



# Agindaso Abinoji-yag

*"He/she reads or counts children"*

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ICWA Compliance Newsletter Q2 2023

## Improving Compliance: The History of the ICWA Court Monitoring Program

In the early 1980s the Minneapolis American Indian Center's Director of Indian Child Welfare Jan (Vizenor) Lindstrom wrote the first ICWA (Indian Child Welfare Act) grant, funded by the Minnesota Department of Human Services. The purpose of the grant was to monitor the state's compliance with ICWA and ensure that tribes received notice when Indian children were removed from their homes. This monitoring focused on reviewing social work files and active efforts.

The court monitoring program expanded nationally in 2010 through a grant from the U.S. Department of Health and Human Services Office of Minority Health with the goal to improve health outcomes associated with the out-of-home placement of American Indian children off tribal land. Objectives included increasing awareness, education, and outreach to address racial minority health and health disparities as well as improving access to health and other community-based services. This expansion also incorporated the legal aspects of ICWA.

We interviewed Paul Minehart, the second court monitor in the country after Jan Lindstrom, and Sheri Riemers, the former Indian Child Welfare Director at MAIC, to learn some of the history of the ICWA court monitoring program.



*At the Minneapolis American Indian Center George McCauley (left) and Paul Minehart (right) developed a database in collaboration with tribal partners to establish a national advocacy network for tribal and urban Indian organizations to understand courtroom compliance with ICWA.*

### In This Issue

- Improving Compliance
- ICWA Stands
- Gigawabamin to County Attorneys
- Quarter 2 Data
- Tribal Attendance
- Court Updates

As part of the Minnesota Department of Human Services grant Paul created quarterly reports on court activities, primarily in Hennepin County. Rose Robinson, an Indian Child Welfare Consultant at the Department of Human Services, requested that Paul expand these reports. "Rose Robinson called me and asked, 'could you do more with this?'"

"Because the grant was to go to hearings I was reporting on the number of hearings attended. She asked 'can you talk about hearings and talk about the types of noncompliance?' and so I did. That's what started the report that was circulated to people in this system. It was at Rose Robinson's suggestion that the court monitoring report came about. I credit her with the format that was used."

## Improving Compliance (Continued from page 1)

"At first, I did not give the names of judges [who violated ICWA]. Then Judge John Stanoch, presiding judge of juvenile court at the time, said 'you should put the names of the judges in there.' We just stumbled upon the notion that people would change their behavior when their activities were being documented and circulated to their peers. We ran with it as a way to get people to change their behaviors without waiting until they changed their attitudes."

***"We just stumbled upon the notion that people would change their behavior when their activities were being documented and circulated to their peers."***

He continued that "in Hennepin County the County Attorney's Office disagreed with portions of pretty much every report and that was an opportunity to do some education. Judges in Hennepin County asked me to talk at one of their judges meetings about what is required to implement ICWA. Of course the County Attorney's Office wanted to be there to hear what I was saying to the judges, so they were there, too. Sometimes county social workers would ask me what ICWA required and the County Attorney - their attorney - did not appreciate social workers asking me. Tension developed between the court monitor and the County Attorney's Office, but I thought, if you were providing counsel to your client they wouldn't be asking me!"

Tracking cases and court hearings presented its own challenge. "When I started, the court would fax me the court calendar. I would go through it and based on names identify people who I suspected might be Native. Then Hennepin County District Court started an ICWA hold calendar and a non-ICWA hold calendar. I was copied on tribal notices so I would be informed of the Admit/Deny hearing, even if I wasn't at the hold."

Part of the court monitoring contract was to hold two trainings each year. "One of the trainings was a panel with a judge, county attorney, defense attorney, Tribal representative, and Guardian ad Litem. I moderated the panel. This training and others were well received. One of my favorite trainings centered on the ICWA emergency removal standard - imminent physical damage or harm. I was not the court monitor at the time, but Chelsea Holub who was the court monitor asked me to help with the training. Imminent physical damage or harm is not defined. At the training we had scenarios and people used clickers to vote on whether this fact situation was the basis for a finding of imminent physical damage or harm."

