

## Consent to Adopt<sup>1</sup> Checklist – Indian Child (Consent Hearing)

Hold a consent hearing *promptly* upon examining and approving the investigative report or foster family study OR at an interested party's request, *within seven days* of an investigative report or foster family study filing.<sup>2, 3</sup> [MCL 710.44\(1\)](#); [MCR 3.804\(B\)\(1\)](#).

**Note:** “Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with [\[25 CFR 23.125\]](#).”  
[25 CFR 23.125\(d\)](#).

**The court has 14 days from receipt of the investigative report to enter an order terminating the parent's parental rights (14-day period may be extended for good cause shown or when a hearing is held before a termination order). See [MCL 710.51\(1\)-\(2\)](#).**

Procedures to follow during the consent hearing:

- Call case, identify case number, full name of child, name of child's tribe and identification number (if one).
- Verbatim record is made of consent hearing.<sup>4</sup> See [MCL 710.44\(1\)](#).
- Determine Indian child status and state on the record that the child is an Indian child.
- Swear in witnesses, establish paternity and maternity, establish witness date of birth and child's date of birth and birthplace.
- Ensure Indian child is at least 10 days old. See [MCL 712B.13\(1\)\(a\)](#); [MCR 3.804\(2\)](#).
- Ensure jurisdiction is proper (i.e., that an Indian Tribe does not have exclusive jurisdiction over the proceeding). [MCR 3.807\(B\)\(1\)](#). Dismiss case if jurisdiction is improper.

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<sup>1</sup> *Consent* means “a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.” [MCL 710.22\(f\)](#).

<sup>2</sup> Videoconferencing technology cannot be used for the consent hearing. [MCR 3.804\(B\)\(3\)](#).

<sup>3</sup> For a detailed discussion on Freeing a Child for Adoption and Adoption Proceedings Involving an Indian Child, see the Michigan Judicial Institute's *Adoption Proceedings Benchbook*, Chapters 2 and 11.

<sup>4</sup> Although statutory language requires a verbatim record if a parent or guardian is executing the consent, it is good practice to create a verbatim record for all consent hearings.

- Ensure all interested parties have been notified of the hearing, including the Indian child's Tribe and Indian custodian (if applicable), or where the Indian child's parent, Indian custodian, or Tribe is unknown, the Secretary of the Interior.<sup>5</sup> See [MCL 710.24a](#); [MCR 3.800\(B\)\(2\)](#); [MCR 3.804\(B\)\(2\)](#); [MCR 3.807\(B\)\(2\)](#).
  
- Ensure person consenting is:
  - a parent (if the parent is a minor, his/her consent is not valid unless a parent, guardian, or guardian ad litem of the minor parent has also executed the consent. [MCL 710.43\(4\)](#)); OR
    - Note:** Both parents' parental rights must be terminated in order to issue an adoption order UNLESS it is a stepparent adoption and the parent having legal custody of the child is married to the petitioner. See [MCL 710.43\(7\)](#).
  
  - the prospective adoptee 18 years of age or older; OR
  
  - the court or tribal court with permanent custody of the child; OR
  
  - an authorized representative of DHHS or a child placing agency to whom the child has been permanently committed by court order; OR
  
  - the child's guardian, only if he/she has obtained authority to execute the consent from the appointing court; OR
  
  - the parent's guardian, only if he/she has obtained authority to execute the consent from the appointing court; OR
  
  - the prospective adoptee between 14-17 years of age consenting to his/her adoption alongside the parent's, guardian's, court's, the DHHS's, or the child placing agency's consent. See [MCL 710.43](#); [MCL 712B.13\(1\)](#); [MCR 3.804\(A\)\(1\)](#).
  
- For an *unrepresented minor parent* consenting to the adoption, ensure the adoption attorney or child placing agency provided the minor parent with an opportunity to meet with an attorney, unrelated to the adoption proceedings, to discuss the legal ramifications of his/her consent. See [MCL 710.55a\(2\)](#).

