

PROBATE COURT: Jurisdiction and Venue

(MCL 712b.7(6) & MCR 5.402(4): Indian custodian, Indian child's tribe, and the Indian child have right to intervene at any point in the proceeding.)

Petition for Guardianship of a Minor filed; \$150 filing fee  
 Petition must document all efforts made to determine child's membership/eligibility for membership in an Indian tribe.

Investigation: Upon filing of the petition, the court may appoint a L-GAL to represent the interests of the minor and may order DHS/court employee/agent to conduct investigation

If investigation conducted, a written report of the investigation must be filed pursuant to MCL 700.5204(1) no later than 7 days before hearing. Report must contain information required in MCL 712B.25(1). If it is unknown whether minor is an Indian child, investigation must include an inquiry into Indian tribal membership.

**Involuntary Guardianship:**  
 If the parents do not intend to execute a consent...  
 (Petitioner must state in petition active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.)

The court must conduct a hearing on the petition before entering an order appointing a guardian. Notice of hearing must be sent to persons prescribed in MCR 5.125 and MCR 5.109. At the hearing on the petition, the court must determine:

- If the tribe has exclusive jurisdiction
- If the placement with the guardian meets the placement requirements
- If it is in the child's best interest to appoint a guardian
- If a L-GAL should be appointed to represent the Indian child
- Whether or not each parent wants to consent to the guardianship if consents were not filed with the petition.

If the petition for guardianship of a minor does not indicate that minor is an Indian child, the court must inquire if the child or either parent is a member of an Indian tribe. If the child is a member or eligible for membership, the court must either dismiss the petition or allow the petitioner to comply with MCR 5.404(A)(1).

**Placement:** Must be placed in the least restrictive setting that most approximates a family and where the child's special needs may be met (if any). Child must be placed within reasonable proximity to child's home taking into account special needs of the child. Absent good cause to the contrary (see MCR 5.404(C)(3)), the placement of an Indian child must be in descending order of preference with:

- A member of the child's extended family
- A foster home licensed, approved, or specified by the child's tribe
- An Indian foster family licensed or approved by DHS
- An institution for children approved by an Indian organization that has a program suitable to meet the child's needs.

The court may only remove and place an Indian child upon a clear and convincing finding that:

- Active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family,
- These efforts have proved unsuccessful, and
- Continued custody of the child by the parent/custodian is likely to result in serious emotional or physical damage to the child.

Evidence must include testimony of at least 1 qualified expert witness (MCL 712B.17). Active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. If active efforts are not shown, the court must dismiss the petition and refer the petitioner to DHS for child protective services or to the tribe for services.

If Indian child discovered after guardianship ordered, the court must provide notice of the guardianship on SCAO form (PC 678) to persons pursuant to MCR 5.109 and MCR 5.125. Copy of notice must be mailed to guardian via first-class mail.