

Legal Assistance for Native Kinship/ Grandfamilies Involved with Child Welfare: How to Find an Attorney & Help Them Help You



If you are a Native parent or relative caregiver (whether grandparent, other extended family member, or family friend) of a child who was removed from their parents by a state child welfare system, this resource prepared by the National Indian Child Welfare Association (NICWA) is for you.

Do you need legal advice?

When you become involved in a child placement custody case (whether the child was removed from your home or you are a grandparent or other relative who would like to care for the child), it is extremely important to get legal advice to ensure that the rights of the child and your family are protected.

With legal representation, you will have someone supporting you who will help you navigate the complex legal system in child welfare and who will be responsible for advocating for you.

1. Gather your paperwork.

- ▶ Proof of Income
- ▶ Child Welfare Case Information
- ▶ Tribal Enrollment

2. Ask the judge to appoint you an attorney.

If ICWA applies to the case and you are a **parent or an “[Indian custodian](#)”** (an Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent) and the court finds you to be indigent (impoverished and unable to afford to pay for an attorney), you have the right to ask the court to appoint you an attorney and to have the government pay for that attorney. See [25 USC §1912](#).

If ICWA does not apply or has not yet been determined to apply and you’re a parent or Indian custodian with low income, you may still be eligible to have an attorney appointed to represent you at no cost.

If ICWA applies to the case and you are a **grandparent or other relative who is not considered an Indian custodian** and are seeking to provide a home for a relative child, ICWA does not provide you with the right to have an attorney appointed to represent you at no cost.

3. If you do not qualify for free, court-appointed legal representation...

If you are not entitled to a free, court-appointed attorney, you may be eligible for [free or low-cost legal services](#). A [kinship navigator program](#) or [local agency on aging](#) may be able to help you find low-cost legal help. Another option might be your [local university law school, which may have a free legal clinic](#) where law students provide legal help and are supervised by law professors. Your local state bar association may also be able to help connect you with a volunteer attorney or other free or low-cost legal services.

4. Ask the attorney about ICWA.

Once you have connected with an attorney, it is important to ask if they are familiar with ICWA and other Native-specific considerations. Ideally, you will have an attorney who will have both family law (child welfare) and Indian law experience to guide them in representing you in your ICWA case. Your attorney should also try to contact the child’s tribe to see what other helpful information about ICWA and the case plan for the child or parent is available.

5. Help your attorney help you.

If you believe ICWA applies to the case, there are proactive things you can do to make sure your attorney is equipped with all the information and knowledge needed to help you.

1. Be on time to the appointment with your attorney.

2. Take a copy of tribal enrollment cards, Certificate of Degree of Indian Blood, or other documentation of American Indian or Alaska Native heritage for all family members involved in the case to your first meeting with the attorney. Birth certificates, custody decrees, and findings of paternity are also helpful.
3. If you or the child are not currently enrolled in a federally recognized Indian tribe, take a family tree with as much information as possible for each person on the tree, including dates of birth, maiden names or aliases, tribal enrollment numbers, and blood quantum.
4. Look up and bring the contact information for the tribe's social services or Indian child welfare department and tribal enrollment office.
5. If you are enrolled, ask tribal social services and the enrollment office if you can sign a "Release of Information Form" so that they can speak directly with your attorney.
6. Bring a copy of ICWA with you. A copy is available through the [NICWA website](#).
7. Ask your attorney if ICWA applies to the case. Your attorney may need time to do additional research but should be able to give you an answer about this fairly quickly. Tell your attorney to look at [25 USC § 1903\(1\) & \(4\)](#). These are definitions for "Child Custody Proceeding" and "Indian Child" under ICWA that help define when ICWA applies. They should also consult the federal regulations for ICWA under [25 CFR Part 23](#).
8. If your attorney believes that the child may be considered an Indian child as defined by 25 USC § 1903(1) but is unclear about whether this specific case or proceeding falls under this definition, ask your attorney to consult with the child's tribal social services or a tribal attorney to get a determination from the tribe. Only the child's tribe can make a determination about the child's tribal membership.
9. Ask your attorney if they have any experience with ICWA cases. If yes, ask the following questions:
 - a. How many ICWA cases have you had?
 - b. What tribes did you work with?
 - c. Did you represent the parents, relative caregivers, or children, or did you represent a tribe?
 - d. What state court did you try an ICWA case in? What tribe(s) was(were) involved? In some situations, the case may be transferred from state court

to tribal court. Are you able and willing to practice in the parent or child's tribal court? (ICWA will not apply in tribal court and the attorney may face other conditions in order to practice in tribal court.)

- e. Do you understand the importance of our tribal culture and connection to our tribe for the well-being of the child and me?

Remember, you are looking for the strongest advocate to protect your family's rights. If ICWA applies to the case, you'll need someone who is knowledgeable about this law and comfortable working with tribes.

The Grandfamilies & Kinship Support Network: A National Technical Assistance Center (Network) helps government agencies and nonprofits in states, tribes, and territories work across jurisdictional and systemic boundaries to improve supports and services for families in which grandparents, other relatives, or close family friends are raising children whose parents are unable to do so. For more information, please visit www.GKSNetwork.org.

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