

Qualified Expert Witness

Wisconsin Indian Child Welfare Act Implementing Guidelines

Division of Safety & Permanence

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Summary

This document provides background information on the Qualified Expert Witness (QEW) history and obligations. This document also contains resources and information regarding when the testimony of a QEW is mandated; the role of a QEW; who may serve as a QEW; the QEW Tiers outlined in the Wisconsin Indian Child Welfare Act (WICWA); resources for locating a QEW; and an explanation of the difference between an expert witness and QEW. Additional statutory resources and a list of sample questions are also provided in the appendices.

Background

The Indian Child Welfare Act (ICWA), passed in 1978, was the first federal law to recognize the practice of removing Indian children from their parents, family and community. The law also emphasized the cultural differences in child-rearing practices among the American Indian communities. Prior to the passage of ICWA, American Indian children were removed from their families and communities at alarming rates. In Wisconsin, an Indian child was 1,600 times more likely to be removed from their family than a non-Indian child. These removals were often based upon traditional and customary child-rearing practices that were unfamiliar to the agencies and officials who were removing children.

In order to protect tribal child-rearing practices, ICWA included a requirement for a Qualified Expert Witness (QEW) to provide testimony in Indian child custody proceedings. The intent of a QEW was for a person to be able to speak to the child-rearing practices and traditions of the Indian child's tribe and whether those practices would be harmful to the child if they were to remain with their parent or caretaker.

In 2009, the federal ICWA was codified into Wisconsin statutes, known as the Wisconsin Indian Child Welfare Act (WICWA). During the codification process, the stakeholders sought to clarify many aspects of the federal ICWA; including, QEW. The WICWA recognizes that members of the Indian child's tribe are the ones who are best able to convey, to the court and parties, distinct child-rearing practices of the Indian child's tribe.

In every proceeding involving the out-of-home placement of or involuntary termination of parental rights to an Indian child, the petitioning party must obtain a QEW to provide testimony. The WICWA requirements for the QEW are two-fold. First, to ensure that the norms, culture or traditions of the Indian child's tribe are not used as a premise for removal. Second, to aid the court's determination as to whether continued custody of the child by the parent or Indian custodian is likely to result in serious physical or emotional damage to the child. §§ 48.028(4)(d) & 938.028(4)(d), Wis. Stats.

The following guidelines are the result of joint discussions between the Department of Children and Families, the Children's Court Improvement Program, and tribal nations. The guidelines were updated in 2024 to provide additional guidance and clarity for consistent application of the WICWA QEW provisions. These guidelines also provide critical resource information in order to assist in the implementation of §§ 48.028(2)(g), 938.028(2)(g), 48.028(4)(f) & 938.028(4)(f), Wis. Stats.

The WICWA mandates the testimony of a QEW in proceedings in which the placement of an Indian child in out-of-home care or the involuntary termination of parental rights involving an Indian child is being pursued. It is the petitioner's responsibility, whether a case is publicly-filed on behalf of a county child welfare agency or the Department of Children and Families, or brought by a private individual or private adoption agency, to ensure WICWA compliance by securing a QEW and eliciting their testimony. It is also important to keep in mind that the QEW requirements apply when the Indian child's tribe is located outside of Wisconsin or the Indian child's tribe is not actively participating in the proceedings.

When is QEW Testimony Mandated?

QEW testimony is mandated when placing a child in out-of-home care. §§ 48.028(4)(d)1. & 938.028(4)(d)1., Wis. Stats. This includes child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), and guardianship cases¹ where WICWA applies².

- A) There must be “clear and convincing evidence, including the testimony of one or more qualified expert witnesses... that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” §§ 48.028(4)(d)1. & 938.028(4)(d)1., Wis. Stats., and 25 USC § 1912(e).
- B) The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child(ren). 25 CFR § 23.121(c).
- C) This finding must be made prior to or at the dispositional hearing. If a fact-finding hearing is held, the finding must be made at that hearing by the fact finder (i.e., judge or jury). However, if partial summary judgment is granted regarding the CHIPS grounds, the finding would be made by the court at the dispositional hearing.

QEW testimony is also mandated when there is a petition to involuntarily terminate parental rights. §§ 48.028(4)(e)1. & 938.028(4)(e)1., Wis. Stats.

