

Navigating Conversations with your Attorney in State Child Custody Proceedings



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Many families involved in the child welfare system are navigating a new process that can feel overwhelming and demanding. With legal representation, parents are better equipped to understand their rights, participate meaningfully in court proceedings, and navigate the complexities of the legal system. If you believe the Indian Child Welfare Act [ICWA] ([25 USC §§ 1901 et seq.](#)) applies to your case, there are several proactive steps you can take to ensure your attorney is equipped with all the information necessary to assist you effectively.

The National Indian Child Welfare Association created this resource as a tip sheet for state and Tribal case managers to share with parents or Indian custodians¹ who are navigating state child custody proceedings (i.e., foster care, termination of parental rights, and adoption). This tip sheet provides guidance for parents on communicating effectively with their attorney in ICWA cases and serves as an advocacy tool to support informed and confident engagement throughout the process. While not exhaustive, this resource offers a starting point for parents, providing sample questions to guide conversations with their attorney and practical tips for staying engaged and informed throughout their case.



¹ "Indian custodian" is defined in 25 USC § 1903(6) as any Indian person who has legal custody of an Indian child under Tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

Disclaimer:

This resource is intended for educational and informational purposes only. It is not legal advice. You should consult competent legal counsel for legal advice.

Establish Roles as the First Step in Your Partnership



State courts and child welfare systems can be complex to navigate, and it is common for parents to feel overwhelmed and unsure about what to do next. Getting acquainted with an attorney can be a helpful first step.

If ICWA applies to your case and you are a parent or Indian custodian, you can ask the court to appoint an attorney for you if the court decides you cannot afford one (25 USC § 1912(b)).

Ask your attorney:

- What is your role in my case? What about my role as a parent?
- How are decisions made and what is my involvement in informing these decisions?
- How will we communicate and how often?
- What should I expect in court and how can I prepare?
- What do you need from me before the next hearing?

★ *Tips:*

- **Build a working relationship with your attorney early.** Setting clear expectations at the start helps shape the direction of your case and prevents misunderstandings that can be difficult to fix later.
- **Take notes, ask questions, and follow through on tasks.** Writing things down, speaking up when something isn't clear, and completing any requests from your attorney helps you stay informed and ensure your attorney has what they need to represent you well throughout the case.
- See ***Tips on How to Work with Your Lawyer*** in the resource list for guidance on what to bring to meetings, how to prepare, and key questions you may want to discuss with your attorney.



Communicate Your Family's Story



Your attorney needs to hear your story, from your perspective, because the details you share help them accurately assess the situation and prepare for court proceedings, address your family's needs, anticipate challenges, determine how best to advocate for you, and present your case effectively.

Share with your attorney

- Context about family dynamics.
- Family strengths and your support network (relatives, mentors, community healers, community members, etc.).
- Names of extended family members, trusted community members, or other Tribal families who could be a temporary placement for your child.

★ *Tips:*

- **Describe what happened leading up to the child welfare involvement.** Share the events in your own words, including what you saw, what you understood at the time, and anything that may have contributed to the situation. Your perspective helps your attorney understand the full context.
- **Explain any steps you took to keep your child safe or address concerns.** Tell your attorney about actions you tried, support you sought, or challenges you were facing. These details help them advocate for you and present a more complete picture of your efforts.
- **Write down the key points you want to cover before each meeting with your attorney.** Preparing your questions, concerns, and updates ahead of time helps you stay organized, remain focused, and make sure you don't leave out any important details.

Make the ICWA Connection

ICWA protections begin only when there is “reason to know”² the child is an “Indian child”³. Attorneys need this information early to use the appropriate legal standards (i.e., notice to the child’s parents and Tribe(s), active efforts, placement preferences, higher evidentiary standards, qualified expert witness testimony, etc.).

Ask your attorney:

- Have you been in contact with the Tribe? If so, who have you been in contact with? If not, is there a plan for reaching out?
- Can you help me get connected with the Tribe’s enrollment office?
- Has the court made a formal determination that ICWA applies to my case?

Share with your attorney

- Your child’s Tribal affiliation or possible affiliation.
- Any documentation, enrollment numbers, or family history.
- The names and contact information of relatives who may have additional information about your child’s Tribal affiliation.

³ “Reason to know” means a state court must determine if there is reason to know the child is an Indian child. The ICWA regulations provide examples of when a court has reason to know (25 CFR § 23.107(c)), and ICWA must apply where there is reason to know in a case until otherwise determined that the child does not meet the definition of an Indian child. This helps avoid unnecessary delays or the potential for disrupted placements or proceedings in the future.

⁴ “Indian child” is defined in 25 USC § 1903(4) 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.

⁵ Active efforts are designed to prevent the removal of Native children from their families and to reunify them with their families after removal through affirmative, active, thorough, and timely efforts when safely possible. While not exhaustive, the ICWA regulations provide 11 examples of active efforts <https://www.bia.gov/sites/default/files/dup/assets/bia/ois/ois/pdf/idc2-041405.pdf>

Clarify What ICWA Requires in Your Case

Understanding the foundations of ICWA can help parents know what to expect. When ICWA applies or where there is “reason to know”, **ask your attorney to explain:**

- What active efforts⁴ are being provided to prevent removal and support reunification.
- How placement preferences are being considered if your child has or will be placed outside of their home.
- A parent’s right to notice.
- The child’s Tribes right to notice and intervention.
- How transfer to Tribal court works.
- What standard of proof is required at this point in my case (foster care placement and termination of parental rights standards are different).

★ Tips:

- **Ask for clear explanations.** Ask your attorney to explain each requirement in plain language and request interpreter services if you need them.
- **Share information that supports ICWA compliance.** Ask what documentation or details you can provide—such as names of relatives who may be placement options, Tribal or community services you’ve used, or cultural connections important to you and your child.
- **Request support in learning about ICWA.** Ask your attorney for support or resources to learn more about ICWA and go over specific requirements together.
- **Confirm your attorney’s ICWA experience.** If you’re unsure about their familiarity with ICWA cases, ask them to consult with the Tribal representative (sometimes known as the ICWA or Tribal child welfare worker for the child’s Tribe).

Ask About Case Strategy

When you're involved with the state child welfare system, you may participate in several different types of court hearings, including emergency removal, adjudication, disposition, review hearings, permanency planning, and, in some cases, termination of parental rights (see [A Family's Guide to the Child Welfare System](#)—section 8 of the guide (starting on page 79) outlines how child welfare works with American Indian families). Clear expectations and frequent communication can help ensure you stay on track.

Ask your attorney:

- How do ICWA's protections apply to this stage in my case?
- What action steps should I prioritize before the next hearing?
- Has the Tribe intervened in my case? How is the Tribe going to be involved in upcoming case decisions?

★ Tips:

- **Keep your communications documented.** Write down conversations, questions, and all requests—including your own and any that the agency or court asks of you. Track deadlines, court dates, outcomes, and next steps, including what is expected to happen between hearings. Keeping a clear written record can help ensure nothing is overlooked and shows your progress toward meeting case plan goals.
- **Ask for clarification when you don't understand something.** This can help keep you informed about how the court and child welfare systems in your state/county operate and how you can be involved in upcoming case decisions.



Encourage Tribal Involvement

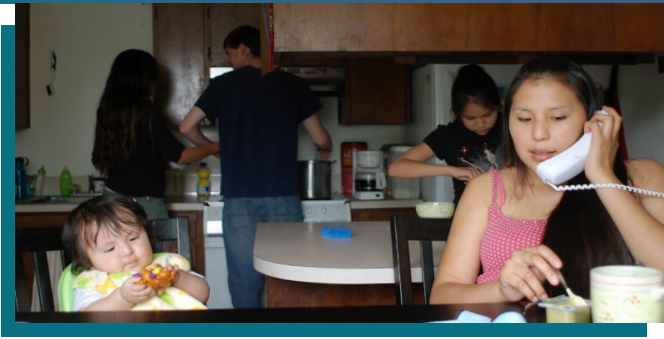
If your child's state case involves their Tribe, the Tribe can participate in decisions about things like where your child's placement and the Tribal or state services your family receives. Sometimes Tribes get involved right away, and sometimes they don't. Even if a Tribe decides not to be involved at first, ICWA allows them to step in later if they choose. Because of this, staying in touch with your child's Tribe is important. Knowing what the Tribe wants and expects can help you better understand the case and speak up for yourself and your child.

Ask your attorney:

- Has the Tribe been notified of the next hearing?
- Is the Tribe planning to have a Tribal representative or advocate present at hearings?
- How involved is the Tribe going to be at this point?

★ Tips:

- **Request regular updates on the Tribes involvement.** Ask about any recommendations the Tribe is making regarding placement preferences, Tribal services for your family, and actions the child welfare agency or court are planning to take.
- **Ask whether the Tribe has been involved before decisions are made.** Share your preferences or concerns with your attorney so they can bring them into the discussion and ensure the Tribe's voice is included in the decision-making process.



Establish Early Contact With Extended Family

ICWA's placement preferences prioritize placement first with extended family members, whether a Native child is placed in foster care or adoption. Identifying relatives early can strengthen the case plan and prevent the placement of your child in a home that does not meet ICWA's placement requirements.

Ask your attorney:

- What information do you need for my family to be considered for placement?
- Can you help make sure the state or private agency caseworker reaches out to them?
- Has the state or private agency reached out to the Tribe for assistance in finding relatives and discussing Tribal placement preferences?
- If my family members cannot be a placement option, are there other ways they can be involved in supporting my child?

★ Tips:

- **Explain how you define family when sharing information.** This helps everyone involved understand who you consider part of your support system and who should be included in conversations about your child.
- **Ask your attorney to consult with the Tribal representative about Tribal definitions of family.** Tribal-specific

terms, cultural standards, and community expectations are important when identifying relatives as placement options or support people.

- **Work closely with your attorney to involve extended family early.** Share all relative names and contact information so your attorney can notify the agency and the Tribe, ensuring your family members are considered as placement options and sources of support.
- **Ask your attorney about the different ways relatives can be involved throughout the case.** This may include participating in case planning meetings, offering cultural or emotional support, helping with transportation or childcare, or staying connected with your child during the case.

Speak Honestly About Your Needs and Barriers

Your attorney can advocate for services relevant to your needs or connect with the Tribal representative to coordinate culturally based services and supports. ICWA centers the child's cultural identity as well as family and community connections—parents can lead in strengthening and maintaining those ties.

Share with your attorney:

- What help you are receiving from the state or private child welfare agency and your child's Tribe to access services that support your case plan goals.
- Any cultural supports and connections—such as cultural classes or activities, parenting programs, peer support groups, or other community-based services—that have helped you in the past or may support you in meeting your case plan.

- New contact information or any changes that could affect your case plan—such as housing, medical needs, employment, transportation, waitlists, scheduling challenges, services you’ve completed, or other major life events.

✦ **Tips:**

- **Document the action steps you have taken.** Share any supporting documents with your attorney, including what you have tried, the outcomes, and any potential solutions. Communicating openly with your attorney gives them the information they need to advocate effectively and help you access additional support.
- **Keep a personal file with all important documents.** This may include court orders, your case plan, certificates or papers showing you finished required services, Tribal contact information, notes about your work with service providers, records of when your visits happened and how they went, summaries of meetings and court hearings, and copies of any communication with your attorney, caseworker, and service providers. Request copies of documents from the agency or court if you don’t already have them.
- **Stay organized throughout your case.** Being organized helps you and your attorney work together, stay on track with your case plan, and quickly find information you may need to share with the court.



Resources

Bureau of Indian Affairs. (2025). ICWA Designated Agents Listing and ICWA Notice. <https://experience.arcgis.com/experience/3381f279c3fa4b43bc2495eaddfee786>

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The National Indian Child Welfare Association (NICWA) protects the safety, health, and cultural identity of all Native children and families—today and for future generations—by upholding culturally based services, community strength, and Tribal sovereignty.

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