***"The idea was to get people to realize when they would shift from not finding imminent physical damage or harm to finding imminent physical damage or harm."***

"We would keep building on that fact situation and people would again vote whether - with the additional fact - the fact situation was the basis for a finding of imminent physical damage or harm. The idea was to get people to realize when they would shift from not finding imminent physical damage or harm to finding imminent physical damage or harm. We would discuss what made people change or not change their minds. It was hopefully a way to get at unconscious bias when people justify emergency removals."

Under the leadership of Sheri Riemers, then Director of the Indian Child Welfare Program, Paul and colleague George McCauley expanded a compliance database with collaboration from tribal partners to establish a national advocacy network for tribal and urban Indian organizations to understand courtroom compliance with ICWA. Initial tribal partners included Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Spirit Lake Nation, Oglala Sioux Tribe, Sisseton Wahpeton Oyate, and Yankton Sioux Tribe. This included a web-based system to improve communication and coordination between tribal governments and urban Indian organizations. This case management system is still used for court monitoring and is referred to as QUICWA for "Quality ICWA" compliance.

"We built the case management system with a court monitoring component. The initial vision was that tribes could run customized reports from their case management system that they could use for their own self-advocacy to impact systems change and have their own court compliance monitoring project. It never really got off the ground, in part because tribes at that time were underfunded in their social services - they probably still are - and understaffed. It takes time to get all your cases loaded into a computerized system and learn how to use it."

## Improving Compliance (Continued from page 2)

"The tribes didn't always have computers, and when they did, they didn't always have Internet access. We provided computers for some of them, but because the database idea never got much traction we shifted to court monitoring and went nationally with the court monitoring program. And that's how Ain Dah Yung Center got involved."

Sheri added that "it had two iterations. Robert Desjarlait was the third ICWA court monitor in the country and the first for Ramsey County at the Ain Dah Yung Center - again it was more focused on social work - but it never really got off the ground." The partnership began with the initial tribal partners located in South Dakota and the Minneapolis American Indian Center, the Ain Dah Yung Center, ICWA Law Center, and the University of Minnesota Duluth School of Social Work, and expanded the national compliance project to Michigan State University College of Law students in Michigan monitoring court.

Sheri noted that "Paul and George built those relationships. We had a workshop talking about the national compliance project at the NICWA (National Indian Child Welfare Association) conference to present the rollout. NCJFCJ (National Council of Juvenile and Family Court Judges) came to the rollout that Paul was trying to recruit at and they were also interested in compliance and that led to their bench book. I just sit here and I think about the national impact that [Paul has] had. That's the impact that 'the little engine that could' had. I think about somebody having an idea that we needed to monitor ICWA, then having the 'Legal Eagle' come in and really sinch it up, really get into the core compliance, and then training it out. I think about the impacts that Paul has had on the local and national level and being able to team up with a national, recognizable project."

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While monitoring was primarily focused on Hennepin County, the program had permission to access courtrooms across the metropolitan area. Paul recalled gaining access to hearings in Ramsey County: "Because these were closed hearings at the time you needed permission. There was a rule about who could attend a hearing and the last one was 'anyone else at the discretion of the judge' and so we met with the judge who was receptive to the idea. The County Attorney's Office gave some pushback having monitoring happening in Ramsey County, but they didn't push very hard and it happened. So then it was mostly Hennepin and Ramsey. We did some other counties but it was hard to have time to do it."

Sheri noted the positive impacts of relationship-building in Ramsey County since the early 2010s. "County Attorney Heather Capistrant has always been a huge advocate. Judge Diamond was the first judge here in Ramsey County to really take the chest of Ramsey County and open it up and say 'how are we doing?' Just like Kim Cleminson did for social work. He actually had NCJFCJ come in and do a review of Ramsey County and they made five recommendations."

