



# ADYC COMPLIANCE NEWSLETTER

By Sadie Hart, ICWA Compliance Monitor

Q2 2020

## Gigawabimin Judge Marek!

We say gigawabimin (see you later) to Judge Lezlie Marek, who recently began a new rotation in the civil division after three and half years serving as a child protection judge. Judge Marek was appointed to the bench in December 2010, after a 27-year career as a civil litigator in private practice. She has completed rotations in the criminal, civil, and child protection divisions and in May 2020 she began a new rotation in the civil division. We interviewed Judge Marek in order to take a look back at her experiences as a child protection judge during the last three and half years.

Judge Marek quickly realized the gravity of child protection. *“While my experience on the bench made me feel comfortable in the courtroom and with child protection law and procedure, nothing fully prepared me for the child protection assignment. Rather than presiding over matters where the end result may be loss of liberty or an award of money damages, child protection cases focus intensely on children and families and the end result may fundamentally alter the structure and functioning of a family. For this reason, it is a challenging assignment for a judge, no matter what the judge’s background and experience has been.”*



### In This Issue

- Gigawabimin Judge Marek!
- Liaison Lowdown: Introducing Mariah Smith!
- COVID-19 Updates
- 2012-2019 Data: A Historical Review
- ICWA Compliance Goals

*“Most cases come into the child protection system because of abuse and neglect of children by their parents or others. Substance abuse, mental health issues, and homelessness are at the root of most child protection cases. Notwithstanding these constants, American Indian children in the child protection system are removed from their homes at significantly higher rates than children from other backgrounds. Historical trauma to the Native American population has resulted in many problems for Native American families, in part because of the weakening of their cultural identity.”*

Judge Marek indicated that her *“greatest challenge in hearing ICWA cases was to ensure that every player in the child protection system understands that an ICWA case is not simply a child protection case involving a child of Native American heritage. ICWA cases are governed by different and more stringent child protection laws and must reflect a heightened effort to reunify the family and to preserve the child’s cultural identity. Another challenge is the lack of services available to all families and children in the child protection system and delays in accessing those services.”*

## Gigawabimin Judge Marek! (Continued from page 1)

Judge Marek also remarked on her experience working with tribes and tribal representatives. *“I have enjoyed learning more about Native American culture. A Native American child is a child not only of two parents, but may also be a child of a particular tribe. Some tribes are very active in assisting with tribal enrollment for eligible children and with helping connect children and families to culturally available services. I have relied on tribal representatives to provide input concerning removal of children, placement of those children in foster care, appropriate case plans for parents, and long-term solutions.”*

The spirit of ICWA is vital and Judge Marek believes that it is followed in Ramsey County. *“Justice partners in Ramsey County have had significant opportunities to be trained in ICWA and MIFPA, and the handling of these cases has improved dramatically in the past several years. The Ain Dah Yung Center ICWA compliance statistics showed no ICWA violations in the cases monitored in Ramsey County in the last 2 quarters, which is an encouraging statistic. All of the justice partners have committed to ‘getting it right’ in ICWA cases, and I believe that commitment is resulting in better outcomes for Indian children and their families.”*

***“...while the law provides a set of minimum standards in ICWA cases, they are minimum standards. We need to go above and beyond these standards to do what is in the best interests of children.”***

After spending over three and a half years in child protection, Judge Marek offers unique insights into presiding over ICWA cases. *“Just like with any other case, the most important thing a judge can do is to be well-prepared for hearings, to listen, and to commit to learning new and often unfamiliar law. It is also important to understand that while the law provides a set of minimum standards in ICWA cases, they are minimum standards. We need to go above and beyond these standards to do what is in the best interests of children. Finally, I believe the judges have a powerful opportunity to help parents set goals and encourage them to achieve them, while at the same time being very direct with parents whose efforts are not sufficient.”*

*“I would encourage new child protection judges to attend local Children’s Justice Initiative (CJI) meetings, because they provide judges with the rare opportunity to discuss difficult child protection issues with justice partners, many of whom are extremely knowledgeable about ICWA and other child protection issues. Every member of CJI cares very deeply about child welfare and works toward the common goal of improving our practices. I would also advise that time spent at ICWA and other child protection trainings is time well spent. Judges rotate in and out of child protection and should recognize that they can learn from the people who spend their entire careers focusing on this area of the law. I benefitted from the collaborative approach to learning in the child protection area.”*

***“We need to ensure that children in the child protection system feel as secure as possible and not that they are being shuffled from place to place.”***

