

The newsletter of *The Judges' Page* website – April 2004

---

The National CASA Association and the National Council of Juvenile and Family Court Judges are committed to providing judges the tools they need to be effective in dependency cases. This issue of *The Judges' Page* is dedicated to informing judges about the Indian Child Welfare Act.

—*Judge J. Dean Lewis, Editor*

### Topics in this issue:

---

#### [Editor's Page—The ICWA Issue](#)

*Introduction from Editor Judge J. Dean Lewis (retired), Member, National CASA Board of Directors*

Page 3

---

#### [An Overview of the Indian Child Welfare Act \(ICWA\)](#)

*Judge William A. Thorne, Jr., Utah Court of Appeals*

Page 5

---

#### [Effective Implementation of the Indian Child Welfare Act \(ICWA\)](#)

*Judge John W. Larson, District Court Judge, Missoula, Montana*

Page 7

---

#### [CASA Advocacy in Tribal Courts](#)

*Marla Jean Big Boy, Tribal CASA Program Specialist*

Page 10

---

#### [Judicial Ethics and ICWA](#)

*Judge Douglas F. Johnson, Separate Juvenile Court of Douglas County, Omaha, Nebraska*

Page 12

---

#### [Model Court Highlight: Pueblo of Zuni Tribal Court](#)

*Serena Noel Hubert, JD, Program Manager and Model Court Liaison, NCJFCJ*

Page 13

---

#### [Online Resources for ICWA Research and Reference](#)

*Compiled by Judge Douglas F. Johnson and Joey Binard, Senior Program Manager, Technical Assistance, NCJFCJ Resources*

Page 15

---

---

The *Judges' Page* Newsletter is a publication of **National CASA** in partnership with **The National Council of Juvenile and Family Court Judges**. Find the *Judges' Page* Newsletter at



[casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301323/k.8E21/Judges\\_Page.htm](http://casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301323/k.8E21/Judges_Page.htm). The National Council of Juvenile and Family Court Judges is dedicated to serving the nation's children and families by improving the courts of juvenile and family jurisdictions. Visit the NCJFCJ website: [ncjfcj.org](http://ncjfcj.org)

© 2004 National CASA Association

## Editor's Page—The ICWA Issue



*J. Dean Lewis, Judge (retired), Member of the National CASA Association Board and Past President of NCJFCJ*

### Summary

The National CASA Association and the National Council of Juvenile and Family Court Judges are committed to providing judges the tools they need to be effective in dependency cases. This issue of *The Judges' Page* is dedicated to informing judges about the Indian Child Welfare Act (ICWA). Many of us sit in jurisdictions in which we assume that the issue of a child welfare case involving a Native American child will never be an issue - think again!

NCJFCJ recently published the *Native American Resource Directory for Juvenile and Family Court Judges* ([casaforchildren.org/files/public/community/judges/July\\_2010/NativeAmericanResourceDirectory.pdf](http://casaforchildren.org/files/public/community/judges/July_2010/NativeAmericanResourceDirectory.pdf)). This document lists all Native American tribes located in each state and is a compelling resource. Judges who review the directory may be as surprised as I was at the number of tribes in existence—and thus the potential for ICWA cases in their court. NCJFCJ has also published the “Indian Child Welfare Checklists” ([ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf](http://ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf)) to give judges a blueprint for handling child welfare cases involving Native American children.

In this issue, Judge William Thorne addresses the national policy considerations which resulted in the decision of Congress to pass the Indian Child Welfare Act in 1978 (25 U.S.C. Section 1901 et. seq.). He outlines the aspects of tribal jurisdiction and state court jurisdiction. Judge John Larson points out that the first question a judge needs to ask at the initial hearing in a child welfare case is a simple one: “Does this child qualify under the Indian Child Welfare Act?” Timely determination of ICWA jurisdiction is critical to the role that the state court and/or the tribal court will play throughout the child’s case. Judge Douglas F. Johnson warns us that it is our ethical obligation to know the law and to abide by it. Thus, we are duty-bound to be knowledgeable of ICWA and its implications in our docket. In this issue of *The Judges' Page*, Judge Douglas F. Johnson and Joey Binard of NCJFCJ provide important resources to expedite our ICWA research and personal education.