- A) There must be proof “beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses... that the continued custody of the Indian child by the parent ... is likely to result in serious emotional or physical damage to the child.” §§ 48.028(4)(e)1. & 938.028(4)(e)1., Wis. Stats., and 25 USC § 1912(f).
- B) The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child(ren). 25 CFR § 23.121(c).
- C) This finding must be made prior to or at the dispositional hearing. If a fact-finding hearing is held, the finding must be made at that hearing by the fact finder (i.e., judge or jury). However, if partial summary judgment is granted regarding the TPR grounds, the finding would then be made by the court at the dispositional hearing.

¹ For § 48.977 guardianship cases, QEW testimony and the serious damage finding are not required if provided in the underlying CHIPS or JIPS case for the same out-of-home placement episode.

² See: §§ 48.13, 48.977, 48.9795, and 938.13(4), (6), (6m) & (7).

What is the role of a QEW?

A QEW's role is to offer a culturally relevant assessment in cases involving an Indian child. A QEW must be someone knowledgeable about the tribal customs and child-rearing practices of the Indian child's tribe. Their testimony should reflect and be informed by those customs and practices. 25 CFR § 23.109, from the 2016 ICWA regulations, provides guidance on how the court determines the Indian child's tribe when the Indian child is eligible for membership in more than one tribe.

In passing ICWA, Congress wanted to ensure that decisions made in cases involving an Indian child are not based on "a white, middle-class standard". Accordingly, Congress required the examination of the finding as to whether continued custody by the parent would result in serious physical or emotional damage to the child be conducted within the context of the prevailing cultural and social standards of the Indian child's tribe.

In addition to being asked whether continued custody is likely to result in serious physical or emotional damage to the child, a QEW may be asked whether the parenting practices are consistent with tribal custom, tradition, and child-rearing practices. The QEW may also be asked additional questions regarding whether these parenting practices would be harmful to the Indian child and to what extent.

Who May Serve as a QEW?

What does federal law say?

The ICWA does not provide context as to who may serve as a QEW. However, the 2016 federal ICWA regulations, in 25 CFR § 23.122, provide the following as to who may serve as a QEW:

- A QEW "must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe."
- A person "may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe."
- The county social worker regularly assigned to the Indian child may not serve as the QEW for that child's case.

The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs (BIA) office serving the Indian child's tribe in locating persons qualified to serve as the QEW.

What does state law say?

WICWA provides an order of preference for QEWs. §§ 48.028(4)(f) & 938.028(4)(e), Wis. Stats.

A QEW from a lower order of preference may be chosen only if the party calling the qualified expert witness shows that it has made a diligent effort to secure the attendance of a QEW from a higher order of preference. Further considerations related to diligent efforts include:

- A QEW from a lower order of preference (i.e., tier) may not be chosen solely because a QEW from a higher order of preference is able to participate in the Indian child custody proceeding only by telephone or live audiovisual means.
- The fact that a QEW called by one party is from a lower order of preference than a QEW called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witnesses.
- In weighing the testimony of all witnesses, the court shall consider as paramount the best interests of the Indian child as provided in § 48.01(2) or § 938.01(3).

§§ 48.028(4)(f)2. & 938.028(4)(e)2., Wis. Stats.

Further, for an involuntary custody proceeding, the petitioner or state/county agency is responsible for obtaining a QEW; however, any party to the proceeding may also provide QEW testimony in support or opposition to the recommendations of the petitioner.

This section will define each tier and describe processes to attain a QEW for WICWA cases. Before proceeding to a lower tier, the petitioner or state/county agency must show it has made diligent efforts to secure a QEW that meets the requirements for a higher tier.

Tier 1

A member of the Indian child's tribe recognized by the Indian child's tribal community as knowledgeable regarding the tribe's customs relating to family organization or child-rearing practices. §§ 48.028(2)(g)1. & 938.028(2)(g)1., Wis. Stats.

A member of the Indian child's tribe, specifically one who is immersed in the tribe's culture, customs, and traditions, is the first statutory preference to provide QEW testimony. This person must also be knowledgeable of the child-rearing practices and family organization of the Indian child's tribe. In some cases, this QEW may be an elder from the child's tribe recognized as a cultural traditional expert.

The assigned worker from the tribe/tribal representative may also serve as the QEW, provided they are a member of the Indian child's tribe; however, the tribe is not required to provide a QEW.

If the Indian child's tribe decides they will not provide a QEW, the court may decide whether due diligence efforts have been met.