When asked about what the ideal child protection system would look like, Judge Marek indicated that she *“would like to see many of principles of ICWA applied to all child protection cases. The ideal child protection process would involve the provision of more ‘up-front’ services to families before children are removed from their homes. It would also take a closer look at whether there are family members or friends who are known to the child who can foster the child if the child is removed from the care of their parents. Placement decisions would be made very carefully, so that children are placed in culturally relevant and safe homes with people who really care about them.”*

*“We need to ensure that children in the child protection system feel as secure as possible and not that they are being shuffled from place to place. I would like to see parents have the opportunity to visit their children more often, because frequent and meaningful visitation is usually extremely helpful in reuniting families. We need to recognize that child safety must always come first, but in our zealotness to provide it, we may end up inflicting more trauma upon a child who has already suffered from many adverse life experiences. We need to consider alternative ways to promote child safety and well-being. I would also like to see better coordination between the child protection system and the juvenile delinquency system.”*

## Gigawabimin Judge Marek! (Continued from page 2)

Judge Marek also shared her hopes for the future of child protection. *“I hope that those in government who control the purse strings will recognize the importance of more funding for the child protection system. Every facet of the system is stressed by the volume and complexity of the cases. Better funding would result in the expedient delivery of services to children and families, who are in desperate need of immediate help. The lack of affordable housing and transportation is a big issue for many families in the child protection system. If children don’t have a clean and safe place to live, they will not be in a position to succeed in school, if they can even get there. Once children get behind in school, they often never catch up. A good home and a good education is my biggest hope for every child.”*

Finally, Judge Marek noted that she *“will miss working with children, families and the child protection justice partners. I will especially miss the opportunity to see and hear from children in court. Working in this division was often emotionally taxing and the work was sometimes overwhelming and discouraging. But the work can also be very rewarding, because we do keep children safe and assist their parents with the skills they need to successfully parent their children.”*

*“When I was hearing child protection cases, I kept a Nelson Mandela quote inside my bench book that reads, ‘There is no keener revelation of a society’s soul than the way it treats its children.’ This is so true. Children cannot vote, have quiet voices and do not have political power, but we need to recognize that they are this nation’s most valuable resource, and treat them as such.”*

Miigwech, Judge Marek, for answering our questions and serving our American Indian families!

## Liaison Lowdown: Introducing Mariah Smith!

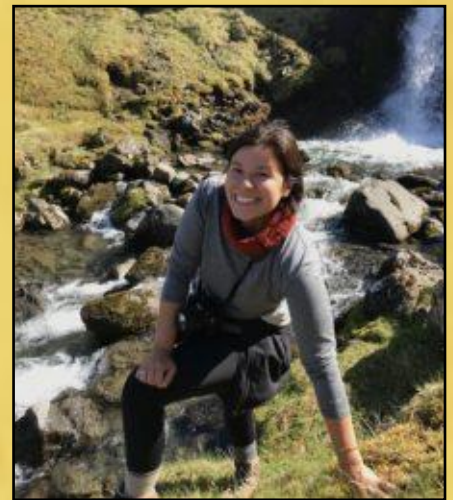
Boozhoo! My name is Mariah Smith. I am an enrolled member of the Fond Du Lac Band of Lake Superior Chippewa and Red Cliff Band affiliated. I have been with the Ain Dah Yung Center for a little over a year now - previously working in the Ninijanisag (Our Children) Program and I am now excited to take on the roles of the Nokomis Circle Liaison and Coordinator of the Oyate Nawajin (Stand With the People) Program.

As the Nokomis Circle Liaison, I will work with Ramsey County Child Protection Services (CPS) workers, case managers and our American Indian families involved with child protection services. My responsibility is to reach our families and offer support. This may be working alongside the CPS workers/case managers to identify kinships and/or relative placements for the child, find culturally relevant services for the family or assist with family visitations. Additionally, I will be working with Ramsey County and other agencies to recruit, develop and sustain foster care homes within the American Indian community.

From start to finish, I will be supporting families in any way I can to make sure they stay on track with their case plans and finish them so their families can reunify. I will educate families about the child protection process and make sure they have an understanding of their rights, what can happen, and what will happen next so there are no unexpected surprises and they feel engaged and involved the entire time.

Ultimately, I will be working collaboratively with the CPS workers every step of the way from the opening of an investigation, helping to process and analyze the situation and continuously addressing the question - Is the current problem imminent danger to the child or are there alternative solutions to prevent this family from entering the system?

