

# Notify an Indian tribe in a minor guardianship case

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Use this if you're filing in a Washington State court to ask a judge to appoint a guardian for children who are (or might be) Indian children.

### 1. Fast facts

# Why do Indian tribes need notice of a minor guardianship case?

Federal and state law provide extra protections to Native American families in certain types of court cases. Along with giving notice to the children's parents and any Indian custodians, you must give the children's tribes (or possible tribes) notice that you've filed a court case affecting custody.

This gives the tribe the chance to determine if the children are tribal members or eligible to be tribal members. If so, the tribe has the right to take part in the



court case.

# Giving the tribe notice is just one step in a procedure that can take a long time or feel complicated.

You must thoroughly investigate any tribal relative connections. If the child is an Indian child, you must prove to a judge that there were active efforts to provide services and programs to the children's parents to try to keep the children with the parents.

If you don't correctly follow the required procedure, you risk not getting a court order or having your court order canceled later. <u>Talk</u> to a lawyer who's familiar with the ICWA.

#### When do I have to give notice to an Indian tribe?

When you file a guardianship case, here's when you must give an Indian Tribe notice:

- You know that the children are or may be tribal members.
- The children are eligible to be tribal members and have a parent who's a tribal member.
- You learn about a child's possible tribal heritage, **even if you learn this** later in the case.

**You may have to give notice to more than one tribe.** The children might be members of more than one tribe, or you might not be sure which tribe the children belong to. The instructions apply to all tribes the same.



**You must investigate and give notice** to every tribe with possible connections to the children. Only a tribe can determine if children are tribal members or eligible for tribal membership. Each tribe has different eligibility requirements.

#### ()How do I give the tribe notice?

You must send a special notice plus a copy of your Guardianship Petition to the Indian children's tribe by registered mail with return receipt requested.

You must call the tribe or look online
(https://www.federalregister.gov/documents/2023/03/22/2023-05861/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice#:~:text=The%20regulations%20implementing%20the%20Indian%20Child%20Welfare%20to find out who to send it to (the tribe's designated agent) and the address where you must send it.

#### What if we don't know which tribe to give notice to?

You must instead mail the papers to the Secretary of the Interior's Regional Director, Bureau of Indian Affairs (BIA), in Portland, Oregon. The ICWA notice has the address listed on it.

The court forms assume you'll always send a copy to the BIA. You should do this to cover all possibilities.

### What happens after I mail the notice?



Once you get back your receipts of delivery to the tribe or tribes and BIA, file the confirmations of receipt in your case. Your court case can't go forward until at least **10 days after the tribe gets notice**. The tribe can ask for an extra 20 days after that to get ready for any hearing scheduled.

The Secretary of Interior has 15 days to give notice to the tribe. If the Secretary can't verify within 15 days that the children meet the legal criteria of Indian children, or can't find the parents or Indian custodians, the Secretary will tell the court how much more time, if any, is needed to complete the verification or the search.

If a tribe responds, the tribe may choose to take part in the case if the children are tribal members or eligible for membership. If the tribe doesn't respond to written inquiries, make sure you mailed the notice to the correct address for the tribe's designated agent. You might get help contacting the tribe from the Portland BIA office (https://www.bia.gov/regional-offices/northwest) or the BIA's central office in Washington, D.C (https://www.bia.gov/bia).

## 2. Step-by-step

1. **Make copies.** You need one copy of the completed <u>ICWA notice</u> for yourself, one for the judge, one for each parent, any Indian custodian, one for every tribe the child is or might be affiliated with, and one for the BIA. You must also make a copy of your completed Guardianship Petition for every tribe you must mail the ICWA notice to (and/or the Department of Interior, if you're giving them notice).



- 2. **Organize the copies in sets**. You'll need one set for every person and tribe you're sending notice to and one for the BIA. You don't have to include a copy of the Proof of Mailing. Put each set of papers into an envelope addressed to the parent, Indian custodian, BIA, and to each tribe, with your return address. You'll use these sets to give notice.
- 3. You must use certified mail, return receipt requested to send a set of copies to the parent, Indian custodian, BIA, and tribes.
- 4. **When you get all the green receipts back**, make copies and attach them to the Proof of Mailing. Keep the green receipts.
- 5. **File the originals.** Bring the original of the ICWA Notice and the Proof of Mailing, plus your copy of each, to the clerk's office for the Superior Court where you filed the Guardianship Petition. The clerk keeps the originals. Ask the clerk to date-stamp your copy of both forms.

### 3. Forms

Form attached:

**Indian Child Welfare Act Notice** (GDN M 401)

Form attached:

**Indian Child Welfare Act Notice - Attachment** (GDN M 402)



Form attached:

**Proof of Mailing (Indian Child Welfare Act)** (GDN M 403)

# Tips for filling out the Indian Child Welfare Act Notice, GDN 401

**To:** In the blank, put the names of the children's parents.

**Indian Custodian/s:** The law defines "Indian custodian" as an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child, or to whom a parent has given temporary care, physical custody, and control of an Indian child.