When seeking a QEW from Tier 1, it is advised that the petitioner reach out to the Indian child's tribe in advance to request assistance to identify a QEW. Requests for QEW testimony should not be made on the day of the hearing. Further, if the Indian child's tribe is not willing to provide QEW, this may indicate further conversations are necessary to understand the tribe's position or other barriers that may be present.

Tier 2

A member of another tribe who is knowledgeable regarding the customs of the Indian child's tribe relating to family organization or child-rearing practices. §§ 48.028(2)(g)2. & 938.028(2)(g)2., Wis. Stats.

If the petitioner or state/county agency is unable to secure a QEW that meets the requirements for Tier 1, it must show it has made diligent efforts and proceed to locate a QEW that meets the criteria for Tier 2.

QEWs under Tier 2 may include individuals who have dual heritage, potentially having connections to multiple tribes (e.g., they may be a citizen with one tribe but not another), and possess knowledge across various tribal customs and child-rearing practices. It is important to remember that a Tier 2 QEW must be a member of another tribe who has knowledge of the customs, family organization, and child-rearing practices of the Indian child's tribe.

The search for a Tier 2 QEW may extend beyond tribal boundaries, encompassing individuals with affiliations to tribes both statewide and nationally. This ensures a comprehensive understanding of the Indian child's cultural context, accommodating cases where a single tribal affiliation may not fully capture the complexities of their heritage.

Tier 3

A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the customs, traditions, and values of the Indian child's tribe relating to family organization or child-rearing practices. §§ 48.028(2)(g)3. & 938.028(2)(g)3., Wis. Stats.

If the petitioner or state/county agency is unable to secure a QEW from Tier 1 or Tier 2, it must show it has made diligent efforts and proceed to locate a QEW that meets the criteria for Tier 3.

A professional person must possess substantive experience, education and expertise in their designated area, as well as have substantial knowledge of the customs of the Indian child's tribe. While they may not have a direct connection to the Indian child's tribe but may have the knowledge gained through experience, marriage, employment with the tribe, or a long-standing relationship with tribal members. While not required to be a tribal member, as a QEW, this person will be required to provide testimony related to the tribal customs, traditions, values, and child-rearing practices of the Indian child's tribe.

Practice tip: Examples of a professional person include but are not limited to: tribal professional employees (e.g., psychologist, social worker, health provider, teacher, etc.), tribal college/university professors, tribal law enforcement officers, etc.

Tier 4

A layperson having substantial experience in the delivery of child and family services to Indians and substantial knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian child's tribe. §§ 48.028(2)(g)4. & 938.028(2)(g)4., Wis. Stats.

If the petitioner or state/county agency is unable to secure a QEW from the higher tiers, it must show it has made diligent efforts and proceed to locate a QEW that meets the criteria for Tier 4.

By definition, a layperson serving as QEW must possess substantial experience and knowledge in the delivery of child and family services and the child-rearing practices of the Indian child's tribe. Similar to Tier 3, the Tier 4 QEW is not required to be a tribal member. The test is whether the layperson meets the criteria of substantial experience and knowledge in the requested areas.

Practice tip: Examples of a layperson include but are not limited to: persons experienced working with Indian families, retired or former tribal social workers, tribal GALs, tribal youth service workers, tribal child care providers, etc.

Resources for Identifying and Locating a QEW

- The best resource for locating and identifying a QEW is the Indian child's tribe because it will generally have the personnel or know of tribal members who can speak to the issue of tribal-specific social and cultural norms and practices, including family organization and tribal child-rearing practices.
 - The tribal representative may recommend a QEW or may elect to provide QEW testimony themselves; however, the tribe is not under any obligation to provide a QEW and the petitioning party must be prepared to find a QEW elsewhere if the tribe is unable or unwilling.
 - For tribes located in Wisconsin, contact information can be found on the [Department of Children and Families website](#).
 - For out-of-state tribes, refer to the [Federal Register of Designated Tribal Agents for Service of Notice](#).
- The court or any party may request the assistance of the Indian child's tribe or the BIA office serving the Indian child's tribe in locating persons qualified to serve as the QEW. 25 CFR § 23.122(b).
 - A BIA caseworker or social worker may be another resource. These individuals frequently work with tribal child welfare programs or tribal family and social services departments.
- The Native American Rights Fund (NARF) also keeps a [list of BIA and tribal and urban organizations](#). This may be a useful starting point to identify a QEW, especially if an organization may have a referral system leading to a QEW.
- A tribal court may also be able to help locate a QEW.
 - In Wisconsin, each tribal court is a member of the [Wisconsin Tribal Judges Association](#).
- Another resource could be public, private, or tribal college or university professors or instructors, who may or may not be members of a federally recognized tribe.