Finally, in a time such as COVID-19, support might look differently than it has previously. With the added stress and challenges it has brought, I am dedicated to continuing to find ways to support our families and to ensure they are still heard and seen. Although this is a difficult time, we are a resilient People and I will continue to help our families navigate through it. We will continue to strengthen our families and children through this unforeseen time in our history. I look forward to sharing my skills and knowledge and I am excited to deepen my skillsets moving forward.



## COVID-19 Update

During the COVID-19 pandemic the Second Judicial District has taken steps to ensure the safety of the families it serves as well as its employees. As directed by the Minnesota Supreme Court in late March, counties began to limit in-person access to courthouses for only designated cases while utilizing remote hearings through Zoom or by phone.

Within child protection, review hearings have primarily been held administratively, with the opportunity to request Zoom or phone hearings for cases that require additional consideration or present a conflict that cannot be handled administratively. Admit/Deny and Pre-Trial hearings for child protection and permanency cases were temporarily halted in the beginning of the court shutdown, but they are now completed remotely. Trials were also temporarily halted but have either been rescheduled to be conducted in-person once possible or held remotely via Zoom. Emergency Protective Care hearings continue to be held in the courtroom, though attendance is limited to parties, parent-participants, and attorneys.

Justice partners from the Second Judicial District have been working together to tackle issues relating to remote hearings and COVID-19, such as ensuring families have access to phones for remote hearings. Additional plans include a gradual reopening of the court system as well as scheduling more hearings, including review hearings, by phone or Zoom to meet scheduling demands. Even if the court system is able to return to normal operations, justice partners must also be prepared for the possibility of another shutdown.

As court systems begin to reopen each county is responsible for implementing a COVID-19 Preparedness Plan and ensuring safety procedures are consistent with the Minnesota Department of Health. These procedures, such as social distancing and wearing face coverings, must be in place to ensure the continued safety of employees and families. Some courtrooms at the Ramsey County Juvenile and Family Justice Center have been outfitted with additional technology to allow for continued remote appearances.

Families have also faced unique challenges during the shutdown. Families have largely been unable to have in-person visits and meetings with social workers, guardians ad litem, and attorneys. Instead, Zoom and phone calls have become the new norm. Family visitation also presents a struggle as many in-person visits have been replaced with Zoom or phone calls. Many services required by case plans have also been suspended or limited. There continues to be ongoing conversations regarding how best to serve families and ensure access to justice during this difficult time.

Miigwech to the Second Judicial District for your hard work in keeping our families safe and continuing to preside over these cases!



## 2012-2019 Data: A Historical Review

Due to the COVID-19 pandemic, hearing data has been limited in Ramsey County and will be for several months. Data from Quarters 2 and 3 of 2020 will be included in the Quarter 4 compliance newsletter. **Therefore, for this newsletter and the next newsletter, we are pleased to provide a multi-year review of the court monitoring data since the beginning of ICWA court monitoring in Ramsey County in 2012.** A nice snapshot of history on how far we've come and where continued work is needed! This data was collected by the court monitor at hearings held at court, talking to the parties involved, and reading case files. This data reflects hearings the court monitor attended and does not include all Ramsey County ICWA cases.

## Attendance

The rate for mothers' attendance at hearings has varied over the past several years, with a notable increase from 2015 to 2016 followed by a decrease from 2017 to 2018.

Attendance of fathers, however, has remained consistently low and has declined from 2017 to 2019.

Some reasons for parents who were interested in attending court but not present include a lack of transportation to court hearings, public transit issues, parking, length of wait time, and conflicts with work schedules.

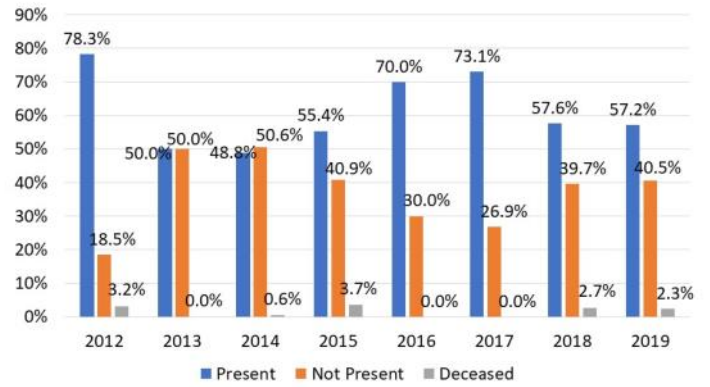
Attendance data for parents does not include hearings in which parental rights have been terminated or a custody transfer has been deferred pending benefits under the Northstar Care for Children Act.