In handling child welfare cases involving Native American children, it is imperative that judges recognize the need to preserve tribal traditions and values. Both National CASA and NCJFCJ have been active in supporting tribal courts and educating the judiciary about the tribal courts. *The Judges' Page* is proud to highlight the activities of NCJFCJ’s Model Court, The Pueblo of Zuni’s tribal court. This issue highlights the ongoing role of National CASA in assisting tribal courts in development of CASA programs in “CASA Advocacy in Tribal Courts” by Marla Jean Big Boy. National CASA has been involved in educating CASA/GAL volunteers on ICWA and the importance of preserving a child’s Native American culture and heritage in cases which may be heard in state courts in which a CASA program is active.

ICWA applies to cases in state courts in specific situations: child custody proceedings, foster care placement, termination of parental rights, and pre-adoptive and adoptive placements which involve an Indian child. An Indian child is defined as any person under the age of 18 who is a member of an Indian tribe or the biological child of a member of an Indian tribe and thus eligible for membership in an Indian tribe. ICWA authorizes tribal courts to adjudicate child abuse and

neglect cases and adoption cases involving tribal members. If the Indian child resides on the reservation, the tribal court has exclusive jurisdiction. If the Indian child resides outside of the reservation and the case is initiated in state court, the issue becomes more complicated. Notice to all parties including the tribe or US Secretary of the Interior is mandatory in these cases. The tribe has the right to intervene at any time until the case is dismissed and to request transfer of jurisdiction to the tribal court from the state court. Federal and state courts must give full faith and credit to any custody proceeding of a tribal court.

The burden of proof in abuse/neglect and TPR cases is higher in ICWA. The court must hear from expert witnesses and find by clear and convincing evidence that serious emotional or physical damage is likely to result if the child is maintained with the parent or Indian custodian in the abuse/neglect case. In termination of parental rights, the burden of proof is “beyond a reasonable doubt.”

Iowa has chosen to adopt a statute to address the relationship between state and tribal courts in ICWA cases. The statute outlines the government’s policy: “It is the policy of the state to cooperate fully with Indian tribes and tribal citizens in Iowa...cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child.” Iowa’s is considered a model statute and is the first state statute to fully deal with ICWA issues. The statute acknowledges the vital relationship between the Indian tribes and the tribes’ children and proceeds to define “best interest of the child” by stating that it “... means the use of practices in accordance with the federal Indian Child Welfare Act, this chapter and other applicable law...whenever such placement is necessary or ordered, placing the child, to the greatest extent possible, in a ...placement that reflects the unique values of the child’s tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child’s tribe and tribal community.” Iowa has determined that unless either of an Indian child’s parents objects, the Court **shall** transfer the proceeding to the jurisdiction of the Indian child’s tribe once a petition is filed by either of the child’s parents; the child’s Indian custodian; or the child’s tribe. For a full recitation of the statute, go to [dhs.state.ia.us/docs/THE%20IOWA%20INDIAN%20CHILD%20WELFARE%20ACT.pdf](https://dhs.state.ia.us/docs/THE%20IOWA%20INDIAN%20CHILD%20WELFARE%20ACT.pdf).

Editors Note: The editorial committee hopes that this issue will be of interest to you as you seek to do what is right and just for our nation’s dependent children.
--

[Back to Top](#)

## ***An Overview of the Indian Child Welfare Act (ICWA)***

*Judge William A. Thorne, Jr., Utah Court of Appeals*

### **Summary**

ICWA is national policy that recognizes the special political status of Indian tribes and their members, not unlike the political status accorded foreign diplomats.

In exploring ICWA, it is important to keep in mind that the problems sparking the adoption of ICWA were not, generally, the same problems encountered in non-Indian cases. While ASFA (the Adoption and Safe Families Act) addressed the problem of children staying too long in the foster care system, ICWA was directed to a different problem. Prior to the passage of ICWA, a multi-year congressional examination of Indian affairs detailed, among other things, problems with how the child welfare system was failing Indian children.<sup>1</sup> Utilizing that information, Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children ...by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.”<sup>2</sup> Congress further noted that “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children,”<sup>3</sup> and “that the States...have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”<sup>4</sup> Congress then declared a national policy “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families...which will reflect the unique values of Indian culture.”<sup>5</sup> ICWA is that national policy.