These relationships evolved into the ICWA Court and greater compliance. "ADYC ICWA Court Monitor Jake Day and I worked really closely with Judge Diamond," Sheri said. "Through the court advocacy work of Bree Bussey, Judge Tarnowski started their ICWA Court. Here, [social worker] Shad Cook was a strong advocate in promoting the process here in Ramsey County, but we could never get past creating a formal ICWA Court because court procedures are really stringent. Judge Diamond worked in collaboration with Indian Child Welfare stakeholders to create the atmosphere. He was the first judge ever that I can remember that has come in and actually taken ICWA seriously. He made sure when he left that it was turned over to Judge Smith."

***"Judge Diamond was the first judge here in Ramsey County to really take the chest of Ramsey County and open it up and say 'how are we doing?'"***

When asked about the future of ICWA court monitoring, Paul indicated that "it would be nice if it wasn't needed, but we're not going to get there in this current climate for sure. We have all these things in the law; inquiry, notice, transfer to tribal court, and placement preferences, and really those take two different tracks."

## Improving Compliance (Continued from page 3)

“One is getting decision-making authority to rest with the tribe and the other is facilitating a deeper connection between children and their tribes. And really that's what I would like to see. It has gotten a lot better through court monitoring and has really had an impact on both of those things from within the system, but I would like to see that go so much farther. Because right now it happens and it's the monitoring that really facilitates tribal involvement, which then allows for children to be more connected to their tribes and tribes to have more decision-making authority. And it would be nice if the system itself would embrace those two things without being monitored. Because that's really what it comes down to.”

Paul also noted the opportunity to help families connect with their cultures as a protective factor, recalling the work of Nancy Hawkins Vickers, a therapist and member of the Leech Lake Band of Ojibwe: “She did her dissertation on the predictive factors of long-term sobriety for Native American women. She looked at a number of different factors but only one had any significant impact and that was connection to culture, connection to their tribe. And the earlier in their life that they were connected to the tribe the stronger it became an indicator of being able to maintain long-term sobriety. You know there's a healing nature to tribal connection. There's a stabilizing nature to tribal connection; that identity piece is so strong.”

Miigwech to Paul and Sheri for sharing more about the ICWA court monitoring program!

## ICWA Stands

In June the US Supreme Court upheld the constitutionality of the Indian Child Welfare Act and rejected all challenges in *Haaland v. Brackeen*. Justice Amy Coney Barrett wrote the 7 - 2 opinion and was joined by six other justices, while Justices Clarence Thomas and Samuel Alito Jr. dissented.

Justice Gorsuch provided a concurring opinion that explored the ongoing attacks on Indian families: “The Indian Child Welfare Act did not emerge from a vacuum. It came as a direct response to the mass removal of Indian children from their families during the 1950s, 1960s, and 1970s by state officials and private parties. That practice, in turn, was only the latest iteration of a much older policy of removing Indian children from their families - one initially spearheaded by federal officials with the aid of their state counterparts nearly 150 years ago. In all its many forms, the dissolution of the Indian family has had devastating effects on children and parents alike. It has also presented an existential threat to the continued vitality of Tribes - something many federal and state officials over the years saw as a feature, not as a flaw.”



Justice Gorsuch also noted that “in adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution’s original design.”

Miigwech to everyone who supported ICWA and all those who will continue to uphold ICWA’s protections!

## Gigawabamin (See You Later) to Two Assistant Ramsey County Attorneys

Two Assistant Ramsey County Attorneys who specialized in Indian Child Welfare Act and Minnesota Indian Family Preservation Act cases recently transitioned out of the Ramsey County Attorney’s Office. Stephanie Wiersma was with the Child Protection Division for seven years and Rob Hamilton was with the Division for six years. Both held integral roles in advancing ICWA compliance in Ramsey County, improving the child protection process for families, and the establishment of the Second Judicial District ICWA Court. Miigwech, Stephanie and Rob, for upholding the protections of ICWA and MIFPA and partnering with justice partners to improve outcomes for our Indigenous families in Ramsey County! Your commitment and advocacy have left a lasting impact in Ramsey County.