While there has been an increase in children's attendance over the past two years, most children do not attend court in Ramsey County, though they are always welcome.

Children 10 and older were more likely to attend and have more involvement in the court process, most likely due to their increased connection through their attorney. Some children who attended hearings chose to sit in the gallery and observe rather than participate in the hearings.

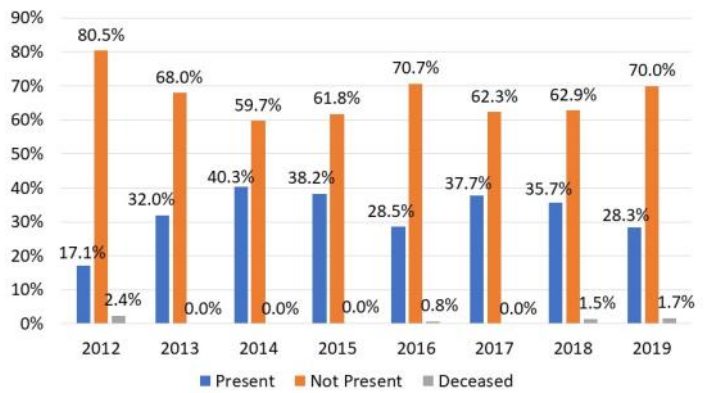
## Attendance of Mothers

	Present	Not Present	Deceased	Total
2012	72	17	3	92
2013	33	33	0	66
2014	80	83	1	164
2015	103	76	7	186
2016	100	43	0	143
2017	49	18	0	67
2018	171	118	8	297
2019	174	123	7	304
<b>2012-2019</b>	<b>782</b>	<b>511</b>	<b>26</b>	<b>1319</b>



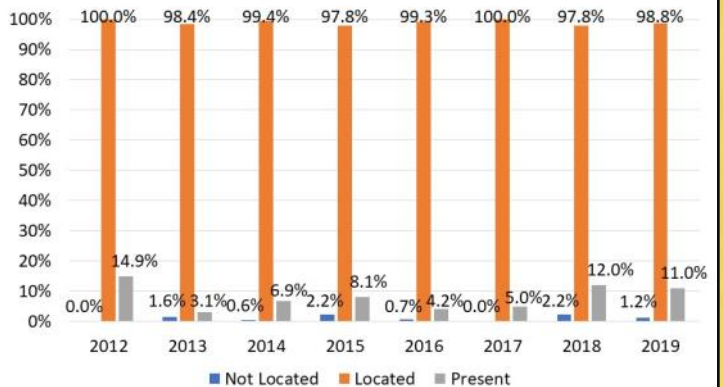
## Attendance of Fathers

	Present	Not Present	Deceased	Total
2012	14	66	2	82
2013	16	34	0	50
2014	58	86	0	144
2015	68	110	0	178
2016	35	87	1	123
2017	23	38	0	61
2018	100	176	4	280
2019	82	203	5	290
<b>2012-2019</b>	<b>396</b>	<b>800</b>	<b>12</b>	<b>1208</b>



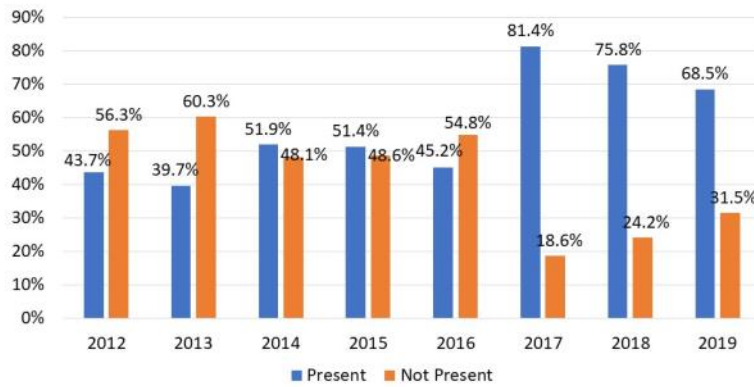
## Attendance of Children

	Not Located	Located	Present	Total
2012	0	87	13	87
2013	1	63	2	64
2014	1	159	11	160
2015	4	182	15	186
2016	1	141	6	142
2017	0	60	3	60
2018	0	100	39	325
2019	4	343	38	347
<b>2012-2019</b>	<b>11</b>	<b>1135</b>	<b>127</b>	<b>1371</b>



## Attendance of Tribes

	Present	Not Present	Total
2012	45	58	103
2013	25	38	63
2014	83	77	160
2015	89	84	173
2016	61	74	135
2017	48	11	59
2018	191	61	252
2019	183	84	267
<b>2012-2019</b>	<b>725</b>	<b>487</b>	<b>1212</b>



## Attendance of Tribes

Tribal participation at hearings increased significantly from 2016 to 2017. Tribal participants include lawyers, social workers, representatives, and liaisons.