If the child has an Indian custodian, put the custodian's name here. If they don't, put "none" here.

**Designated ICWA Tribal Agent/s**: Put the name or names of any <u>tribal agents</u> here.

**Court Hearing:** Check the first box if there's a hearing scheduled in the case. Make sure you include a copy of any hearing notice with the court papers you're sending the tribe.

**To the Petitioner:** make sure you follow these instructions.

# Tips for filling out the Indian Child Welfare Act Notice Attachment, GDN M 402

Fill this out only if the guardianship case covers more than one child. Fill it out as completely as you can in the same way you filled out the main Notice.



#### Tips for filling out the Proof of Mailing, GDN M 403

**Form section 2.** If you're sending the tribe a hearing notice or other court papers, make sure you check **other documents** and list what you mailed besides the Petition and ICWA notice.

**Indian custodian/s if any:** Check the box and fill out this section only if the child has an Indian custodian.

**Form section 3. Other information (if any):** Most people won't put anything here.

**WashingtonLawHelp.org** gives general information. It is not legal advice. Find organizations that provide free legal help on our <u>Get legal help</u> page.

Superior Court o	f Washing	ton, County	/ of
In the Guardianship of:			
		No	
Respondent/s (minors/childre	n)	(Gı	ian Child Welfare Act Notice uardianship) (BIAN)
			rk: Do <u>not</u> file in a public access file R 22(c)(3), 25 CFR 23.11(e)(7))
Indian Chil	d Welfar	e Act Noti	ce (Guardianship)
To: Parent/s (name/s):			
Indian Custodian/s, if any (nam	ne/s):		
Designated ICWA Tribal Agent	/s (name/s a	and tribe/s):	
Regional Director: Portland Re Portland, Oregon 97232.	gional Direc	tor, Bureau of	Indian Affairs, 911 NE 11th Avenue,
children who are members of (	or may be e ay affect th	ligible for me e rights of the	nington State Court for guardianship of mbership in) the Indian tribe/s listed e children's parents, Indian custodians, temporarily or permanently.
The Court is located at:			
Court's street address			Court's phone number
Court's mailing address (if diffe	erent)		
City	State	Zip	

### **Court Hearing**

A court hearing (or hearings) have been scheduled	<ol> <li>See attached hearing notice or case</li> </ol>
scheduling order.	

□ No court hearing has been scheduled in this case yet.

#### **Rights**

If you are the parent, Indian custodian, or agent of the children's tribe, you have these rights:

- To receive this notice at least 10 days before the first hearing in this case.
- To have up to 20 extra days to prepare for a hearing, if you ask the Court.
- To see all documents and evidence filed with the Court for this case.
- To be part of this case at any point (intervene as a party).
- To have the Court appoint a lawyer for you, if you are a parent or Indian custodian and the Court finds you are indigent (*cannot afford your own lawyer*).
- To ask this Court to transfer this case to the court of the child's tribe. This Court will approve the transfer to tribal court unless one of the parents objects or there is a good reason to keep the case in state court.

#### Warnings

- This case may affect the future parental and/or custodial rights of the child's tribe/s, the parents, and any Indian custodian of the child named above. The child could be removed from their home temporarily or permanently.
- You must keep this notice and all the information in it confidential. Only people that need this information to exercise rights under ICWA should see this notice.

#### Information

The information below is to help determine the children's Indian status. Petitioner/s must make a good faith effort to provide this information.

	Name:	Tel. No.:
		Tel. No.:
		Tel. No.:
2.	Child's information	
	Child's name:	
	Date of birth:	Place of birth:
	Tribe/s child belongs to (or	ay belong to):
	Tribal enrollment # or other	bal ID:
	birth relative may be	e child's parents or grandparents was adopted. The child or a ligible for tribal membership. (Sections 3 through 5 below askegal relatives. Provide the same information for birth relatives s.)

Parent 1's information	N M 402, "ICWA Notice – Attachment for Additional Child".)			
Parent 1's Information Parent's current name:				
	/): Place of birth:			
	to:			
	er tribal ID:			
Parent 2's information				
	/):			
• • •	/) Place of birth:			
	riace of birtif.			
THORK PAIRNI / DRIGNOS I	μO.			
Tribal enrollment # or othe	to:er tribal ID:er tribal ID:endingerents and great grandparents			
Tribal enrollment # or othe	er tribal ID:			
Tribal enrollment # or othe	er tribal ID:			
Information about the Parent 1's parents Current name & other	er tribal ID:			
Information about the Parent 1's parents Current name & other names used	er tribal ID:			
Information about the Parent 1's parents Current name & other names used Current address	er tribal ID:			
Information about the Parent 1's parents Current name & other names used Current address Former addresses	er tribal ID:			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of	er tribal ID:			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of death, if no longer living	er tribal ID:			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of death, if no longer living Tribe Tribal Enrollment #	child's grandparents and great grandparents			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of death, if no longer living Tribe Tribal Enrollment # or other tribal ID	child's grandparents and great grandparents			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of death, if no longer living Tribe Tribal Enrollment # or other tribal ID  Parent 1's grandparer Current name & other	child's grandparents and great grandparents			
Information about the Parent 1's parents Current name & other names used Current address Former addresses Date and place of birth Date and place of death, if no longer living Tribe Tribal Enrollment # or other tribal ID  Parent 1's grandparer Current name & other names used	child's grandparents and great grandparents			