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<sup>5</sup> 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\(b\)\(2\)](#).

- If *prospective adoptee* is consenting, affirm the following:
  - Explain that by signing the consent, he/she is consenting to acquire permanently the adopting parents as legal parents as though he/she had been born to the adopting parents. [MCL 710.44\(7\)](#).
  - Explain that by signing the consent, he/she is consenting to the termination of right to be an heir at law of his/her former parent(s) whose rights have been terminated.
- Ensure a verified accounting statement was filed that itemizes all money or things of value received, promised, or paid in connection with the consent. [MCL 710.44\(5\)](#); [MCL 710.44\(8\)\(c\)](#).
- For direct placement consent, ensure that the parent/guardian filed a verified statement that affirms the following:
  - Parent/guardian has received a list of community and federal resource support groups and information regarding the duties of adoption facilitators as described in [MCL 722.956\(1\)\(c\)](#).
  - Parent/guardian has received counseling related to the adoption of his/her Indian child or waived the counseling.
  - Parent/guardian has not received or been promised any money or anything of value for the consent to adoption of the Indian child, except for lawful payments that are itemized on the verified accounting statement filed with the court.
  - Validity/finality of the consent is not affected by any collateral or separate agreement between the parent/guardian and the adoptive parent.
  - Parent/guardian understands that it serves the Indian child's welfare for the parent to keep the child placing agency, court, or DHHS informed of any health problems that the parent develops that could affect the Indian child.
  - Parent/guardian understands that it serves the Indian child's welfare for the parent/guardian to keep his/her address current with the child placing agency, court, or DHHS in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older. [MCL 712B.13\(6\)\(a\)-\(f\)](#).
- For a direct placement consent, fully explain to the parent/guardian his/her legal rights and that consenting to the child's adoption means he/she is voluntarily and permanently

relinquishing his/her rights to the Indian child, [MCL 710.44\(6\)](#), including:<sup>6</sup>

- Right to have/seek care and custody of child. [MCL 710.44\(8\)\(c\)\(i\)](#); [MCL 722.2](#).
- Right to have/seek parenting time with child. [MCL 710.44\(8\)\(c\)\(ii\)](#).
- Right to inherit from child or have child inherit from parent. [MCL 710.44\(8\)\(c\)\(iii\)](#); [MCL 700.2103\(b\)](#).
- Right to services and earnings of child. [MCL 710.44\(8\)\(c\)\(iv\)](#); [MCL 722.2](#).
- Right to determine child's schooling, religious training, and parenting practices. [MCL 710.44\(8\)\(c\)\(v\)](#).
- Ask the parent/guardian to verbally affirm whether he/she is voluntarily and permanently relinquishing these rights.
- Ensure the consenting parent understands that his/her consent may be withdrawn for any reason at any time before entry of a final order of adoption by filing a written demand requesting the return of his/her Indian child. [MCL 712B.13\(3\)](#), [MCL 712B.13\(6\)](#).
- Ensure the consenting parent understands that parental rights may be reinstated without further hearing if the adoption of the child is not confirmed. [MCL 710.62](#).
- Advise parent that he/she can request a rehearing or appeal within 21 days after an order is entered terminating his/her parental rights. See [MCL 710.64](#); [MCR 7.104](#).
- Certify that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent, and that either the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood. [MCL 712B.13\(1\)\(a\)](#); [MCR 3.804\(B\)\(2\)](#).
- Explain to parent his/her continuing parental responsibilities:
  - Duty to support continues unless modified or terminated by court, or if minor is emancipated by operation of law. [MCL 722.3](#); *In re Beck*, 488 Mich 6, 14-15 (2010).

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<sup>6</sup> These rights are specified by statute in the context of an out-of-court consent; however, it is good practice to review these items on the record during a consent hearing.