At many hearings the tribal affiliation of the child was in the process of being determined, which accounts for some of the hearings in which tribal representatives were not present.

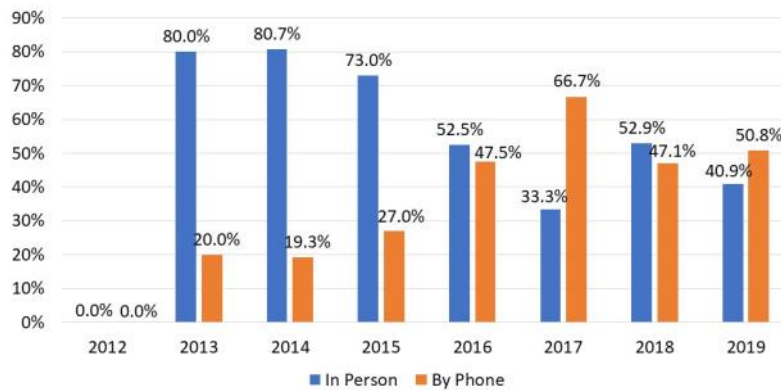
Data for ICWA cases where tribal affiliation is unknown or vague is not included.

There has been a shift in how tribes participate in hearings. In 2017 there was a sharp increase of tribal participation by phone, which makes it easier for tribal representatives to appear for court hearings.

This increased collaboration between the county and tribes is a great improvement for our children!

## Form of Attendance of Tribes

	In Person	By Phone	Total
2012	0	0	0
2013	20	5	25
2014	67	16	83
2015	65	24	89
2016	32	29	61
2017	16	31	48
2018	101	90	191
2019	79	98	193
<b>2012-2019</b>	<b>380</b>	<b>293</b>	<b>690</b>



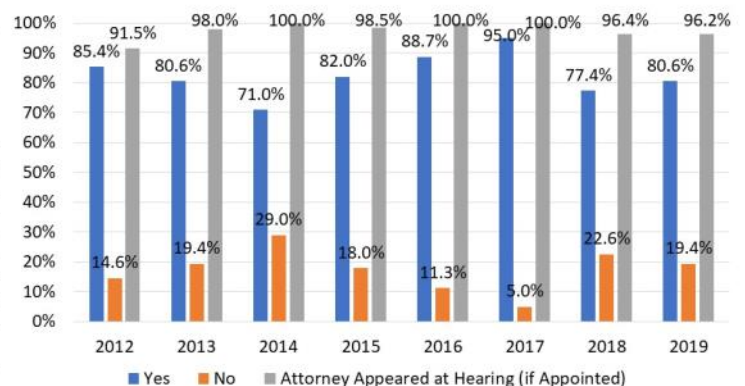
## Representation

Mothers consistently had representation at hearings, whether or not they appeared.

Fathers were less likely to have counsel, most likely due to their parentage status. However, under ICWA, a child's father is considered a party and has a right to counsel, regardless of his parentage status.

## Did the mother have an attorney?

	Yes	No	Attorney Appeared at Hearing (if Appointed)	Total
2012	82	14	75	96
2013	50	12	49	62
2014	115	47	115	162
2015	137	30	135	167
2016	118	15	118	133
2017	57	3	57	60
2018	222	65	214	287
2019	237	57	228	294
<b>2012-2019</b>	<b>1018</b>	<b>243</b>	<b>991</b>	<b>1261</b>



## Representation

While a few parents did not financially qualify for a court-appointed attorney, most parents who did not have an attorney had not yet appeared in court or completed a request for a court-appointed attorney.

