

ICWA Appellate Hot Topic Issues

“Reason to Know” Child is an Indian Child

What is reason to know

Duties of all parties and Court

Inquiry of parents

- Lack of Inquiry at all during case
 - Multiple parents involved creates issues
 - Failing to appear parent who appears
- Court directed inquiry vs. counsel statements
- ICWA forms both for ICWA eligible and non-eligible children

Determination of Eligibility

Standard of Proof at Adjudicatory Hearing

- ICWA does not set a higher standard of proof at Adjudicatory hearings

Notices not sent or sent to incorrect Tribes

- Includes ongoing notice for non-responding Tribes or to BIA

Sufficiency of Notice

Qualified Expert Witness issues

- Cases prior to the new BIA guidelines