

Adoption Release¹ Checklist – Indian Child (Preliminary Matters)

If the court has an active abuse and neglect case and the parent is releasing his/her parental rights, the court MUST execute the release and termination order under the Adoption Code.²

A release requires **BOTH** parents' parental rights over a child to be terminated. See [MCL 710.22\(u\)](#); [MCL 710.28\(1\)\(a\)](#); [MCL 710.29\(8\)](#). Once one parent's/guardian's rights over the child are released, the other parent's parental rights **MUST** be released or involuntarily terminated in order to commit the child to the DHHS or a child placing agency. See [MCL 710.29\(8\)](#); [MCL 710.31](#).

Note that a release may *only* be given to the DHHS or a child placing agency.³ See [MCL 710.28\(5\)](#). A parent/guardian may not release his/her parental rights to the court or third party. Refer to the Michigan Judicial Institute's *Consent to Adopt Checklist* if a parent wants to consent to a third party adoption.

To make sure all the preliminary steps have been followed leading up to a release hearing, the court should make the following inquiries and determinations:

- If child's parent/guardian requested the release, a court-ordered investigation was completed. See [MCL 710.29\(7\)](#). But see, *In re Blankenship*, 165 Mich App 706, 714 (1988) (court's questioning of parties during release procedure was sufficient to satisfy the investigation requirement of [MCL 710.29\(7\)](#)⁴).
- Ensure court file contains any requests made to Tribes seeking information or verification on a child's or parent's Tribal status. See Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act*, 81 Federal Register 96476, B.7 (2016).

¹ Release is "a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency." [MCL 710.22\(u\)](#).

² See *In re Hernandez/Vera*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 312136) (setting out procedures the trial court should have followed when a respondent-parent executes a release and termination of parental rights under the Adoption Code after the initiation of a child protective proceeding under the Juvenile Code); *In re Buckingham*, 141 Mich App 828, 837 (1985) (court's failure to properly execute a release and termination of parental rights under Adoption Code will invalidate a termination order). Unpublished opinions are not precedentially binding under the rule of stare decisis. [MCR 7.215\(C\)\(1\)](#).

³ For a detailed discussion on Freeing a Child for Adoption, see the Michigan Judicial Institute's *Adoption Proceedings Benchbook*, Chapter 2.

⁴ Formerly [MCL 710.29\(6\)](#).

- Child is or the court has reason to believe the child is an Indian child as defined in [MCR 3.002\(12\)](#).⁵ If the child is not an Indian child, refer to the Michigan Judicial Institute's [Adoption Release Checklist \(Non-Indian Child\)](#).
 - Ask each participant if the participant knows or has reason to know whether the child is an Indian child and record each participant's response. [25 CFR 23.107\(a\)](#).
 - If the consenting parent evidences by written request or statement on the record a desire for anonymity, the court must keep relevant documents pertaining to the inquiry confidential and under seal. [25 CFR 23.107\(d\)](#). **Note** that a parent's request for anonymity does not relieve the court or DHHS from complying with the ICWA. [25 CFR 23.107\(d\)](#).
- If there is reason to believe the child is an Indian child, but there is insufficient evidence to determine such, the court must confirm due diligence was used to work with all relevant Tribes to verify membership or eligibility for membership, and treat the child as an Indian child until the child is determined on the record that the child does not meet the definition of an Indian child. [25 CFR 23.107\(b\)](#).
- Court has determined it has jurisdiction because the child is domiciled or resides off the Indian reservation and is not a ward of the Tribal court. See [25 USC 1911\(b\)](#); [MCL 712B.7\(3\)](#).
- Child's Indian Tribe⁶ has been notified of the proceedings.⁷ See [MCR 3.807\(B\)\(2\)](#).
- Placement preferences under [MCL 712B.23\(2\)](#)⁸ will be followed or find on the record or in writing that good cause to the contrary can be shown.⁹ [25 USC 1915\(a\)-\(b\)](#); [MCL 712B.23](#); [25 CFR 23.129\(c\)](#); [25 CFR 23.132\(c\)](#).

⁵ *Indian child* is "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe as determined by that Indian tribe." [MCR 3.002\(12\)](#).

⁶ "*Indian child's tribe* means: (1) [t]he Indian tribe in which an Indian child is a member or eligible for membership; or (2) [i]n the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in [[25 CFR 23.109](#)]." [25 CFR 23.2](#). See also [MCL 712B.3\(j\)](#) and [MCR 3.002\(13\)](#), which contain substantially similar language except that where an Indian child is a member of or eligible for membership in more than one tribe, it defines the *Indian child's tribe* to be the "Indian tribe with which the child has the *most* significant contacts[.]" [25 USC 1903\(5\)](#), which also contains substantially similar language except that where an Indian child is a member of or eligible for membership in more than one tribe, it defines the *Indian child's tribe* to be the "Indian tribe with which the Indian child has the *more* significant contacts[.]" (Emphasis added).

⁷ Copies of the notice must also be sent to the appropriate Regional Director, which for Michigan is the Midwest Regional Director. [25 CFR 23.11\(a\)](#); [25 CFR 23.11\(b\)\(2\)](#).

Note: [25 USC 1915\(c\)](#) and [25 CFR 23.129\(b\)](#) require the court to give weight to a consenting parent's desire for anonymity when applying placement preferences.

- Ensure the DHHS informed the parent/guardian what child placing agencies serve the county, and if a request was made, the DHHS referred the parent/guardian to one of the agencies. [MCL 710.28\(6\)](#).

Hold a release hearing.¹⁰

For court forms related to adoption proceedings, see the One Court of Justice [website](#).

⁸ "Absent good cause to the contrary, the adoptive placement of an Indian child must be in the following order of preference: (a) A member of the child's extended family[;] (b) A member of the Indian child's tribe[;] (c) An Indian family." [MCL 712B.23\(2\)](#). "The court must, where appropriate, also consider the placement preference of the Indian child or the Indian child's parent." [25 CFR 23.130\(c\)](#). "This language does not require a court to follow a child's or parent's preference, but rather requires that it be considered where appropriate." Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act*, 81 Federal Register 96476, H.1 (2016). "[A] preferred placement may not be excluded from consideration merely because the placement is not located in the State where the proceeding is occurring." *Guidelines for Implementing the Indian Child Welfare Act, supra* at H.3.

⁹ See [MCL 712B.23\(5\)](#) and [25 CFR 23.132\(c\)](#) for conditions a court *should* consider when determining whether good cause exists to deviate from the order of preference, and [MCL 712B.23\(4\)](#), [25 CFR 23.132\(d\)](#), and [25 CFR 23.132\(e\)](#) for conditions the court may *not* consider for deviation purposes.

¹⁰ Videoconferencing technology cannot be used for the release hearing. [MCR 3.804\(B\)\(3\)](#).