Congress, in the exercise of its plenary authority in Indian affairs, created a special set of requirements applicable to Indian children, families and tribes. Hinging on the special political status of Indian tribes and their members, not unlike the special political status accorded foreign diplomats, the imposition of special requirements is not racial in application, but political. That is, the special political status of Indian tribes permits the different treatment of tribes and tribal members and prevents ICWA from running aground on the shoals of equal protection and civil rights provisions. Application of ICWA is therefore limited to children who are “either (a) a member of an Indian tribe or (b) ...eligible for membership in an Indian tribe and ...the biological child of a member of an Indian tribe.”<sup>6</sup> ICWA is an attempt, in the exercise of a special federal relationship between tribes and the Federal government, to remedy the mistakes of the past, where Indian children were removed from their families, and communities, at an alarmingly high rate—in one state exceeding 20 times the rate for non-Indian children.

Congress utilized several principal mechanisms to correct this pattern of unnecessary removals. First, Congress created both a category of cases subject to exclusive tribal jurisdiction as well as establishing a presumptive transfer of jurisdiction from state courts to tribal courts in an attempt to move a significant portion of the cases involving Indian children to judges who were familiar with the cultural norms of Indian communities. Second, for those cases remaining in state courts, Congress imposed a requirement that higher burdens of proof be applied when deciding questions of parental fitness, both for initial removal determinations and for the termination of parental rights. Third, Congress imposed a requirement that states provide active focused efforts to solve problems before the removal or termination of parental rights is justified. Fourth, Congress recognized that a child’s extended family as well as other tribal families should be the first option to provide surrogate care for Indian children removed from their caregivers. And finally, in creating ICWA, Congress provided a vehicle for tribes to actively participate in any state court proceeding involving tribal children.

In the interest of clarity it is probably worth noting what ICWA is not. ICWA is not applicable to “a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.”<sup>7</sup>

Finally, state law may facilitate the specific goals of ICWA. “States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children...”<sup>8</sup> In addition, “in any case where ...State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian ...than the rights provided under [ICWA], the...court shall apply the State or Federal standard.”<sup>9</sup> Some states, notably California and Iowa, have attempted to address either particular aspects of enhanced protection or attempted to implement the spirit as well as the actual rules of ICWA in a comprehensive manner for the Indian children and families of their particular state.

While ICWA is not perfect, it is a significant step forward in protecting the long-term best interests of Indian children, families and tribal communities.

---

Footnotes:

<sup>1</sup> The American Indian Policy Review Commission of the United States Congress, report issued 1977.

<sup>2</sup> 25 U.S.C. § 1901(4) (2003)

<sup>3</sup> 25 U.S.C. § 1901(3) (2003)

<sup>4</sup> 25 U.S.C. § 1901(5) (2003)

<sup>5</sup> 25 U.S.C. § 1902 (2003)

<sup>6</sup> 25 U.S.C. § 1903(4) (2003)

<sup>7</sup> 25 U.S.C. § 1903(1) (2003)

<sup>8</sup> 25 U.S.C. § 1919(a) (2003)

<sup>9</sup> 25 U.S.C. § 1921 (2003)

**Additional Resources:**

California Judges Benchguide to the Indian Child Welfare Act  
[calindian.org/home/113](http://calindian.org/home/113)

Iowa state statute on Indian Child Welfare  
[dhs.state.ia.us/docs/THE%20IOWA%20INDIAN%20CHILD%20WELFARE%20ACT.pdf](http://dhs.state.ia.us/docs/THE%20IOWA%20INDIAN%20CHILD%20WELFARE%20ACT.pdf).

Presentation by Judge Thorne comparing ICWA with the Iowa state statute (PDF)  
[casanet.org/download/tribal-casa/icwa-iowa-presentation.pdf](http://casanet.org/download/tribal-casa/icwa-iowa-presentation.pdf)  
(Tip - you may need to click the 'rotate' button on the Acrobat toolbar to shift the display to landscape)

[Back to Top](#)

## **Effective Implementation of the Indian Child Welfare Act (ICWA)**

*Judge John W. Larson, District Court Judge, Missoula, Montana*

### **Summary**

Timely determination of ICWA jurisdiction is critical to the role that the state court and/or tribal court will play throughout the child's case.