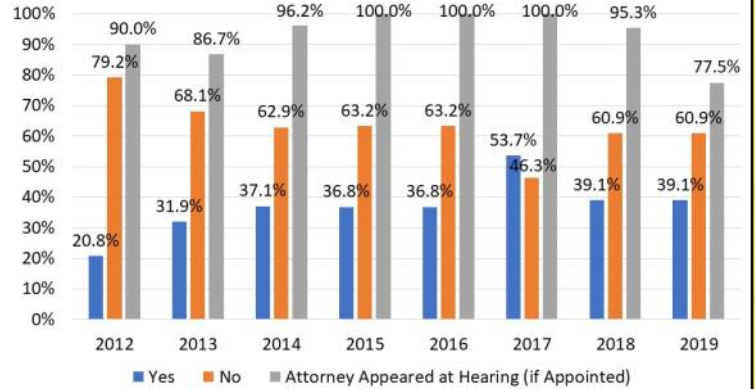
Some attorneys waived their appearances for cases where they had not had contact with their client for some time, though most attorneys appeared for their clients whether or not their client appeared in court.

Most children in Ramsey County are represented through the Children's Law Center (<https://clcmn.org/>). Some children waived their right to have an attorney.

McKenna's Law, passed in 2017, requires social workers to inform the child of their right to be represented by a lawyer and to attend court hearings.

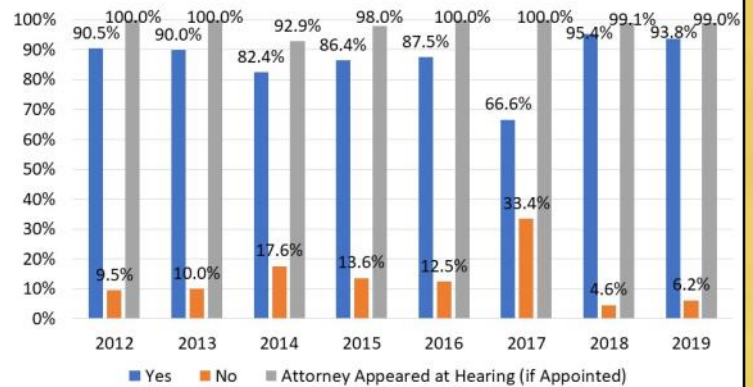
## Did the father have an attorney?

	Yes	No	Attorney Appeared at Hearing (if Appointed)	Total
2012	20	76	18	96
2013	15	32	13	47
2014	53	90	51	143
2015	60	89	58	149
2016	32	55	32	87
2017	22	19	22	41
2018	107	167	102	274
2019	111	173	86	284
<b>2012-2019</b>	<b>420</b>	<b>701</b>	<b>382</b>	<b>1121</b>



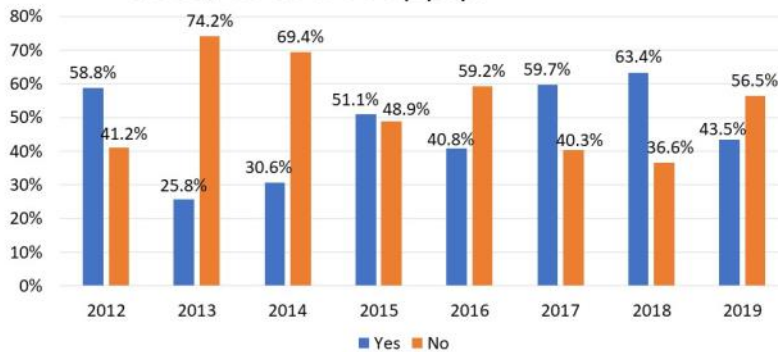
## Did children over 10 have an attorney?

	Yes	No	Attorney Appeared at Hearing (if Appointed)	Total
2012	19	2	19	21
2013	18	2	18	20
2014	42	9	39	51
2015	51	8	50	59
2016	21	3	21	24
2017	8	4	8	12
2018	103	5	102	108
2019	105	7	104	112
<b>2012-2019</b>	<b>367</b>	<b>40</b>	<b>361</b>	<b>407</b>



## If there is an indication that this is an ICWA case, did the judge make a finding orally on the record that ICWA does/does not apply?