## About the Quarter 2 Data

Data was collected from April 1, 2023 to June 30, 2023. This data was collected by the court monitor at hearings, 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 hearings.

## Tribal Attendance

The following chart indicates the tribes involved in ICWA cases in Ramsey County during Quarter 2. The chart includes the tribes involved, the number of hearings that occurred, and the number of times the tribe attended hearings. This data reflects hearings the court monitor attended and does not include all Ramsey County ICWA hearings.

TRIBE	NUMBER OF HEARINGS	TRIBE PRESENT
Bad River Band of the Lake Superior Tribe of Chippewa Indians	2	2
Bois Forte Band of Chippewa	1	1
Cheyenne River Sioux Tribe	4	4
Choctaw Nation	1	1
Leech Lake Band of Ojibwe	8	8
Mille Lacs Band of Ojibwe	3	3
Oglala Sioux Tribe	1	1
Red Cliff Band of Lake Superior Chippewa	1	1
Red Lake Nation	4	4
Rosebud Sioux Tribe	1	1
Spirit Lake Nation	1	1
Standing Rock Sioux Tribe	2	2
White Earth Nation	6	5
Winnebago Tribe of Nebraska	1	1
Yankton Sioux Tribe	1	1
Unknown/Tribe Not Identified	5	-

## Court Updates

This newsletter includes positive observations from ICWA hearings as well as highlights that demonstrate the great work happening in Ramsey County.

**Observation:** The Guardian ad Litem and tribal representative noted the amount of services the father has taken advantage of while incarcerated and his growing engagement with his daughter.

**Observation:** The mother noted that while her child is in a non-relative/non-Indian home, she really liked the placement and had a good relationship with the foster parents.

**Observation:** Social worker Kurt Marsh noted the phenomenal work Ain Dah Yung Center Family Advocate Mariah Smith had done in assisting the family with resources, connecting them with cultural services, and how impactful those connections have been on the family.

**Observation:** The youth's attorney told the court that her client was enjoying school and was Student of the Month.

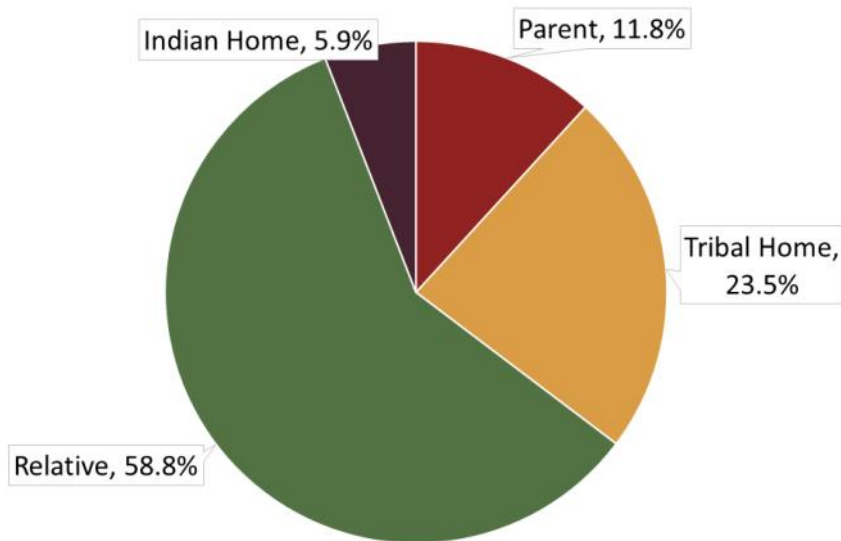
**Observation:** The Guardian ad Litem indicated that she was very proud of the youth's transparency with his chemical use and willingness to work with those supporting them. The youth's attorney appreciated everyone's efforts to support him during this time.

**Observation:** The tribal representative noted the extensive active efforts social worker Anna Coyle has made to get to this positive permanency option.

**Observation:** The mother said that she wanted and deserved to be at Avivo and has been learning about problem-solving, cycles of abuse, and how to forgive herself.

