

ICWA and Payment Reminders

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Though its implications in the area of juvenile law are fairly easy to grasp, the influence of the Indian Child Welfare Act (ICWA), 25 USC 1901 et seq., on probate proceedings may not be as obvious a connection. Recent modifications to the Michigan Court Rules and certain SCAO forms serve to reinforce the necessity of addressing ICWA issues in minor guardianship cases. These changes were effective May 1, 2010.

New MCR 3.002 provides definitions relative to ICWA proceedings and specifically includes proceedings under the Estates and Protected Individuals Code (EPIC). For example, under MCR 3.002(1)(a), the term “foster-care placement” is defined as “any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.”

In relation to probate proceedings, MCR 5.109 is a new rule that specifically addresses the notice requirements for guardianship proceedings concerning an Indian child. This rule dictates the type of service and form of the notice that must be given to the child’s parent or custodian, as well as the Indian child’s tribe. It is imperative that these steps be pursued carefully in instances where the child falls under ICWA.

In addition, new subsection (E) of MCR 5.402 addresses details such as jurisdiction, transfer and intervention. For example, pursuant to MCR 5.402(E)(4), the Indian custodian of the child and the Indian child’s tribe have a right to intervene at any point in the proceeding pursuant to ICWA.

As a reminder, the Chapter 5 Michigan Court Rules regarding ICWA and EPIC guardianships do not apply to juvenile guardianships established under the Juvenile Code and MCR 3.979. Those guardianships are controlled by the relevant rules under Chapter 3 of the Michigan Court Rules.

As is generally the case, court rule revisions come with form changes. When petitioners are completing a *Petition*

for Appointment of Limited Guardian of Minor (PC650) or a *Petition for Appointment of Guardian of Minor (PC651)*, they will be required to state whether the child would be covered by the provisions of ICWA. The forms also provide an option for indicating that the child’s status in relation to ICWA is unknown. A new form was created for use in complying with the notice provisions under MCR 5.109. It is PC678, *Notice of Guardianship Proceedings Concerning an Indian Child*.

Reminders

For court-appointed attorneys, please be sure to check the Probate Court Web site at www.oakgov.com/probate for the most recent versions of the *Statement of Services* forms before submitting requests for payments. Using the wrong form could delay your payment. Please note that there are separate forms for payment of general probate matters and mental health cases.

Follow-up questions regarding the processing of your payment should be directed to the Business Office at 248-858-1591. If you are new to court appointments in Oakland County, please be sure to check the Web site for information on registering as a vendor. The Oakland County Probate Court Web site is also an excellent place to find basic information regarding procedures, filing fees and required forms. Information regarding Judge On-Line, Basic Training classes for guardians and conservators, and useful phone numbers are included as well.

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