It sounded like success—and it was—a young baby was going home. The parents had been directed to services for the issues that brought their child before the court, and all agreed that a second removal wouldn't occur without notice to the other parties or their attorneys unless it was an emergency. Everyone seemed happy, and I was pleased with such a good start for this child. Perhaps the joy was in part due to the expectation (of the lawyers) that they wouldn't have to find time to prepare for and conduct a hearing on this emergency removal.

Of course, the definition of emergency—while always elusive—can be specifically determined here because it is a case where the two-month-old child's parent is an enrolled tribal member and the child is eligible for membership in that tribe. This is, then, a case where any removals of the child from his/her parents are governed by the Indian Child Welfare Act (ICWA), a federal law enacted in 1978.

No, this case will probably not be transferred to tribal court because the couple resides in a town 150 miles away from the reservation and, in this particular case, all have agreed that the family will be able to access the necessary support services where they live. It is therefore up to me, a white judge, to determine if we fulfilled the requirements of ICWA. For example, a hearing is required—even if the child is returned home—so that the judge can determine if the initial removal was not only supported by the facts presented but also supported by an expert who is fully knowledgeable about the parenting mores within the child's culture. This expert is usually a tribal member. Under ICWA, such expert testimony must support removal and placement by clear and convincing evidence.

Judges need to ensure that these evidentiary hearings happen. It is very easy to ignore this ICWA requirement; no one will complain about not having a hearing, particularly in a heavy dependency docket with lots of children. To be clear, I am not holding the hearing just to make reviewing auditors happy but to establish firm standards for this case. Future removals are all too likely if addiction and domestic violence are challenges within the family. We need a clear standard to protect the best interest of the child—and ICWA has provided us with just such a standard. Cultural support for the removal also adds credibility to the process and firmly establishes that fairness to the child and parents will guide the future of the case.

In this particular case a new social worker and law students from our Native American Law Center will participate. Yes, continuances and stipulations are easier, but judges need to make sure we have hearings and establish firm guidelines. Other federal timeline requirement not contained in ICWA will also be assisted when everyone understands the rules that will guide the case.

To be sure, Court Appointed Special Advocates (CASAs) are not usually available for an emergency hearing removal in an ICWA case, but the standard established by the hearing will set clear expectations for the case and will no doubt shape future CASA investigations and reports. Both the early appointment of a CASA volunteer and the use of qualified experts assist judges to set a credible course for comprehensive front-end work in ICWA cases. CASA volunteers can also remind the parties and court in an ICWA case when the emergency hearing has not been held or did not include a qualified expert.

As in the case described above, emergency hearings are required by state and federal law in ICWA matters. These hearings should not be delayed by continuances or avoided by hasty entry into stipulation.

The tenets of ICWA are a reminder of the necessity for judges to have knowledge of the standard required by law as well as a practical approach to implementation. In addition to the use of the law and appointing the necessary professionals, judges can be assisted by well-developed guidelines and forms to effectively operationalize the provisions of ICWA. Judges can encourage that lawyers and child welfare professionals familiarize themselves with advanced technical materials.

These useful tools include materials such as the “ICWA Checklist” developed by the National Council of Juvenile and Family Court Judges and the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (NCJFCJ and OJJDP, Technical Assistance Brief, 2003) and forms adapted from the State of Oregon for the County of Multnomah Juvenile Department (Courtesy State Of Oregon; Judge Dale Koch 2004).

Checklists and forms that comport with law can be used as templates by judges to guide hearings and ensure that follow-up orders do not depart from boilerplate language, which would undermine credible implementation of the law. These materials assist the court to make inquiries that allow for informed, credible determinations based on expert testimony regarding removal, legal review, tribal identification, notification, enrollment issues, and documentation of thorough casework - see sample forms for “Initial Shelter Order” ([nationalcasa.org/download/Judges\\_Page/0404\\_sample-initial\\_shelter\\_order\\_form\\_0041.pdf](http://nationalcasa.org/download/Judges_Page/0404_sample-initial_shelter_order_form_0041.pdf)) and “Active Efforts Findings of Fact” ([nationalcasa.org/download/Judges\\_Page/0404\\_sample-active\\_efforts\\_findings\\_fact\\_form\\_0041.pdf](http://nationalcasa.org/download/Judges_Page/0404_sample-active_efforts_findings_fact_form_0041.pdf)).