	Yes	No	Total
2012	60	42	102
2013	16	46	62
2014	49	111	160
2015	93	89	182
2016	58	84	142
2017	37	25	62
2018	222	128	350
2019	160	208	368
<b>2012-2019</b>	<b>695</b>	<b>733</b>	<b>1428</b>



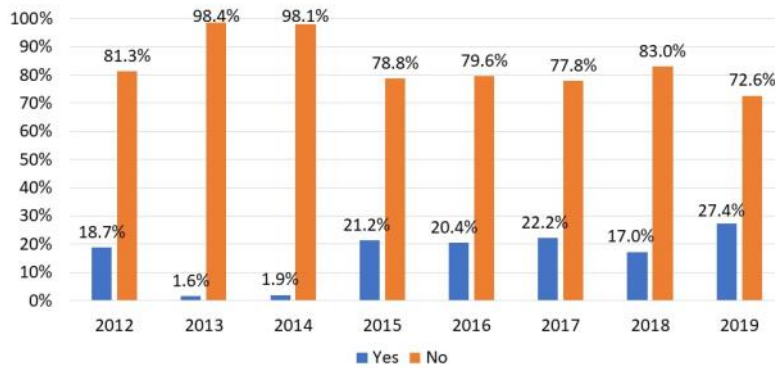
## ICWA Finding

While it is not a requirement for an ICWA finding to be made at each hearing, it is a best practice that helps reinforce that a higher standard applies to the case.

This finding often varies by judge, with some consistently making the finding and others rarely making the finding.

## Was there discussion orally on the record whether the child is a member, or eligible for membership?

	Yes	No	Total
2012	3	13	16
2013	1	61	62
2014	3	158	161
2015	39	145	184
2016	29	113	142
2017	14	49	63
2018	55	269	324
2019	95	252	347
<b>2012-2019</b>	<b>239</b>	<b>1060</b>	<b>1299</b>



## Membership

Discussion of a child's membership in specific tribes often occurs early in the case as the county works with tribes to verify membership.

There has been an increase in discussion over the past few years, which demonstrates the improved communication between the county and tribes!

## Active Efforts

Active efforts were considered at most hearings, though findings were not necessarily required at some pre-adjudication hearings.

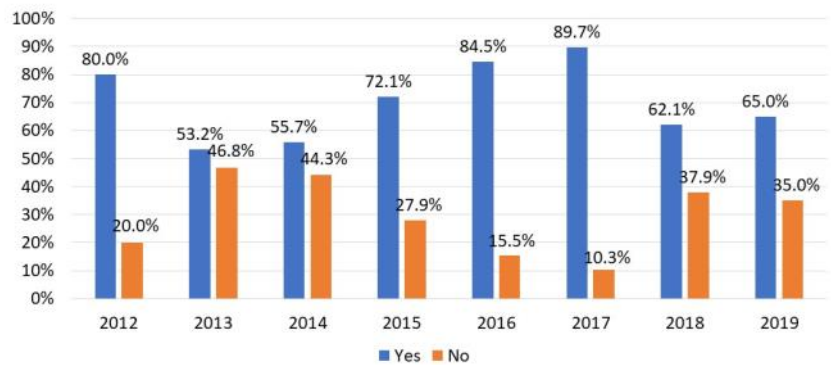
Testimony to support the active efforts finding must include how the agency's efforts were active and not only an explanation of the efforts that were made.

Testimony to support the active efforts finding greatly increased from 2018 to 2019. This increase is a great recognition of how vital active efforts are in ICWA cases!

While efforts that the social worker has made are included in reports, it is important that these are more fully discussed in court to provide the judge with context about the services families receive, how the social worker has actively engaged with the family, and to allow for discussion among all parties.

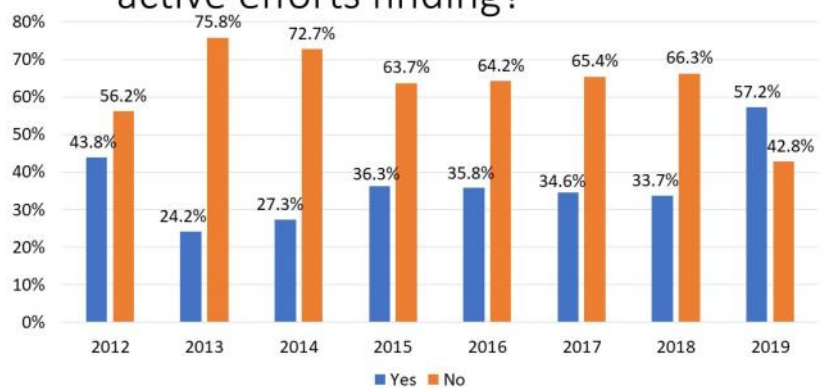
## Did the judge find that the agency made active efforts to prevent removal or to return the child to the home?

