

QUALIFIED EXPERT WITNESS JOB AID



Michigan Department of Health and Human Services (MDHHS),
Native American Affairs (NAA)

What is a Qualified Expert Witness (QEW)?

MCL 712B.15.2

A person who has knowledge of child rearing practices of the Indian child's tribe that provides testimony that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

MCL 712B.17.1

If the testimony of a qualified expert witness is required for a child custody proceeding, the court shall accept either of the following in the following order of preference:

- A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices.
- A person with knowledge, skill, experience, training or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices.

When do you require a Qualified Expert Witness?

- A Removal Hearing
- A Placement Hearing (Foster Care, Pre-Adoption, Guardianship, and Juvenile Justice)
- An Emergency Removal Hearing
- A Termination of Parental Rights Hearing.

Where do I obtain a Qualified Expert Witness?

- Contact the Tribal Social Services and/or ICWA Designated Indian Agent for the tribe to request a QEW from the respective tribe of the child.
- Contact a MDHHS Indian Outreach Worker to assist you with locating a QEW at a tribe.
- The Bureau of Indian Affairs (BIA) office serving the tribe (per regional office designation) may assist you with locating a QEW for a tribe. For example: For Michigan tribes, the Regional Midwest BIA office in Minnesota provides service delivery.
- A QEW should be designated/approved by the tribe.

How Should Staff Prepare a QEW for Court/Testifying?

- Provide case information for QEW to review.
- Meet with QEW to review case file and any questions they may have.
- Coordinate with your legal representation on preparing the QEW for testimony.
- Provide directions and general information on court location/amenities.
- Ask if subpoena is required by tribe.

QEW Testimony Answers Two Questions

- First**, is the action, or inaction, of the parent or Indian custodian likely to result in serious emotional or physical damage to the child? This question seeks to determine if the child rearing practices are endangering the welfare of the child. In this situation, expert witness testimony can assist the court in understanding that tribal child rearing practices of involving extended family are not harmful to Indian children and "[s]pecific behavior patterns will often need to be placed in the context of the total culture to determine whether they are likely to cause serious emotional harm." Depending upon the expert's background, questions about whether the parents' parenting practices are in keeping with tribal custom and tradition may be asked. If the expert confirms that the parenting practices are tribal practices, the expert may be asked if the practices may be harmful to children, and the expert may also be asked for the rationale behind the determination of whether the practice is harmful.
- If the parenting practices are likely to result in serious emotional or physical damage to the child, then the **second** question is: "can the parents be persuaded to modify their conduct?" The persuasion to modify conduct can take many forms, depending upon the circumstances of the case and the needs of the family. It may also be dependent upon the availability of services, the parents' recognition that a problem exists, the parents' willingness to cooperate, etc. Time may be a factor that the expert is requested to address since the court will want to know the amount of time needed to plan for permanency for the children.

- “Determining the likelihood of future harm frequently involves predicting future behavior,” and it then recognizes that behavior is greatly influenced by culture. Tribes, extended family members and Individual Indian Caregivers may have an impact on the likelihood for change and the prediction of future behavior, and an expert witness, depending upon the expert’s background, may be asked to address culture within the predictions for the future and the importance of culturally competent services.
- The content of the testimony of the expert witness will vary according to the facts of each case. Expert witnesses, based upon their areas of expertise, may expect to testify to family organization, tribal customs as they apply to childrearing practices, the potential for harm to a child and culturally appropriate services that could be offered to the family. The expert may also be asked to testify about services available through the tribe or Indian organizations or local services with appropriate cultural components.

(BIA Guidelines for State Courts in Indian Child Custody Proceedings Commentary D.4. National Association of State Indian Child Welfare Managers.)

What resources are available for me to implement ICWA/MIFPA in Michigan?

- 1) NAA Policy Manual (IOS/NAA/NAG/TAM): MDHHSnet & <http://www.michigan.gov/mdhhs>
- 2) NAA website: <http://www.michigan.gov/americanindians>
- 3) Indian Child Welfare Act of 1978: A Court Resource Guide: <http://courts.michigan.gov/scao/resources/publications/manuals/cws/ICWActResourceGuide.pdf>
- 4) A Practical Guide to the Indian Child Welfare Act: <http://www.narf.org>
- 5) Native American Affairs (NAA) Tribal Service Area Matrix (Pub-172): <http://www.michigan.gov/americanindians>
- 6) BIA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings: http://www.michigan.gov/documents/dhs/BIA-Guidelines-for-State-Courts-2015_482687_7.pdf?20151022132202
- 7) BIA ICWA Designated Indian Agent Listing: <http://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>

The Michigan Qualified Expert Witness (QEW) Job Aid was not created to replace the NAA policy manual or Michigan Court Rules regarding implementing the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA), tribal codes or state child welfare laws as applicable.

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