In the absence of information during emergency removals, the judge is assisted by guidelines to clarify to parties and professionals what may need to be done in the case. At case inception, judges need to receive enough qualitative information to make a determination about the application of ICWA. Judges need to continue to assess evidence and active efforts as a case evolves.

Hearings and follow-up orders that prompt all parties to supply clear evidence on active efforts, identify issues, clarify placement decisions, and use information relayed by cultural experts at the onset of a case and throughout every stage of the case can circumvent delays, keeping the case on an effective track.

Most important, as in all cases involving children, judges want to set high standards in ICWA cases to protect children from trauma. The “connectedness” young children have with their families is often overlooked in situations perceived to be emergencies (*Protecting America’s Future*; NCJFCJ; Arredondo and Edwards, 2000).

The use of professionals with expertise in cultural differences is important in assessing the propriety of removals, placements, and all initial efforts in ICWA cases. In rescuing children from crisis we must be ... “aware of the impact of every decision so that the child, presumably already traumatized by the circumstances which bring him/her into our courts, is not further harmed by the decisions made in our courts” (*Protecting America’s Future*; Brenneman; 2002).



The importance of thorough work at the front-end of a case cannot be overstated. The court has an opportunity through its own example in advance of these cases to clarify to professionals the expectation for emergency and preliminary protective hearings. Further, the court also has an opportunity in the courtroom to benefit children by establishing a clear standard of conduct for case professionals in ICWA cases. The leadership of the judiciary is essential in establishing the standards by which professionals within the child welfare and legal system will respond to ICWA cases.

Editors Note: Cf.: State ex rel Juv. Dept. v. Charles, 688 P 2d 1453, 70 Or App10, 16 (1984)

[Back to Top](#)

## CASA Advocacy in Tribal Courts

*Marla Jean Big Boy, Tribal CASA Program Specialist*

### **Summary**

Some tribal courts tend to look and act like state courts. Others operate in a much more traditionally Native American manner. CASA volunteers can be the liaison among the state, social services and tribe. Today, there are 24 CASA programs that operate within tribal courts.

Today there are 24 tribal court-based CASA programs—three times the number of programs since the National CASA Association began its Tribal Court CASA project in 1995. Tribal CASA programs operate with memoranda of agreement with tribal courts. Tribal court support is not only absolutely necessary but is known to be a critical component in tribal court CASA program success. Tribal courts vary significantly from tribe to tribe (for example, the Association of Village Council Presidents located in Bethel, Alaska supports 26 tribal courts and hears upwards of 30 cases a day while smaller tribal courts may hear fewer than 50 cases per year). Some tribal courts tend to look and act like state courts. Others operate in a much more traditionally Native American manner.

These traditional components may include use of Native language, introduction of customary or common law, a more holistic approach to dispute resolution, inclusion of the extended family, more fluid communication, invocation of the spiritual realm in ceremonies/prayer, comprehensive problem-solving, focus on reparative and restorative justice and use of customary sanctions.

It is possible under ICWA that a case be transferred to a tribal court. (In certain limited circumstances, it would be mandatory.) If there is discussion of transfer of jurisdiction, the CASA volunteer can be a very good liaison between the parties and the tribe. Oftentimes when a transfer is discussed, state officials, including court and social services personnel, react with apprehension. They often fear that a transfer is somehow a lessening of services, or that the tribal system is not as qualified as the state system to protect the child. This apprehension is often based on assumptions and stereotypes rather than on actual knowledge of what is available on any given reservation. The CASA volunteer's role may very well be to serve as an information link between these two worlds which may not have a good working relationship.