- Regardless of whether they are a member of a federally recognized tribe, they must have substantial knowledge of the customs, traditions, and values of the Indian child's tribe relating to family organization or child-rearing practices.
- Additional resources for locating a QEW may also include:
 - [Great Lakes Intertribal Council](#)
 - Social workers or professional staff employed by:
 - Indian Health Services hospitals or clinics,
 - Treatment facilities, and
 - Native American Rehabilitation Association clinics.

How is QEW Testimony Different from Other Expert Testimony?

In addition to the required QEW testimony, there are other issues which may need the assessment and testimony of other witnesses, including expert witnesses. It is important to draw the distinction between the subject matter that a QEW is required to testify about versus the areas that other witnesses or expert witnesses may address. There are times that a QEW may have additional expertise that would enable them to provide both QEW testimony and other expert testimony.

Here are some examples of the information that may be provided by an expert witness in both WICWA and non-WICWA cases:

- Testimony by a psychologist or psychiatrist to establish the CHIPS ground of emotional damage. § 48.315(4), Wis. Stats.
- Testimony by an individual who conducted the alcohol or other drug assessment required for the CHIPS ground of AODA impairment. § 48.315(4), Wis. Stats.
- Testimony relevant to the issue of disposition in a CHIPS, JIPS, guardianship, or TPR case. §§ 48.335(3), 48.427(1), 48.977(4)(fm), and 48.9795, Wis. Stats.

In addition, other witness or expert witness testimony could include testimony on issues related to the WICWA requirements. However, the testimony required for the serious damage finding must be provided by one or more individuals who meet the criteria of a QEW as defined by WICWA. Appendix A in this guide provides an outline of when QEW testimony is required versus when additional WICWA considerations may involve other testimony. A few examples of this testimony are provided below:

- Tribal services and cultural considerations:
 - The court may need testimony regarding services available through the tribe, Indian organizations, or local services with appropriate cultural components which can reduce or ameliorate risk to the Indian child or provide the possibility of healing for the family. This testimony may be provided by tribal personnel who are familiar with these services, and knowledgeable about the unique circumstances of the family and needs of the Indian child.
 - A witness or expert witness could also be asked to testify to the impact that a proposed placement or permanency plan could have on cultural connections and the relationship between the Indian child and the Indian child's tribe.

- WICWA-related legal requirements:
 - Testimony establishing the extraordinary physical, mental, or emotional health needs of an Indian child that would constitute good cause to depart from the WICWA placement preferences. §§ 48.028(7)(e) and 938.028(6)(d), Wis. Stats.
 - The court or other parties may also ask for testimony as to whether active efforts were provided to prevent the breakup of the Indian child's family, whether WICWA placement preferences were followed or good cause exists to depart from the order of preference, and other questions related to the requirements of WICWA.

Testimony of QEWs and other witnesses may be based on a review of the case file, evidence, or discovery materials; interviews with family members, case participants, or service providers; and other preparation specific to the facts of the case that is permitted by law.

A QEW may or may not have the expertise that would enable them to provide other expert testimony. Although a QEW may have knowledge of the areas listed above, it should not be an expectation of the court or parties that a QEW be the primary source of such information. Any party utilizing a QEW has the responsibility to ensure that the QEW is prepared and has access to the necessary case records or documents.

It is important to note that not all of the subject matter areas or examples listed in this section require expert testimony. Parties will need to decide when it is appropriate to utilize expert or other witnesses to provide testimony in the case.

