

Consent to Adopt¹ Checklist – Indian Child (Preliminary Matters)

A parent may consent to a direct placement adoption, a stepparent adoption, or a relative adoption.² Refer to the Michigan Judicial Institute's *Adoption Release Checklist* if a parent wants to release a child to the DHHS or a child placing agency.

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

- An adoption petition has been filed. See [MCL 710.46\(1\)](#); [MCR 3.804\(B\)\(1\)](#).
- A full investigation was conducted that considered the adoptee's best interests, the adoptee's family background (including names and identifying data regarding the parents if obtainable), and the reason for the adoptee's placement away from the parents.³
 - 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).
- A written report was filed within three months of the court-ordered investigation or the court waived the full investigation and a foster family study was completed or updated. [MCL 710.46\(2\)-\(3\)](#).
- Child is or the court has reason to believe the child is an Indian child as defined in [MCR 3.002\(12\)](#).⁴ If the child is not an Indian child, refer to the Michigan Judicial Institute's *Consent to Adopt Checklist (Non-Indian Child)*.

¹ *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\(j\)](#).

² 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.

³ Once an adoption petition is filed, the court must direct an employee or agent of a child placing agency, the DHHS, or the court to conduct a full investigation. [MCL 710.46\(1\)](#).

⁴ *Indian child* means "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\(12\)](#).

- 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 Tribe⁵ has been notified of the proceedings.⁶ See [MCR 3.807\(B\)\(2\)](#).
- Placement preferences under [MCL 712B.23\(2\)](#)⁷ will be followed or find on the record or in writing that good cause to the contrary can be shown.⁸ [25 USC 1915\(a\)-\(b\)](#); [MCL 712B.23](#); [25 CFR 23.129\(c\)](#); [25 CFR 23.132\(c\)](#).

⁵ "*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\(i\)](#) 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).

⁶ 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\(b\)\(2\)](#).

⁷ "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.

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.

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.⁹ [MCL 710.44\(1\)](#); [MCR 3.804\(B\)\(1\)](#).

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

⁸ 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.

⁹ Videoconferencing technology cannot be used for the consent hearing. [MCR 3.804\(B\)\(3\)](#).