- Generally not relieved from support arrearages.<sup>7</sup>
- May order visitation between the Indian child and one or more members of the Indian child's tribe and extended family members. See [MCL 712B.27\(2\)](#).
- Determine whether to accept or deny the consent.
  - DENY consent and state reasons for denial on the record (or in writing), [MCL 710.63](#); OR
  - ACCEPT consent if consent is genuine, the person has authority to consent, and it is in the child's best interests. [MCL 710.51\(1\)\(a\)-\(b\)](#).
- Ensure consent contains the following information:
  - The Indian child's name and date of birth.
  - The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
  - The name and address of the consenting parent.
  - A sworn statement from the translator, if any, attesting to the accuracy of the translation.
  - The signature of the consenting parent verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate consent at any time.
  - The name and address of the person or entity that will arrange the preadoptive or adoptive placement. [MCL 712B.13\(2\)\(a\)-\(e\)](#), (g).
  - Clearly sets out the conditions attached to the consent. See [25 CFR 23.126\(a\)](#).
- Have consenting person sign the consent. See [MCL 710.44\(1\)](#).
- Sign the consent.
- Collect nonidentifying and identifying information from consenting parent/guardian. See [MCL 710.27\(4\)](#).

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<sup>7</sup> See [www.legislature.mi.gov/Publications/FriendofCourt.pdf](http://www.legislature.mi.gov/Publications/FriendofCourt.pdf); [www.courts.mi.gov/administration/scao/resources/documents/publications/manuals/focb/focb\\_hbk.pdf](http://www.courts.mi.gov/administration/scao/resources/documents/publications/manuals/focb/focb_hbk.pdf).

- Sign the order terminating parental rights,<sup>8</sup> ensure placement preferences under [MCL 712B.23\(2\)](#)<sup>9</sup> are followed (or find on the record or in writing that good cause to the contrary was shown),<sup>10</sup> and approve formal placement of child with the petitioning adoptive parent.<sup>11</sup> [MCL 710.51\(1\)](#); [25 CFR 23.129\(c\)](#); [25 CFR 23.132\(c\)](#).

**Note:** The court must not enter a termination order against a custodial parent married to the petitioner in a stepparent adoption. See [MCL 710.51\(5\)](#).

- Child becomes court ward pending adoption order UNLESS it is a stepparent adoption or child is being placed for adoption in Michigan by an agency of another state or country that prohibits providing consent at time of placement. See [MCL 710.51\(3\)-\(4\)](#).

### **Withdrawal of consent:**

- BEFORE** entry of a final order of adoption parent files a written demand requesting return of the Indian child, the court must order return of the Indian child. [MCL 712B.13\(3\)](#); [MCR 3.804\(C\)](#). Any person or entity that arranged the preadoptive or adoptive placement must be notified. [25 CFR 23.128\(d\)](#).
- AFTER** entry of a final order of adoption parent files a petition to vacate the order of adoption and alleges that his/her consent was obtained through fraud or duress, the court must vacate the final order of adoption, revoke the consent, and return the child IF the court finds that the consent was obtained through fraud or duress *and the adoption has been effective for less than 2 years*.<sup>12</sup> [MCL 712B.27\(5\)](#). All parties to the adoption

<sup>8</sup> Once the termination order is entered, the consent to adopt cannot be withdrawn. [MCL 710.51\(3\)](#).

<sup>9</sup> "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.

<sup>10</sup> 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.

<sup>11</sup> To formally place the child in a direct placement or relative adoption after one parent or guardian has consented to the adoption, the other parent's or guardian's rights over the child must be terminated.

<sup>12</sup> An adoption may not be vacated pursuant to [25 USC 1913\(d\)](#) or [MCL 712B.27\(5\)](#) if the adoption has been effective for at least two years, unless otherwise permitted by law. [25 USC 1913\(d\)](#); [MCL 712B.27\(5\)](#).

proceedings and the Indian child's Tribe must be notified. [25 CFR 23.136\(b\)](#).

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