APPENDIX A

Qualified Expert Witness (QEW) Testimony	
Statute	Area of Testimony
§§ 48.028(4)(d)1. & 938.028(4)(d)1. §§ 48.355(2)(b)6v. & 938.355(2)(b)6v. §§ 48.31(5) & 938.31(5)	<u>Removal</u> <ul style="list-style-type: none"> The court may not order an Indian child to be removed from the home...[unless] [t]he court or jury finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses...that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This finding must be made prior to or at the dispositional hearing in a CHIPS or JIPS case. If a fact-finding hearing is held, the finding must be made at that hearing by the finder of fact.
§§ 48.32(1)(d)1. & 938.32(1)(e)1.	<u>Consent Decree</u> <ul style="list-style-type: none"> ...if at the time the consent decree is entered into the Indian child is placed outside the home...and if the consent decree maintains the Indian child in that placement or other living arrangement, or if an amended consent decree changes the placement of the Indian child from a placement in the Indian child's home to a placement outside the Indian child's home, the consent decree shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child...
§§ 48.357(2v)(a)4. & 938.357(2v)(a)4.	<u>Change in Placement</u> <ul style="list-style-type: none"> If the change in placement order changes an Indian child's placement from a placement in the home...to a placement outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child...
§§ 48.028(4)(e)1.	<u>Involuntary TPR</u> <ul style="list-style-type: none"> The court may not order an involuntary termination of parental rights to an Indian child unless...[t]he court or jury finds beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses...that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
§§ 48.977(4)(b)6.,	<u>§ 48.977 Guardianship</u>

48.977(4)(c)2m., 48.977(4)(g)4., 48.028(4)(d)1. & 938.028(4)(d)1.	<ul style="list-style-type: none"> All rights and responsibilities under WICWA are applicable to guardianship of an Indian child, including the need for QEW testimony to establish serious emotional or physical damage to the child, as indicated for removal (see above) <i>if this finding was not already made in the underlying CHIPS or JIPS case.</i>
§§ 48.9795(4)(b)11. & 48.028(4)(d)1.	<p style="text-align: center;"><u>§ 48.9795 Guardianship</u></p> <ul style="list-style-type: none"> <i>If the petitioner knows or has reason to know that the child is an Indian child, reliable and credible information showing that continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child under § 48.028(4)(d)1.</i>
§§ 48.831(4)(cm)	<p style="text-align: center;"><u>Guardian for Child without Living Parent – Adoptability Finding</u></p> <ul style="list-style-type: none"> <i>If the child is an Indian child who is in the custody of an Indian custodian, the court may not remove the child from the custody of the Indian custodian...unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the Indian custodian is likely to result in serious emotional or physical damage to the child...</i>
§§ 938.355(6)(cr) & 938.355(6m)(cr)	<p style="text-align: center;"><u>JIPS Sanctions</u></p> <ul style="list-style-type: none"> <i>[T]he court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (d) 1., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile...</i>

Other Testimony

The following areas of testimony are specific to a case involving an Indian child. Testimony may be necessary to prove and/or challenge these assertions. While a Qualified Expert Witness may be able to provide insights into these issues, depending on the individual circumstances and relevance, QEW testimony is NOT required to establish these findings and the court may rely upon other testimony.

Statute	Area of Testimony
§§ 48.028(7)(e) & 938.028(6)(d)	<p style="text-align: center;"><u>Placement Preferences – Good Cause to Depart</u></p> <ul style="list-style-type: none"> <i>Whether there is good cause to depart from the order of placement preference...shall be determined based on... [a]ny extraordinary physical,</i>

	<i>mental, or emotional health needs of the Indian child requiring highly specialized treatment services</i> as established by the testimony of an expert witness, including a qualified expert witness.
§§ 48.028(4)(d)2., 48.028(4)(e)2., 48.028(4)(g), & 48.9795(4)(b)11.	<p style="text-align: center;"><u>Active Efforts</u></p> <ul style="list-style-type: none"> • The court may not order an Indian child [to be removed, involuntarily terminate parental rights, approve guardianship] unless...[t]he court or jury finds by clear and convincing evidence that active efforts...have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. • The court may not order an Indian child to be removed from the home of the Indian child's parent or Indian custodian and placed in an out-of-home care placement unless the evidence of active efforts...shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe and that utilizes the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers [as evidenced by whether the nine required Active Efforts activities were performed].
§§ 48.028(3)(c).3.b. & 938.028(3)(c)3.b.	<p style="text-align: center;"><u>Transfer to Tribal Court – Good Cause to Deny</u></p> <ul style="list-style-type: none"> • The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that...the following applies:...evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence

APPENDIX B

Sample Qualified Expert Witness Questions

The following are sample questions that address the applicable areas of testimony under ICWA and WICWA. The questions seek to establish whether the behaviors of the parents reflect the customs and child-rearing practices of the Indian child's tribe, and whether returning the child to the parent or Indian custodian is likely to result in serious emotional or physical damage. ***This is not an exhaustive list; and some of the questions may not apply depending on the circumstances of the case or the knowledge/expertise of the QEW.***

Introductory Questions

Please state your name for the record.