Tribal CASA volunteers are trained in elements specific to Native communities—for instance, Native history, tribal court procedure, relationships with state child welfare workers, working with tribal ICWA workers, tribal customs and traditions, how to advocate for the best interests of Native children using federal and tribal law and testifying in tribal and state court. The tribal CASA volunteer is an individual trusted by the Native community who stands up for abused and neglected Native children in tribal and state court. In January 2004, a Tribal Volunteer Curriculum Project was launched to adapt the National CASA Association core volunteer curriculum for tribal CASA programs and Native volunteers. In addition, a Tribal Court Advisory Committee assists with guidance on development of tribal court CASA programs and the best methods for adapting CASA to meet the needs of Native American communities.

The 24 tribal CASA programs in existence today are located in 12 states: Alaska, California, Colorado, Idaho, Michigan, Montana, New Mexico, Oklahoma, Oregon, South Dakota, Utah and Washington. The tribal CASA program farthest east is on the Grand Traverse Band of Chippewa Indians reservation located in Michigan. The farthest west is the Crook and Jefferson Counties CASA program in Oregon, which is developing a collaboration with the Warm Springs tribe in Oregon. The farthest north is located in Barrow, Alaska. The farthest south is the Pueblo of Tesuque CASA program located in New Mexico. Some tribal CASA programs provide volunteers for both tribal and state courts. Some tribal court CASA programs serve one community; others serve more than one community.

Additional information on tribal CASA programs can be found in the [Online Resources for ICWA Research and Reference](#) article in this issue of *the Judges' Page* and at the CASAnet Tribal web page ([casaforchildren.org/site/c.mtJSJ7MP1sE/b.5466425/k.9106/Tribal\\_CASA.htm](http://casaforchildren.org/site/c.mtJSJ7MP1sE/b.5466425/k.9106/Tribal_CASA.htm)).

Excerpts adapted from *The Connection*, the Quarterly Newsletter of the National Court Appointed Special Advocate Association, Fall 2001, Vol.17, No.3.

[Back to Top](#)

## Judicial Ethics and ICWA



*Judge Douglas F. Johnson, Separate  
Juvenile Court of Douglas County,  
Omaha, Nebraska*

### **Summary**

Judges should be mindful of their responsibilities under the 1990 American Bar Association Model Code of Judicial Conduct and their state judicial codes to follow the mandates of the Indian Child Welfare Act.

Canon II A provides that “a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.”

Canon III B (1) provides that “a judge shall be faithful to law and maintain professional confidence in it.” Accordingly, a judge should be knowledgeable about the Indian Child Welfare Act (ICWA) and comply with its mandates. Depending upon jurisdiction, some judges deal regularly with ICWA. For others, it may be an infrequent occurrence.

### **Additional Resources:**

Online resources to help judges maintain competency in ICWA (see the [Online Resources for ICWA Research and Reference](#) article by Joey Binard on page 15 of this issue of *the Judges'Page*.)

A judge is well advised to check his or her state court website regarding judicial ethics advisory opinions and disciplinary actions. If you have an issue about Judicial Ethics and ICWA, ask for an advisory opinion from your state’s judicial ethics committee.

[Back to Top](#)

## Model Court Highlight: Pueblo of Zuni Tribal Court

*Serena Noel Hubert, JD, Program Manager and Model Court Liaison, NCJFCJ*

### Summary

An important goal for this Model Court is to revise the children's code to fully integrate ASFA while preserving Zuni traditions and cultural practices of raising a child.

The Pueblo of Zuni's tribal court was selected by the National Council of Juvenile and Family Court Judges (NCJFCJ) in April 2001 as the first tribal court to participate in the Victim's Act Model Court (VAMC) project. Judge Albert Banteah, Jr. has served as Model Court Lead Judge.

The Zuni Tribal Model Court serves approximately 11,146 residents of the Zuni Indian Reservation, which includes 723.87 square miles in New Mexico and Apache County, Arizona. The Zuni Indian tribe has occupied this part of the country since time immemorial. The A:shiwi, a term meaning "The People" in the Zuni language, is rarely seen in writings by non-Indians. The Zuni do not use this term to denote membership in the tribe. The word Zuni, it is theorized, was a term ascribed to the A:shiwi by a neighboring Indian tribe and later adopted by the Spanish.

Traditional Zuni governance changed in 1970 when the Zuni Nation adopted a constitutional form of government similar to that of the United States. Since then, the tribe has been operating under an elected governor and lieutenant governor (executive branch), a tribal council (legislative branch) and the tribal court (judicial branch).