Tribe  Tribal Enrollment #	
or other tribal ID	
Parent 2's parents (add pages, a	as needed)
Current name & other names used	
Current address	
Former addresses	
Date and place of birth	
Date and place of death, if no longer living	
Tribe	
Tribal Enrollment # or other tribal ID	
Parent 2's grandparents (add pa	ages, as needed)
Current name & other names used	
Current address	
Former addresses	
Date and place of birth	
Date and place of death, if no longer living	
Tribe	
Tribal Enrollment # or other tribal ID	
ature	Date
<sup>t</sup> name	
Petitioner:	

- Children's tribe/s, addressed to the agent identified by the tribe/s (tribal agents
  designated to receive ICWA Notices are listed in the Federal Register:
  www.FederalRegister.gov (search "ICWA Agent")),
- Children's parents,
- Indian custodians (if any), and
- Bureau of Indian Affairs.

Fill out and file a Proof of Mailing form (GDN M 403). (In addition to this mailing, you must have the Summons and Petition personally served on the parents and any Indian custodian.)

#### ICWA Notice - Attachment for Additional Child

(Fill out this form for each additional child and attach to the ICWA Notice.)

6.	Additional child's information					
	Child's name:					
	Date of birth:	Place of birth:				
	Tribe/s child belongs to	o (or may belong to):				
	Tribal enrollment # or o	other tribal ID:				
	(Check one):					
	☐ This child has the same parents as the child listed the ICWA Notice section 2. (*delete the tables below.)					
	☐ This child has differ (Fill out below.)	rent parents than the child listed in	the ICWA Notice section 2.			
Info	rmation about the child	d's parents, grandparents, and g	reat grandparents			
	Child's Parents	Parent 1	Parent 2			
	Current name & other names used					
() () ()	Current address					
	Former addresses					
	Date and place of birth					
	Date and place of death, if no longer living					
	Tribe					
	Tribal Enrollment # or other tribal ID					
	Parent 1's parents	Г	I			
	Current name & other names used					
	Current address					
	Former addresses					
	Date and place of birth					
	Date and place of death, if no longer living					
	Tribe					
	Tribal Enrollment # or other tribal ID					

Parent 1's grandpa	rents	
Current name & other names used		
Current address		
Former addresses		
Date and place of birth		
Date and place of death, if no longer living		
Tribe		
Tribal Enrollment# or other tribal ID		
-	☐ same as the child listed in section	on <b>2</b>
Current name & other names used		
Current address		
Former address		
Date and place of birth		
Date of death, if no longer living		
Tribe		
Tribal Enrollment # or other tribal ID		
Parent 2's grandpa	rents ☐ same as the child listed in	n section 2
Current name & other names used		
Current address		
Former addresses		
Date and place of birth		
Date of death, if no longer living		
Tribe		
Tribal Enrollment # or other tribal ID		

In	the Guardianship of:				
		No.			
Re	espondent/s <i>(minors/children)</i>	Proof of Mailing (Ir Notice) (AFML)	ndian Child Welfare Act		
	Proof of Mailing (Indi	an Child Welfare Act	: Notice)		
l de	eclare:				
1.	I am age 18 or older.				
2.	On (date):, I personally mailed copies of the:  Guardianship Petition Indian Child Welfare Act Notice (Guardianship)  Other documents:				
	to the following people by certified ma <b>Tribe/s</b> (mail to the agent listed in the ( <i>Tribal agent</i> ):	e Federal Register)			
	(Tribe):				
	street number or P.O. box cit	ty state	zip		
	(Tribal agent):				
	(Tribal agent):(Tribe):				
	(Tribe):				
	(Tribe):	ty state			

	street number or P.O. box	city	state	zip	
Pa	rents				
	(Name):				
	street number or P.O. box	city	state	zip	
	(Name):				
	street number or P.O. box	city	state	zip	
BI	<b>A</b> Regional Director, Bureau of 911 NE 11 <sup>th</sup> Avenue Portland, OR 97232	Indian Affair	S		
	Indian custodian/s (if any) (Name):				
	street number or P.O. box	city	state	zip	
Otl	her information (if any):				
	e under penalty of perjury unde	er the laws of	the State of Washir	gton that the state	ement
ed a	at			ate:	
	city		state		

Tape return receipt/s below: