 Cal. Rptr. 3d 1 (Ct. App. 2004)

In re Amber F., 58 Cal. Rptr. 3d 874 (Ct. App. 2007)

In re Antoinette S., 129 Cal. Rptr. 2d 15 (Ct. App. 2002)

In re Asia L., 132 Cal. Rptr. 3d 733 (Ct. App. 2003)

In re Brooke C., 25 Cal. Rptr. 3d 590 (Ct. App. 2005)

In re C.D., 1 Cal. Rptr. 3d 578 (Ct. App. 2003) (certified for partial publication)

In re Christopher I., 131 Cal. Rptr. 2d 122 (Ct. App. 2003)

In re D.T., 5 Cal. Rptr. 3d 893 (Ct. App. 2003) (certified for partial publication)

In re Daniel M., 1 Cal. Rptr. 3d 897 (Ct. App. 2003)

In re Desiree F., 99 Cal. Rptr. 2d 688 (Ct. App. 2000)

Dwayne P. v. Superior Court, 126 Cal. Rptr. 2d 639 (Ct. App. 2002)

In re Edward H., 122 Cal. Rptr. 2d 242 (Ct. App. 2002) (certified for partial publication)

In re Elizabeth W., 16 Cal. Rptr. 3d 514 (Ct. App. 2004)

In re Gerardo A., 14 Cal. Rptr. 3d 798 (Ct. App. 2004)

In re Glorianna K., 24 Cal. Rptr. 3d 582 (Ct. App. 2005)

In re H.A., 128 Cal. Rptr. 2d 12 (Ct. App. 2002)

In re I.G., 35 Cal. Rptr. 3d 427 (Ct. App. 2005) (certified for partial publication)

In re Jaclyn S., 58 Cal. Rptr. 3d 321 (Ct. App. 2007) (certified for partial publication)

In re Jasmine G., 26 Cal. Rptr. 3d 394 (Ct. App. 2005)

In re Jeffrey A., 127 Cal. Rptr. 2d 314 (Ct. App. 2002)

In re Jennifer A., 127 Cal. Rptr. 2d 54 (Ct. App. 2002)

In re Jonathan D., 111 Cal. Rptr. 2d 628 (Ct. App. 2001)

In re Jonathon S., 28 Cal. Rptr. 3d 495 (Ct. App. 2005) (certified for partial publication)

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In re Joseph P., 45 Cal. Rptr. 3d 591 (Ct. App. 2006)
In re Junious M., 193 Cal. Rptr. 40 (Ct. App. 1983) (certified for partial publication)
In re Justin S., 59 Cal. Rptr. 3d 376 (Ct. App. 2007)
In re K.W., 51 Cal. Rptr. 3d 130 (Ct. App. 2006) (certified for partial publication)
In re Kahlen W., 285 Cal. Rptr. 507 (Ct. App. 1991) (certified for partial publication)
In re Karla C., 6 Cal. Rptr. 3d 205 (Ct. App. 2003)
In re Kenneth M., 19 Cal. Rptr. 3d 752 (Ct. App. 2004) (certified for partial publication)
In re Krystle D., 37 Cal. Rptr. 2d 132 (Ct. App. 1994)
In re L.B., 3 Cal. Rptr. 3d 16 (Ct. App. 2003)
In re Levi U., 92 Cal. Rptr. 2d 648 (Ct. App. 2000)
In re Louis S., 12 Cal. Rptr. 3d 110 (Ct. App. 2004)
In re M.A., 40 Cal. Rptr. 3d 439 (Ct. App. 2006)
In re Marinna J., 109 Cal. Rptr. 2d 267 (Ct. App. 2001) (certified for partial publication)
In re Mary G., 59 Cal. Rptr. 3d 703 (Ct. App. 2007)
In re Merrick V., 19 Cal. Rptr. 3d 490 (Ct. App. 2004)
In re Miguel E., 15 Cal. Rptr. 3d 530 (Ct. App. 2004)
Nicole K. v. Superior Court, 53 Cal. Rptr. 3d 251 (Ct. App. 2007)
In re Nikki R., 131 Cal. Rptr. 2d 256 (Ct. App. 2003)
In re Pedro N., 41 Cal. Rptr. 2d 819 (Ct. App. 1995)
In re Robert A., 55 Cal. Rptr. 3d 74 (Ct. App. 2007) (certified for partial publication)
In re S.B., 30 Cal. Rptr. 3d 726 (Ct. App. 2005) (certified for partial publication)
In re S.M., 13 Cal. Rptr. 3d 606 (Ct. App. 2004)
In re Samuel P., 121 Cal. Rptr. 2d 820 (Ct. App. 2002)
In re Suzanna L., 127 Cal. Rptr. 2d 860 (Ct. App. 2002) (certified for partial publication)
In re Terrance B., 50 Cal. Rptr. 3d 815 (Ct. App. 2006)
In re X.V., 33 Cal. Rptr. 3d 893 (Ct. App. 2005)

Colorado

B.H. v. X.H., 138 P.3d 299 (Colo. 2006)

Connecticut

In re Elizabeth I., 2 Conn. L. Rptr. 564 (Conn. Super. Ct. 1990)

Indiana

In re D.S., 577 N.E.2d 572 (Ind. 1991)
In re T.R.M., 525 N.E.2d 298 (Ind. 1988)
Smith v. Tisdal, 484 N.E.2d 42 (Ind. Ct. App. 1985)

Iowa

In re J.W., 528 N.W.2d 657 (Iowa Ct. App. 1995)
In re J.W., 498 N.W.2d 417 (Iowa Ct. App. 1993)
In re R.E.K.F., 698 N.W.2d 147 (Iowa 2005)

Kansas

In re B.G.J. (B.G.J. II), 133 P.3d 1 (Kan. 2006)
In re H.A.M., 961 P.2d 716 (Kan. Ct. App. 1998)
In re H.D., 729 P.2d 1234 (Kan. Ct. App. 1986)
In re J.J.G., 83 P.3d 1264 (Kan. Ct. App. 2004)

Massachusetts

In re Arnold, 741 N.E.2d 456 (Mass. App. Ct. 2001)

Michigan

In re Elliott, 554 N.W.2d 32 (Mich. Ct. App. 1996)
In re I.E.M., 592 N.W.2d 751 (Mich. Ct. App. 1999)
In re Jacobs, 444 N.W.2d 789 (Mich. 1989)

In re N.E.G.P., 626 N.W.2d 921 (Mich. Ct. App. 2001)

In re T.M., 628 N.W.2d 570 (Mich. Ct. App. 2001)

Minnesota

In re J.B., 698 N.W.2d 160 (Minn. Ct. App. 2005)

Missouri

In re C.F., 218 S.W.3d 22 (Mo. Ct. App. 2007)

In re C.K., 221 S.W.3d 467 (Mo. Ct. App. 2007)

Montana

In re C.H., 2003 MT 308, 318 Mont. 208, 79 P.3d 822

In re M.E.M., 635 P.2d 1313 (Mont. 1981)

In re Riffle (Riffle I), 902 P.2d 542 (Mont. 1995)

Nebraska

In re Dakota L., 712 N.W.2d 583 (Neb. Ct. App. 2006)

New Jersey

In re J.O., 743 A.2d 341 (N.J. Super. Ct. App. Div. 2000)

In re Child of Indian Heritage (Indian Child II), 543 A.2d 925 (N.J. 1988)

In re Child of Indian Heritage (Indian Child I), 529 A.2d 1009 (N.J. Super. Ct. App. Div. 1987)

New York

In re Baby Boy C., 805 N.Y.S.2d 313 (App. Div. 2005)

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Ohio

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