In recent years, the Pueblo of Zuni has undergone a reorganization that resulted in a more streamlined governmental bureaucracy. This restructuring involved grouping programs according to similar services and hiring fulltime division directors to provide direct oversight of programs. Prior to this organizational change, the tribal administrator had full oversight of these programs; with the recent change, accountability is ensured and adequate support is now provided to the programs.

At the end of 2003, the Zuni Tribal Council appointed the Honorable Sharon Begay as the Chief Administrative Judge. The Honorable Albert Banteah, Jr. will continue to serve as Lead Judge of the Model Court. The Southwest Inter-Tribal Court of Appeals (SWITCA) serves as the tribal court's court of appeals. The Zuni tribal court implements a formal hearing process in child abuse and neglect cases. In the children's court, an emergency removal hearing is held within 72 hours of removal (preliminary inquiry) and an adjudicatory hearing is held within 10 days of the petition. Permanency hearings are now held within six months, which was a change made to reflect the requirements of the Adoption and Safe Families Act (ASFA). Present at the hearing are the parties to the case, the social service worker, a court clerk, a prosecutor representing social services, a defense attorney (although rarely, due to lack of available defense attorneys), and a tribal judge. A child may be represented by a tribal member. If an attorney is present, that attorney must be a member of the tribal bar.

The Honorable Albert Banteah, Jr. and the Model Court team, including Shelly Chimoni, Safe Start Project Director, are also working with the local Safe Start Initiative and the NCJFCJ to collaborate on mutual objectives. The collaboration of the Model Court Project and Safe Start initiative has provided the opportunity for the team to coordinate resources to meet training and technical assistance needs, primarily improving services and programs for children and families.

Currently one of the Model Court goals is revision of the Zuni children's code to include traditional, customary, and cultural childrearing practices of the tribe. For example, the Zuni Model Court team and Zuni Safe Start are revising the Zuni children's code to fully integrate ASFA and are building on the Indian Child Welfare Act (ICWA) to incorporate and preserve Zuni traditions and values. The revision of the children's code has been a challenging process, as

traditionally the Zuni community was opposed to the concept of termination of parental rights (TPR) and adoption. It is the goal of the Model Court team to ensure the inclusion of kinship by identifying a process to recognize clanship and extended family as an alternate option for permanency. TPR would be the last resort for the tribal court. However if TPR is exercised, it is mutually understood that the clanship ties of a child are never terminated and that clanship relations continue from birth until the person leaves this earth.

Zuni was selected as one of five tribes from New Mexico to be a part of the New Mexico Children's Code Project. The project is funded through the Office on Victims of Crime (OVC). New Mexico contracted with the American Indian Development Associates to facilitate training and technical assistance for the tribes. Tribes were selected based on meetings that took place at the Children's Code Conference in August 2002. Two tribes with established codes will revise their codes (Zuni and Acoma) and the other three that do not have a code but operate via customary or traditional law will be drafting their codes. The Deputy Secretary for the New Mexico Commission on Indian Affairs, Bernie Teba, sought funds on behalf of the tribes for this project. The Committee began meeting in November and continues to meet biweekly. The Committee is on a formal timeline of six months and hopes to have a finished product by April 2004.

For more information, please contact Serena Noel Hulbert, J.D., Program Manager and Model Court Liaison, National Council of Juvenile and Family Court Judges, Permanency Planning for Children Department, P.O. Box 8970, Reno, Nevada 89507, Phone: (775) 784-7571
--

[Back to Top](#)

## Online Resources for ICWA Research and Reference

*Compiled by Judge Douglas F. Johnson and Joey Binard, Senior Program Manager, Technical Assistance, NCJFCJ Resources*

### Summary

Online resources compiled by Judge Douglas F. Johnson and Joey Binard, Senior Program Manager, Technical Assistance, NCJFCJ

### Two New ICWA Resources from the Permanency Planning for Children Department PPCD of NCJFCJ:

- **Native American Resource Directory for Juvenile and Family Court Judges**  
[casaforchildren.org/files/public/community/judges/July\\_2010/NativeAmericanResourceDirectory.pdf](http://casaforchildren.org/files/public/community/judges/July_2010/NativeAmericanResourceDirectory.pdf)

Two hundred solid pages of resources, contacts and appendices: includes state data; a directory of national Indian organizations; federally recognized Indian tribes and Native Alaskan villages; listings for the Secretary of the Interior and the BIA and state ICWA specialists. Downloadable online or may be purchased in hardcopy at the address above.