Briefly describe your educational background.

Are you currently employed? If so, where?

What is your position [with the Tribe]?

How long have you been so employed?

Please describe your job duties.

Briefly describe your employment experience in the field of child/juvenile protection.

Approximately how many Indian children and families have you worked with, either in your current position or throughout your career?

Does your agency provide services that are culturally geared to [Indian child's tribe] families?

- If yes, what kinds of services are available?

Have you previously testified in court as a qualified expert witness as defined by the Indian Child Welfare Act? If yes, how many times?

Tribal Affiliation & Familiarity

Is it your understanding that the child is a member or eligible for membership in [insert name of the Indian child's tribe]?

Are you yourself Native American? If yes, what tribe?

If not, what is your connection with the Indian child's tribe?

Knowledge of Tribal Practices and Culture

Select one of the following questions depending on the tier of the QEW.

- Tier 1: To the best of your knowledge, does the [Indian child's tribe] recognize you as knowledgeable regarding the customs of the [Indian child's tribe] relating to family organization or child-rearing practices? If yes, please describe why.
- Tier 2: Are you knowledgeable regarding the customs of the [Indian child's tribe] relating to family organization or child-rearing practices? If so, how did you obtain this knowledge?
- Tier 3: What is your profession? Please describe the education and experience that you have in that professional specialty. Do you have substantial knowledge of the customs, traditions, and values of the [Indian child's tribe] relating to family organization and child-rearing practices? If so, how did you obtain this knowledge?
- Tier 4: Do you have substantial knowledge of the prevailing social and cultural standards and child-rearing practices of the [Indian child's tribe]? If so, how did you obtain this knowledge? Do you also have substantial experience in the delivery of child and family services to Indians? If yes, please explain.

Your Honor, at this time I would ask that the witness be certified as a qualified expert for the purpose of Qualified Expert Witness Testimony pursuant to both Wisconsin's and the Federal Indian Child Welfare Act.

Case Background

Do you have current knowledge of the case? If yes, how did you acquire this knowledge?

To the best of your knowledge, is [name of child] an Indian child within the meaning of both the federal and Wisconsin Indian Child Welfare Acts?

Was the [Indian child's tribe] notified and invited to participate in all aspects of this Indian child's custody proceeding?

Has your advice/the advice of the [Indian child's tribe] been actively solicited throughout the proceeding?

Have you read the records (e.g., court reports, CPS reports, permanency plans, etc.) of the [name of state/county agency] regarding the child(ren) and parent(s)?

What was the basis for removal and placement outside the home in this case?

Child-Rearing Practices

What is the role of extended family within the [Indian child's tribe]?

- Who are the family members that have the most influence in decision-making regarding children?

How do parents in the [Indian child's tribe] customarily assign parenting duties to extended family members?

- Would the [Indian child's tribe] require an extended family member to present a simple note or a legal document?

Is it unusual for parents in the [Indian child's tribe] to leave their children with extended family members for days or, in some cases, weeks at a time?

- Under what circumstances or timeframe would this behavior be deemed appropriate (or inappropriate)?

Would the alleged conduct of the parents be an acceptable practice within the Indian child's tribe?

- Why?

Abuse/Neglect Allegations

Physical/Sexual Abuse

What is the role of discipline within the family structure and child-rearing practices of the [Indian child's tribe]?

- How are children disciplined?
- Who generally provides the discipline?
- Is physical discipline an accepted practice?
- How does this differ from the family structure and child-rearing practices outside of the [Indian child's tribe]?

Abandonment

Is it acceptable within the child-rearing practices of the [Indian child's tribe] for a mother/father not to visit or communicate with their child for a period of time?

- Why?
 - Are there certain circumstances when it would be acceptable?
- What would be acceptable behavior?

Medical Neglect (medical or dental care)

Is it acceptable within the child-rearing practices of the [Indian child's tribe] to seek alternative methods of medical care or treatment for a child?

- Under what circumstances?

Is it acceptable according to the norms and cultural practices within the [Indian child's tribe] to not have health insurance?

- Explain if having access to a Tribal or IHS Clinic historically affects this answer.

General Neglect (care, food, clothing, or shelter)

Is it acceptable according to the norms and cultural practices within the [Indian child's tribe] to have large extended families residing together or in a multi-generational living situation?

