

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT
IN THE CHILDREN’S COURT

Case No.: D-202-JQ-Case Number.

STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
IN THE MATTER OF [NAME OF CHILDREN.](#), Child(ren),
AND CONCERNING [NAME OF RESPONDENTS.](#), Respondent(s).

EX PARTE ORDER CONCERNING THE INDIAN CHILD AND FAMILY

THIS MATTER came before the Court *sua sponte* and upon review of the Neglect/Abuse Petition and Affidavit for *Ex Parte* Custody Order, and the Court FINDS:

1. The face of the pleadings reflect there is reason to know that a child in this case may be an Indian child under NMSA 1978 §32A-1-4(N) and (O), and 25 C.F.R. §23.107(c).

2. **Active Efforts Required.** The Department is required to make active efforts at all stages of this case. *See* NMSA 1978 §32A-28-2(A), §32A-28-4, and §32A-1-4(A). Such efforts must be *documented*. *See* NMSA 1978 §32A-28-4. Failure to achieve and document active efforts to support action by the Department may result in the invalidation of such action. *See* NMSA §32A-28-20.

A. To Maintain or Reunite an Indian Child with the Indian Child’s Family.

The Department’s duty of active efforts includes the duty to make and document active efforts to maintain or reunite an Indian child with the Indian child’s family. *See* NMSA 1978 §32A-28-4; §32A-28-12 (outlining efforts must be made *prior* to filing a Neglect/Abuse Petition, *while* such a petition is pending, and *after* the adjudication and disposition of such a petition). This duty, as detailed under NMSA 1978 §32A-28-4,

continues during the period of time between the filing of a Neglect/Abuse Petition and its adjudication.

B. To Identify the Indian Child. The Department shall make active efforts to determine whether the child is in fact an Indian child and work with all Tribes with which the child may be a member to confirm membership, and to consult with the tribe on the efforts and placement of the child. *See* NMSA 1978 §32A-28-3, §32A-1-4(N) and (O), §32A-1-14.1(A), and 25 C.F.R. § 23.107.

3. The Court recognizes 25 U.S.C. § 1921 when applying the laws to this case, specifically:

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

WHEREFORE THE COURT ORDERS:

1. The Department *shall file* with the Court a copy of the completed Children's Court Rule 10-521 ICWA Notice as to Child[ren] within two (2) business days of the date of the entry of this Order;

2. The Department *shall send* the Rule 10-521 ICWA Notice to the appropriate tribes and/or BIA Regional Office by certified mail with return receipt requested. *See* NMSA 1978 §32A-28-5(A), §32A-28-13(D), and 25 C.F.R. § 23.111(e). The Rule 10-521 ICWA Notice must be sent to the designated tribal agent listed in the Federal Register at:

<https://www.federalregister.gov/documents/2018/06/04/2018-11924/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>. If the identity or location of the Indian tribe cannot be determined, the Department shall follow the notice requirements under NMSA 1978 §32A-28-13(D), 25 U.S.C. § 1912(a); and 25 C.F.R. § 23.111(e).

3. The Department shall file with the Court proof that the Rule 10-521 Notice has been sent to each of the tribes or BIA Regional Office. *See* NMSA 1978 §32A-28-5(A), §32A-1-14(B), §32A-4-6(D) and (E), 25 U.S.C. § 1912(a); and 25 C.F.R. § 23.111(a), (b) and/or (e).

4. The Department shall file with the Court proof of the date that the Rule 10-521 ICWA Notice was received by the tribes and or BIA Regional Office. This proof is necessary for the Court to be able to assess whether the waiting period has been met under NMSA 1978 §32A-28-13(E) and 25 U.S.C. § 1912(a).

5. Any and all responses from the tribes and/or BIA Regional Office to the Department as a result of the Rule 10-521 ICWA Notice shall be filed with the Court within five (5) business days of receipt by the Department;

6. If the response(s) from the tribes and/or BIA Regional Office to the Rule 10-521 ICWA Notice call for a different finding than one entered in the case, the Department shall request a hearing to address the finding;

IT IS FURTHER ORDERED:

7. Compliance with this *Ex Parte* Order shall be addressed at the Custody Hearing and the Department shall be prepared to present any further update;

8. All counsel for all parties are required to appear to present and preserve legal argument regarding IFPA compliance at the Custody hearing or any separate hearing to change an IFPA finding, regardless of whether service has been made on the Respondent(s);

9. These procedures shall be implemented every time the Department receives information in this case that a child may be an Indian child.

IT IS SO ORDERED.

Choose judicial officer.

Parties Entitled to Copies – within two (2) business days of the filing of this *Ex Parte* Order, the *Department shall* ensure a copy of this order is served on the designated tribal agent for each Indian Tribe(s) and/or BIA Regional Office, **any subsequently appointed counsel for the child, and Respondents, not yet identified at the time of filing the Petition.** The Department shall file Certificate of Service that reflects the same.