

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712B.9 Child custody proceeding; notification to parent, Indian custodian, and tribe; additional preparation days; suspension of proceedings; prejudice by lack of notice; determination as to which tribe child is member; circumstances leading to belief child is an Indian; determining, documenting, and contacting extended family; determination or testimony by authorized person; documentation of efforts.

Sec. 9.

(1) In a child custody proceeding, if the court knows or has reason to know that an Indian child is involved, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary in the same manner described in this subsection. The secretary has 15 days after receipt of notice to provide the requisite notice to the parent or Indian custodian and the tribe.

(2) 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 or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovers that the child may be an Indian child, all further proceedings shall be suspended until notice is received by the tribe or the secretary as set forth in this subsection. If the court determines after a hearing that the parent or tribe was prejudiced by lack of notice, the prior decisions made by the court shall be vacated and the case shall proceed from the first hearing. The petitioner has the burden of proving lack of prejudice.

(3) The department shall actively seek to determine whether a child at initial contact is an Indian child. If the department is able to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership. If the department is unable to make an initial determination as to which tribe or tribes a child may be a member, the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.

(4) Circumstances under which a court, the department, or other party to a child custody proceeding has reason to believe a child involved in a child custody proceeding is an Indian include, but are not limited to, any of the following:

(a) Any party to the case, Indian tribe, Indian organization, or public or private agency informs the court that the child is an Indian child.

(b) Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child.

(c) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

(d) 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.

(e) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(5) The department shall exercise due diligence to determine, document, and contact the Indian child's extended family members in accordance with the fostering connections to success and increasing adoptions act of 2008, Public Law 110-351. If applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

(6) A written determination or oral testimony by a person authorized by the Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in a tribe, is conclusive as to that tribe.

(7) The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

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Popular Name: Probate Code