Is it within the [Indian child's tribe's] norms for tribal members to rely solely on extended family to provide them and their children shelter?

Is it culturally acceptable within the [Indian child's tribe] to have more than two people to a room?

- Is it within the [Indian child's tribe's] norms to see relatives sleeping in rooms other than bedrooms?
 - Living rooms, basements, family rooms/dens?

Is it acceptable according to the norms and cultural practices within the [Indian child's tribe] to rely almost solely on others for food?

- To rely heavily or solely on tribal commodities for food?
- To rely heavily or solely on relatives for food?

Is it acceptable according to the norms and cultural practices within the [Indian child's tribe] to rely almost solely on relatives for access to clothing?

Is it acceptable within the culture of the [Indian child's tribe] to leave a child in the care of someone who the parent knows, or has reason to know, will not properly care for the child?

Alcohol or Drug Use

Is the alcohol/drug use alleged in this case [describe], acceptable according to the norms and child-rearing practices within the [Indian child's tribe]?

QEW Opinions

As of today, does the child remain placed outside of the parental home?

In your expert opinion, would the continued custody of the Indian child by the parent or Indian custodian likely result in serious emotional or physical damage to the child?

- Why?

In your expert opinion, based upon the facts of this case, is there a causal relationship between the conditions in the home and the likelihood that serious emotional or physical damage would occur to the child?

Please describe the causal relationship between the conditions in the home that are of concern and the likelihood that serious emotional or physical damage would occur to the child?

Was any of the alleged abuse/neglect in this case acceptable according to the cultural norms regarding family organization and child-rearing practices of the [Indian child's tribe]?

Are there any other cultural factors that may have affected this case that have not been addressed, but should be considered?

Are there any other cultural factors that may further explain the parents' behavior toward the child?

Optional Areas of Testimony

Disposition/Best Interest of the Indian Child

Do you believe that the action being sought (e.g., guardianship, TPR, etc.) is in the best interest of the Indian child?

- Why?

Placement Preferences

Has the [Indian child's tribe] established their own order for placement preferences?

- Are the placement preferences the [Indian child's tribe] established by resolution of the Indian child's tribe?
- What are the placement preferences of the [Indian child's tribe]?
- Are those placement preferences different from the placement preferences provided in ICWA or WICWA?
 - If so, please describe how they are different.

Where is the child currently placed?

- Is that a relative placement?
- Does the Indian child's tribe support this placement?
- Are you aware of whether there is a placement available that meets a higher placement preference?
- Does this placement comply with both the federal and Wisconsin Indian Child Welfare Act [or with the placement preferences of the Indian child's tribe]?

Do you believe there is good cause to depart from the placement preferences?

- Why?

Active Efforts

Did the state/county conduct an assessment of the situation of the Indian child's family?

Did the state/county look at whether the Indian child's health, safety, and welfare could be protected while remaining in the home?

- What did the state/county conclude?

- Does the [Indian child's tribe] agree with those conclusions?
- What was this determination based on?

Do you believe that the state/county made active efforts to provide remedial services to this family to prevent its breakup?

- Were those efforts successful?
- Why?
- Is there anything else the state/county could have provided to this family to prevent its breakup?

Did the state/county request the assistance of the [Indian child's tribe] in developing a case plan that uses the resources of the [Indian child's tribe] and of the Indian community, including traditional and customary support?

Has the Indian child been provided with family interaction?

- If the family did not want to participate, was it at least offered?

Was the interaction provided in a natural setting that ensured the Indian child's safety?

- If so, please describe what efforts were made

Were family members either offered or provided resources to aid in attending the interaction(s)?

- If so, what resources were offered or provided to the family?

Did the state/county invite the [Indian child's tribe] to assist with identifying culturally appropriate family preservation strategies?

- What strategies were identified?
- What strategies were implemented?

Were community resources identified to address the needs of the family?

- What resources were identified?
- Was the Indian child's family offered and assisted in accessing those resources?

Did the county/state monitor the progress of the family and their participation in services?

Were alternative ways of addressing the needs of the Indian child's family considered?

- Were any alternatives identified?
- Where these services provided?

Are there any services that would address the needs of the family that do not exist or are not available?

In your opinion, do you believe the state/county provided active efforts in this case?

- Do you believe the efforts that have been made are in compliance with the federal and Wisconsin Indian Child Welfare Acts?