	Yes	No	Total
2012	80	20	100
2013	33	29	62
2014	88	70	158
2015	124	48	172
2016	120	22	142
2017	52	6	58
2018	190	116	306
2019	201	108	309
<b>2012-2019</b>	<b>888</b>	<b>419</b>	<b>1307</b>



## Was testimony presented to support the active efforts finding?

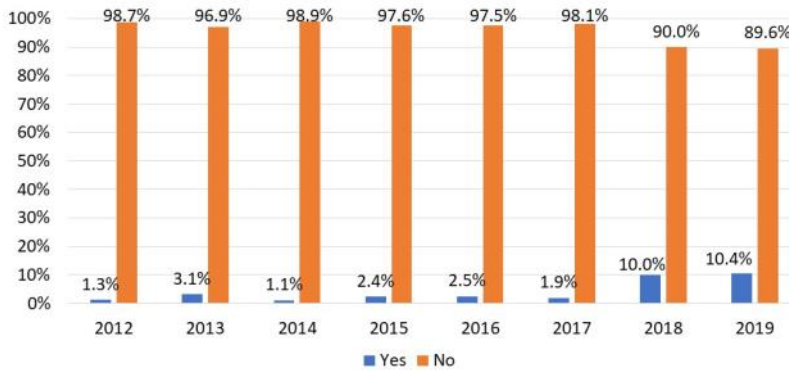
	Yes	No	Total
2012	35	45	80
2013	8	25	33
2014	24	64	88
2015	45	79	124
2016	43	77	120
2017	18	34	52
2018	64	126	190
2019	115	86	201
<b>2012-2019</b>	<b>352</b>	<b>536</b>	<b>888</b>





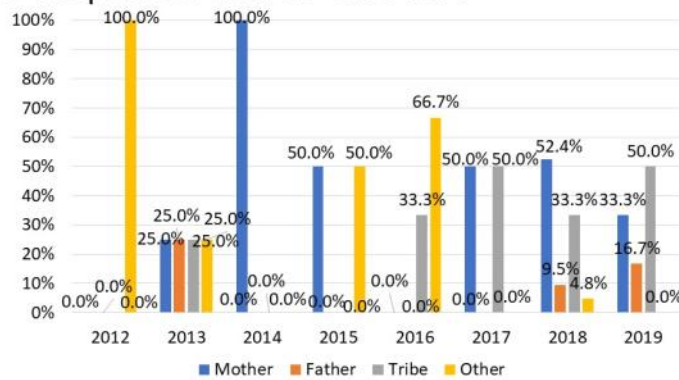
## Did a party dispute whether active efforts were provided?

	Yes	No	Total
2012	1	79	80
2013	1	32	33
2014	1	87	88
2015	3	121	124
2016	3	117	120
2017	1	51	52
2018	19	171	190
2019	12	188	201
<b>2012-2019</b>	<b>41</b>	<b>846</b>	<b>888</b>



## If active efforts were disputed, who disputed active efforts?

	Mother	Father	Tribe	Other	Total
2012	0	0	0	1	1
2013	1	1	1	1	4
2014	1	0	0	0	1
2015	2	0	0	2	4
2016	0	0	1	2	3
2017	1	0	1	0	2
2018	11	2	7	1	21
2019	4	2	6	0	12
<b>2012-2019</b>	<b>20</b>	<b>5</b>	<b>16</b>	<b>7</b>	<b>48</b>



## Active Efforts Disputes

While the increase of active efforts disputes may seem negative, it actually shows the importance of increased discussion in court.

When active efforts were disputed, the issue was typically raised by the mother or the tribe. Many concerns were due to communication issues or case plan requirements.

These disputes could lead to improved communication and relationship building for families, the tribe, and the social worker. They also provided an opportunity for the judge to clearly define their expectations for the case.

Other parties who disputed active efforts findings included relatives, guardians ad litem, and children.

We look forward to having Mariah Smith, our new Nokomis Circle Liaison, support all our goals!

## ICWA Compliance Goals

While the data shows a lot of improvement over the past several years, there is still room for growth. Some areas include:

- **Increased attendance of parents:** Determining new strategies to engage parents and emphasize the importance of the court process is vital.
- **Increased involvement of children:** While children often choose not to attend court hearings, some children have indicated that they do not feel like they are a part of the process and would like to be more involved.
- **Increased tribal participation:** Tribal involvement is critical to ensure children remain connected with their cultures.
- **Increased discussion regarding active efforts:** Improved communication can improve relationships between the parties and lead to better outcomes for families.

## Contact Information

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