

## Module 3: Notice

### Module 3: Notice

- Notice in Involuntary Proceedings
- Contents of Notice
- Informing of Rights
- Timing of Notice & Proceedings
- Notice in Voluntary Proceedings
- Notice in Emergency Proceedings

*This module will help you ensure parents and Tribes get notice of the proceeding for full participation and that notice occurs early, to promote stability for the child*

## Module 3: Notice

### Notice in Involuntary Proceedings

- When a court knows or has reason to know the child is an “Indian child” in an involuntary foster-care-placement or TPR proceeding, the court must ensure that:
  - (1) The party seeking placement promptly sends notice of each such child-custody proceeding by *registered or certified mail, return receipt requested*, to:
    - Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member)
    - The child’s parents; and
    - If applicable, the child’s Indian custodian; and
  - (2) An original or a copy of each notice is filed with the court, together with any return receipts or other proof of service

## Module 3: Notice

### Notice in Involuntary Proceedings

- Send copy of notice to the appropriate BIA Regional Director (see addresses in § 23.11 or on [www.bia.gov](http://www.bia.gov))
- If there is reason to know the child is an “Indian child” but you can’t ascertain the identity or location of the child’s parents, Indian custodian, or Tribes,
  - Provide BIA with as much information as you know about the child’s direct lineal ancestors (e.g., grandparents) to establish Tribal identity
    - BIA may be able to identify Tribes to contact
- Do not send a duplicate notice to BIA Central Office

## Module 3: Notice Contents of Notice

- Notice contents

- Must be in clear and understandable language; and
- Must include:

- The child's name, birthdate, and birthplace;
- Parents' information - all names known (including maiden, married, and former names or aliases), the birthdates and birthplaces, and Tribal enrollment numbers if known;
- Other direct lineal ancestors' (e.g., grandparents') information, if known;
- The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);...



## Module 3: Notice Contents of Notice

- Notice contents (continued)
  - A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated
  - If a hearing has been scheduled, information on the date, time, and location of the hearing;
  - Statements setting out:
    - (1) The name of the petitioner and the name and address of petitioner's attorney;
    - (2) The right of any parent/Indian custodian of the child to intervene in the proceedings.
    - (3) The Tribe's right to intervene at any time in the proceedings...

## Module 3: Notice Contents of Notice

- Notice contents (continued)
  - Statements setting out (continued):
    - (4) That the parent or Indian custodian has the right to court-appointed counsel if the parent/Indian custodian is indigent
    - (5) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings
    - (6) The right of the parent or Indian custodian and the Tribe to petition the court for transfer to Tribal court
    - (7) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding ...

## Module 3: Notice Contents of Notice

- Notice contents (continued)
  - Statements setting out (continued):
    - (8) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian
    - (9) That all parties notified must keep confidential the information contained in the notice and that the notice should not be handled by anyone not needing the information to exercise rights under ICWA

## Module 3: Notice

### Contents of Notice

- Notice must be understandable
  - If there is a reason to know that a parent or Indian custodian possesses limited English proficiency, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws
  - For assistance in locating and obtaining the name of a qualified translator or interpreter, a court may contact or direct a party to contact:
    - The Indian child's Tribe or
    - The local BIA office



## Module 3: Notice Informing of Rights

- If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him/her of his/her applicable rights, including:
  - Right to appointed counsel,
  - Right to request that the child-custody proceeding be transferred to Tribal court,
  - Right to object to such transfer,
  - Right to request additional time to prepare for the child-custody proceeding, and
  - Right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings

## Module 3: Notice

### Timing of Notice & Proceedings

- **Notice Time Limits**
  - No foster-care-placement or TPR proceeding may be held until at least 10 days after receipt of the notice **of that particular proceeding** by the parent (or Indian custodian) and by the Tribe (or the Secretary)
- **Extensions**
  - The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.
  - Additional time beyond this minimum may also be available under State law or pursuant to extensions granted by the court

## Module 3: Notice

### Timing of Notice & Proceedings

- No child-custody proceeding for foster-care placement or termination of parental rights (other than emergency proceedings) may be held until:
  - 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown) has received notice
    - Or up to 30 days after the parent or Indian custodian has received if the parent or Indian custodian has requested up to 20 additional days
  - 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown) has received notice
    - Or up to 30 days after the Tribe has received notice, if the Tribe requested up to 20 additional days

## Module 3: Notice

### Notice in Voluntary Proceedings

- Requirement for notice in involuntary proceedings does not apply to voluntary proceedings, but:
  - Notice in Voluntary Proceedings
    - Court must make a determination of whether the child is an “Indian child”
    - An inquiry with one or more Tribes may be necessary in some cases to confirm a child’s status as an “Indian child”
    - The final rule does not preclude State requirements for notice in voluntary proceedings
    - The Department recommends that Tribes and the other parent be provided notice in voluntary proceedings

## Module 3: Notice

### Notice in Emergency Proceedings

- Requirement for notice in involuntary proceedings does not apply to emergency proceedings, but the petition (or accompanying documents) for an emergency proceeding must describe the steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding

## Module 3: Notice

### Key Points to Remember

- No foster-care-placement or TPR proceeding may be held until at least 10 days after receipt of the notice **of that particular proceeding** by the parent (or Indian custodian) and by the Tribe (or the Secretary)
- Notice to the Tribe & parent (or custodian) by registered or certified mail, return receipt requested, is required in involuntary foster-care placements and TPRs
  - Provide copy to BIA Regional Office
  - File proof of service with the court
- Notice must be clear & understandable and include the contents listed in the rule
- Notice is not required for other proceedings, but is recommended