

1. Chris, what would be examples of Tribal Court alternatives vs. TPR?

A. The particular alternatives to TPR in a tribal court are going to vary and be unique to each tribe. It might be a form of guardianship, a traditional adoption, something similar to SOUL Family, or something entirely different for which there is no parallel in a Kansas state proceeding. One possible example is that some tribes have a much more broad concept of family than the western concept of a nuclear family. Extended family and the community are involved with child rearing. Those extended family members are interested parties in juvenile proceedings. Also, the roles different extended family members play in providing care can evolve and change over time. Rather than terminate the mother's and father's parental rights they might be moved into a role more like an aunt, uncle or cousin that is not the child's primary caregiver.

2. Can someone speak to whether the statute that creates a presumption is being pled in termination motions? When I was on the panel, the presumption statute was not pled very often.

3. What happens when the trial does not happen within 90 days?

4. I'm fascinated in the use of the term "trial" the code in article 22 never uses the word "trial" except when referring to appeal being a "trial de novo." Colloquially we, and certainly the appellate court and Supreme Court refer to the "trial court" referring to the district court making original orders and findings but I don't see it in Article 22. Could this be intentional to indicate the informal nature or "relaxed" evidentiary and procedural practices? I can't imagine the term "trial" was unintentionally avoided for such a large swath of statutes. Would the panel advise continuing with the colloquial use of "trial", correct the term usage to "hearing" or does it not matter?

5. Can you talk about how a trial with ICWA is different?

A. The trial itself is not much different except that the court's standard is different and an additional witness must testify. I generally proceed with the trial as I would with any other TPR trial but adding testimony from a QEW and also arguing "active efforts" in addition to the statutory factors and best interests.

6. Why would a parent's attorney ever submit to a termination hearing on the State's proffer?

A. I have done this when the parent has directed me that she is not willing to work reintegration or have contact with the social workers.

7. doesn't calling it a trial (and saying a hearing is the same as a trial in 22) invoke "The right of trial by jury shall be inviolate"?

8. Isn't per statute the TPR is a hearing not a trial. See, KSA 38-2267(a)

9. Who is a qualified expert witness?

A. Frequently, the QEW is someone from the tribe or suggested by the tribe or BIA. When I have a TPR trial on the horizon in an ICWA case, I reach out to the tribal representative first to see who they

can offer as a QEW. It is also important to assess whether the tribe is on board with TPR because we need to be on the same page.

The QEW must be able to testify as to whether there would be “serious emotional or physical damage to the child” if kept in the custody of the parent or the child's Indian custodian as well as the cultural standards of the tribe regarding family organization and childrearing practices.

This info sheet is from California but is helpful for some QEW questions:

<https://www.courts.ca.gov/documents/ICWA-Info-Sheet.QEW-for-Professionals.Final.pdf>

10. Even if the tribe is not fighting the termination?

11. Has anyone tested that by actually submitting a verified document as opposed to notarized?

12. how does Kansas define customary adoption?

13. Could we touch on the "Reason to Know" with ICWA

A. This document gives a good discussion of what the inquiry should look like and what kinds of information would give a practitioner “reason to know”:

<https://www.bia.gov/sites/default/files/dup/assets/bia/ois/ois/pdf/idc2-041404.pdf>

The court is required to do a basic inquiry to determine whether there is any reason to know that ICWA might apply to the case. If so, the court has to proceed as if ICWA applies until it is determined that ICWA doesn't apply. For example, if the child's parents allege that a grandparent is a tribal member, the case would proceed as an ICWA case until the child's/parent's eligibility is determined.