- **Indian Child Welfare Acts Checklists**  
[ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf](http://ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf)

A series of two-page checklists for ICWA matters, including an adoption hearing checklist, TPR checklist, and review-disposition-adjudication hearing checklists. You may download either the individual checklists or the entire set. The publication is also available to order in hard copy at the address above.

### Tribal Court CASA Project

[casaforchildren.org/site/c.mtJSJ7MPIsE/b.5466425/k.9106/Tribal\\_CASA.htm](http://casaforchildren.org/site/c.mtJSJ7MPIsE/b.5466425/k.9106/Tribal_CASA.htm)

These two pages are loaded with links to information and resources about ICWA and CASA's Tribal Court Project. Links here include two Indian Child Welfare Act handbooks, tribal court CASA programs, Children in Need of Assistance CINA Burdens of Proof Timeline Alaska, and an ICWA summary and amendments.

### National Tribal Justice Resource Center NAICJA Publications

This website is a project of the National American Indian Court Judges Association NAICJA. There are two pages of publications available for purchase at the site.

- **Tribal CASA Courts**  
[tribalresourcecenter.org/courts/details.asp?37](http://tribalresourcecenter.org/courts/details.asp?37)

This page from the National Tribal Justice Resource Center Website provides a list of publications that may be ordered from the Tribal Resource Center. Includes, but is not limited to, ICWA publications.

- **ICWA**  
[tribalresourcecenter.org/legal/details.asp?59](http://tribalresourcecenter.org/legal/details.asp?59)

This page provides a list of publications on ICWA or ICWA-related subject matter.

**California Judges Benchguide to the Indian Child Welfare Act**  
[calindian.org/home/113](http://calindian.org/home/113)

May be viewed and downloaded by section or you may download the complete document. The Benchguide is also available in hard copy from California Indian Legal Services. This internet page also contains a link to a downloadable Indian ancestry questionnaire designed to determine whether ICWA is applicable. Used by county social workers when interviewing parents, custodians and family members. This site refers to the 2000 edition of the Benchguide. There may be updates.

**NICWA – National Indian Child Welfare Association**  
[nicwa.org](http://nicwa.org)

Probably the most comprehensive ICWA site on the internet. Resources include publications, a library, information packets, policy and research. Here are links to some of NICWA's resources:

- Publication Catalog ([http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/#reports](http://www.nicwa.org/Indian_Child_Welfare_Act/#reports)) – Publications include articles, booklets, curriculum materials, a media kit, and research documents.
- Information Packets ([http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/#reports](http://www.nicwa.org/Indian_Child_Welfare_Act/#reports)) – Packet topics include ICWA background, judicially created exceptions to ICWA, amendments, family violence, foster care, parenting, suicide prevention, and boarding schools.
- Online ICWA Course ([http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/#reports](http://www.nicwa.org/Indian_Child_Welfare_Act/#reports)) – The course can be used both for learning about the Act and as a reference while handling an ICWA case. The course is free to NICWA members and employees of member tribes. See details at the link above.

**The Indian Child Welfare Act: An Examination of State Compliance in Arizona**  
<http://www.casey.org/Resources/Publications/NICWAComplianceInArizona.htm>

From the Casey Foundation, this analysis of the practical impact of the 1978 law on Native American families and tribes includes data on each of the five primary areas of compliance and six recommendations to increase compliance with ICWA's mandates. 122 pages, downloadable.

**Indian Law Resource Center**  
[indianlaw.org](http://indianlaw.org)

**National Indian Justice Center**  
[nijc.org/](http://nijc.org/)

Note: Numerous other links to ICWA information, associations, and updates can be found via a web search on "Indian Child Welfare Act" through a search engine site such as Google. Compiled by Judge Douglas F. Johnson and Joey Binard, Senior Program Manager, Technical Assistance, NCJFCJ Resources

[Back to Top](#)