

Appointment of Guardian of Minor Indian Child Checklist

The following checklist is based on [MCR 5.404](#).

Voluntary Consent to Guardianship of Indian Child

- Ensure that both parents or the Indian custodian intend to execute a consent to a petition for guardianship under [MCL 712B.13](#) and the court rules before proceeding. [MCR 5.404\(A\)\(3\)](#).
- Consent meets requirements in [MCR 5.404\(B\)\(1\)](#)¹ and contains all information required by [MCL 712B.13\(2\)](#).
- Certify that parent/Indian custodian received a full, detailed explanation of the terms/consequences of the consent, and that he/she fully understood the explanation of the terms/consequences of consent (in English or language parent/Indian custodian understood).
- Ensure notice of hearing was sent to the persons prescribed in [MCR 5.125\(A\)\(8\)](#) or [MCR 5.125\(C\)\(20\)](#), and in compliance with [MCR 5.109\(1\)](#). [MCR 5.404\(B\)\(2\)](#).
- Determine if tribe has exclusive jurisdiction. [MCR 5.404\(B\)\(2\)\(a\)](#). Is the Indian child's residence or domicile on an Indian reservation or is the Indian child a ward of the Tribal court?
 - YES, must dismiss case, notify the Tribal court of transfer, and ensure all case information is forwarded to the Tribal court. See [25 USC 1911\(a\)](#); [25 CFR 23.110\(a\)](#); [MCL 712B.7\(1\)](#); [MCR 5.402\(E\)\(2\)](#).

¹ Videoconferencing technology may be used for the guardianship consent hearing required to be held under [MCL 712B.13\(1\)](#) and this subrule. [MCR 5.404\(B\)\(1\)](#).

- NO, court has concurrent jurisdiction. See [25 USC 1911\(b\)](#); [MCL 712B.7\(3\)](#). If either parent, the Indian custodian, or the Indian child's Tribe requests that the proceeding be transferred to the Tribal court, the court must transfer the case to the Tribal court unless either parent objects, the court finds good cause not to transfer the case to the Tribal court, or the Tribal court declines the transfer. [25 USC 1911\(b\)](#); [MCL 712B.7\(3\)](#); [25 CFR 23.117](#).
- Determine that a valid consent to a petition for guardianship has been executed by both parents or the Indian custodian. [MCR 5.404\(B\)\(2\)\(b\)](#). See also [MCL 712B.13](#).
- Determine if it is in the Indian child's best interest to appoint a guardian. [MCR 5.404\(B\)\(2\)\(c\)](#).
- Determine if a lawyer-guardian ad litem should be appointed to represent the Indian child. [MCR 5.404\(B\)\(2\)\(d\)](#).
- Based on above determinations, decide whether to appoint guardian.

Involuntary Consent to Guardianship of Indian Child

- Ensure that petitioner stated in petition what active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. [MCR 5.404\(A\)\(3\)](#).
- Ensure notice of hearing was sent to the persons prescribed in [MCR 5.125\(A\)\(8\)](#) or [MCR 5.125\(C\)\(20\)](#), and in compliance with [MCR 5.109\(1\)](#). [MCR 5.404\(C\)\(1\)](#).
- Ensure MIFPA's and ICWA's notice requirements are met. See [25 USC 1912\(a\)](#); [MCL 712B.9](#).
- May permit use of videoconferencing technology in accordance with [MCR 2.407](#), if requested by a participant or sua sponte.² [MCR 5.140\(A\)](#). "[I]f the subject of the petition wants to be physically present, the court must allow the individual to be present."³ [MCR 5.140\(C\)](#).
- Determine if tribe has exclusive jurisdiction. [MCR 5.404\(C\)\(1\)\(a\)](#).

² If videoconferencing technology is used, it must be "in accordance with the standards established by the State Court Administrative Office[.]" and the proceeding "must be recorded verbatim by the court." [MCR 5.140\(D\)](#).

³ "The right to be physically present for the subject of a minor guardianship applies only to a minor 14 years of age or older." [MCR 5.140\(C\)](#).

- Determine if the placement with the guardian meets the placement requirements set out in [MCR 5.404\(C\)\(2\)-\(3\)](#). [MCR 5.404\(C\)\(1\)\(b\)](#).
- Determine whether clear and convincing evidence exists showing active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that active efforts were unsuccessful, and that continued custody of child by parent/ Indian custodian likely to result in serious emotional/physical damage to child. [MCL 712B.15\(2\)](#); [MCR 5.404\(F\)\(1\)](#).
 - Ensure evidence includes the testimony of at least one qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. [MCL 712B.15\(2\)](#).
- Determine if it is in the Indian child's best interest to appoint a guardian. [MCR 5.404\(C\)\(1\)\(c\)](#).
- Determine if a lawyer-guardian ad litem should be appointed to represent the Indian child. [MCR 5.404\(C\)\(1\)\(d\)](#).
- Determine whether each parent wants to consent to the guardianship if consents were not filed with the petition, and proceed under [MCR 5.404\(B\)](#) if each parent wants to consent. [MCR 5.404\(C\)\(1\)\(e\)](#).
- Based on above determinations, decide whether to appoint guardian and place the Indian child in accordance with [MCR 5.404\(C\)\(2\)-\(3\)](#).

