

Indian Child Welfare in Washington State



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➤ Tribe In-house ICW

Attorney group

➤ A look at recent case law

➤ Active Efforts

➤ Uniform Parentage Act

*In the
MATTER OF
the
DEPENDENCY
OF Z.J.G. and
M.E.J.G.*

Court refused to apply ICWA at shelter care hearing although there was *ample* evidence “reason to know” child is Indian child.

The court’s decision undermines the foundations of ICWA by empowering state courts, rather than Tribes, to decide Tribal membership.

BIA Guidelines, 25 C.F.R § 23

If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an “Indian child,” the court must:

- Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); AND
 - **Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child” in this part. (!)**

State courts may not substitute its own determination regarding a child’s membership in a tribes.

*In re
parental
rights to
D.J.S.*

There is a lot on “active efforts” in this case.

Strangely, however, although COA determines the state did not meet threshold ICWA and WICWA active efforts, they find it didn’t matter because those efforts would have been fruitless.

More on Active Efforts

- What does it entail?
- Tribes are looking at MOU's with DCYF about adding tribal definitions about what actions it would include.
- Structuring active effort evidence presented in court and put on the record instead of asking social workers to explain what they've been doing in cases and why they're making determinations about varying degrees of compliance with court orders.

Uniform Parentage Act 26.26A.440

Revised parentage statute in WA, codifies 'de facto' parentage case law into statute. While ICWA defines a parent as a biological parent – there are potential issues.

i.e., a de facto parent (often a stepparent but not always) is a parent and that ICWA does not apply.

Case law WA unequivocally states ICWA applies when a de facto parent seeks custody.

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