**Observation:** The tribal attorney thanked the relative foster parent for taking the child into her home. The foster parent reported that another foster child who is 4 months younger was recently placed with them and the child had been helping her adjust to the household.

## Quarter 2 2023 Placement



Parent	4	11.8%
Relative	20	58.8%
Tribal Home	8	23.5%
Indian Home	2	5.9%
Grand Total	34	

## Placement

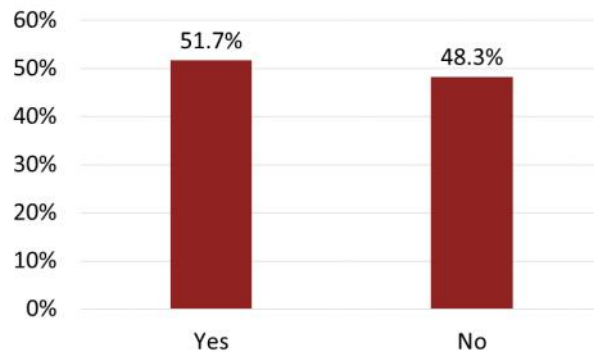
All placements monitored in Quarter 2 were compliant with the Indian Child Welfare Act and Minnesota Indian Family Preservation Act placement preferences. Children were placed with relatives 58.8% of the time.

When a child was not placed with a parent or a relative there was discussion about what prevented placement with a relative 20% of the time. Reasons for non-relative placements included lack of family members in the area and the parent's preference.

Tribal homes include tribal members as well as homes that are approved by tribes.

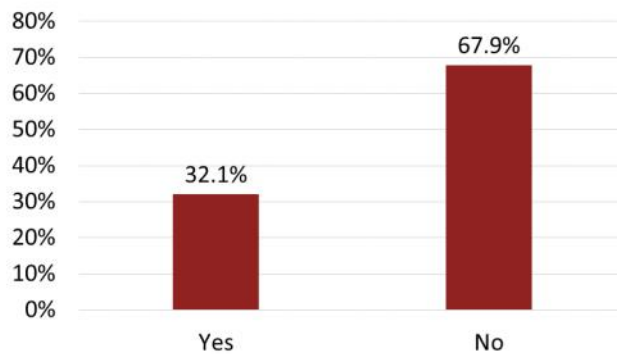
### Did the mother attend the hearing?

Yes	15	51.7%
No	14	48.3%
Grand Total	29	



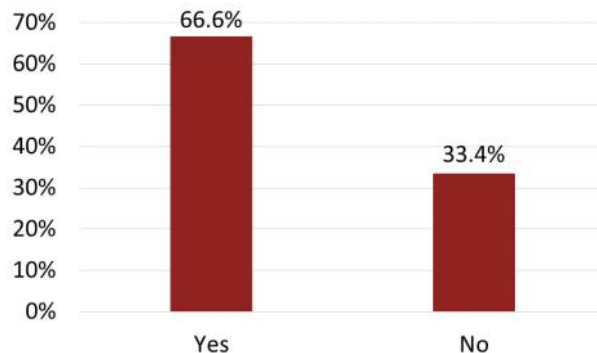
### Did the father attend the hearing?

Yes	9	32.1%
No	19	67.9%
Grand Total	28	



### When the tribe was present, was there discussion of how the tribe has been involved in case planning?

Yes	24	66.6%
No	12	33.4%
Grand Total	36	



### Attendance and Tribal Engagement

Mothers attended hearings 51.7% of the time in Quarter 2 while fathers attended 32.1% of the time. When an attorney had been appointed to represent a parent they appeared at 100% of the hearings at which their client appeared.

Data for parents' attendance does not include post-permanency or extended foster care hearings.

A Guardian ad Litem appeared at every hearing in which one was appointed. Other hearing attendees included foster parents, former foster families, and advocates.

When a tribal representative was present there was discussion about the tribe's involvement with the family and case planning 66.6% of the time. This included visits with the parents, children, and consultations.

### Contact Information

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