

ICWA PETITION FOR PERMANENCY PLANNING HEARING

(INDIAN CHILD WELFARE ACT)

Commonwealth of Virginia VA. CODE §§ 16.1-282.1, 63.2-906, 63.2-910.2; 25 U.S.C. 1901 § *et seq.*; 25 C.F.R. § 23

Court Case No.

Agency Case No.

..... Juvenile and Domestic Relations District Court

In re:

NAME OF CHILD

Male

Female

.....
AGE (YEARS/MONTHS)

.....
DATE OF BIRTH

who was placed in the custody of or through an agreement with

.....
PUBLIC OR PRIVATE CHILD-PLACING AGENCY

on

.....
DATE

I, the undersigned Petitioner, state under oath to the best of my knowledge and belief that the following are true:

1. The above-named child is an Indian child as defined in 25 U.S.C. § 1903(4) based on the following:

.....
or there is reason to believe that the above-named child is an Indian child. The Indian Child Welfare Act applies.

2. The above-named child is the subject of a permanency planning hearing pursuant to Virginia Code § 16.1-282.1 because:

(a) the child

i. was the subject of a foster care plan filed in this court pursuant to Virginia Code § 16.1-281, has not previously been the subject of a permanency planning hearing at which the court approved a permanent goal, and

ii. has been:

placed through an agreement with the local board of social services where legal custody remains with the parents or guardian and such agreement has not been dissolved by court order; or

in the legal custody of the local board of social services or a child welfare agency and the child has not had a petition to terminate parental rights granted, filed or ordered to be filed on his/her behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

OR

(b) the child was the subject of a permanency planning hearing pursuant to Virginia Code § 16.1-282.1 at which the Court approved an interim plan for the child.

OR

(c) the child has been placed in another planned permanent living arrangement and his/her need for long-term residential treatment for a disabling condition is eliminated such that a permanency planning hearing is required pursuant to Virginia Code § 16.1-282.1 A2.

3. A new foster care plan that identifies a permanent goal of for review at this permanency planning hearing is attached hereto and incorporated herein;

PERMANENT GOAL

AND

[] (a) the board or agency seeks to achieve the permanent goal for the child and, therefore, petitions the court for the following relief:

[] transfer custody of child to his/her prior family or Indian custodian, namely

.....
NAME
because the conditions or circumstances that lead to removal have been corrected.

[] dissolve the board's placement agreement and return the child to his/her prior family, because the conditions or circumstances that lead to removal have been corrected.

[] transfer custody of the child to a relative other than the child's prior family, or to fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardian Assistance program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance Program pursuant to § 63.2-1306, namely

.....
NAME

[] approve termination of residual parental rights as being in the best interest of the child, and, upon separate petitions [] filed [] to be filed, terminate residual parental rights pursuant to Virginia Code § 16.1-277.01 or § 16.1-283. The following facts and circumstances support termination of residual parental rights:

[] place child, who is 16 years of age or older, in permanent foster care.

[] A permanent foster care agreement is appended.

[] direct the agency with custody of the child to provide the child with services to transition to independent living if the child has been admitted to the United States as a refugee or asylee, has attained the age of 16 years and the plan is independent living.

[] place the child, who is 16 years of age or older, in another planned permanent living arrangement.

OR

[] (b) The board or agency has thoroughly investigated the feasibility of the alternatives listed in Virginia Code § 16.1-282.1 A (i) – (v) and alleges that none of these alternatives is in the best interest of the child and, therefore, petitions the court for approval of an interim plan and the following relief:

[] continue custody with the board or agency or continue placement with the board through a parental agreement; or

[] transfer custody to the board or agency from the parents, guardian or Indian custodian of a child who has been in foster care through an agreement where the parents or guardian retained legal custody.

4. [] If 3(b) above is applicable, the foster care plan pursuant to Virginia Code § 16.1-282.1 B includes provisions for accomplishing the permanent goal within 6 months, and summarizes the investigation conducted of the alternatives listed in Virginia Code § 16.1-282.1 A (i) – (v) and states why achieving each of these is not in the best interest of the child at this time. The foster care plan describes the child's placement, including in-state and out-of-state placement options and whether the child's placement is in-state or out-of-state. If the child's placement is out-of-state, the foster care plan provides the reason why the out-of-state placement is appropriate and in the best interests of the child.

- 5. The child has been in the custody of the local board or child welfare agency for 15 of the most recent 22 months and no petition for termination of parental rights has been filed for the following reasons:
 - the child is being cared for by a relative, tribal member, or another Indian family; or
 - the local board or child welfare agency has determined that the filing of such a petition is not in the best interest of the child and has documented a compelling reason for such decision in the child's foster care plan; or
 - the local board has not provided to the family of the child, within the time period established in the child's foster care plan, services deemed necessary for the child's safe return home or has not otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title IV-E of the Social Security Act (42 U.S.C. § 673).
- 6. Active efforts to provide remedial and rehabilitative services designed to eliminate the need for placement outside the home of the child's parents, Indian custodian, guardian or other person standing *in loco parentis* to the child, and a timeline of those efforts, were made as follows:

.....
 and district court form DC-5500, ICWA AFFIDAVIT (INDIAN CHILD WELFARE ACT), is attached and incorporated herein.

These active efforts were unsuccessful for the following reasons:

.....

- 7. Placement of the child is in accordance with:
 - the placement preference of the Indian tribe.

OR

 - the placement preferences as described in 25 U.S.C. § 1915(b), to wit:
 - member of the child's extended family
 - a foster home licensed, approved, or specified by the child's Indian tribe
 - an Indian foster home licensed or approved by an authorized non-Indian licensing authority
 - an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

OR

 - that good cause exists to deviate from the placement preferences of the Indian tribe and the placement preferences described in 25 U.S.C. § 1915(b) for the placement of the child as follows:
 - the request of one or both the child's parents, who have attested that they reviewed the placement options, if any, that comply with the order of preference.
 - the request of the child, who is of sufficient age and capacity to understand the decision that is being made
 - the presence of a sibling attachment that can be maintained only through a particular placement
 - the extraordinary physical, mental, or emotional needs of the child, such as specialized treatment services that are unavailable in the community where families who meet the placement preference lives.
 - the unavailability of a suitable placement after a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located, taking into consideration the prevailing social and cultural standards of the Indian community in which the child's parents or extended family resides or with which the child's parents or extended family members maintain social and cultural ties.
 - the placement request of the Indian tribe or the parent was not the least restrictive setting appropriate to meet the particular needs of the child.
 - 8. The following is the agency's understanding of the Indian tribe's position regarding the permanency plan:
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Wherefore, Petitioner requests that the court grant the following relief and such other relief as the child's best interest requires:

1. Docket the case for a permanency planning hearing to be held within thirty days, since a hearing was not previously scheduled pursuant to Virginia Code § 16.1-281 B, 16.1-282 E, or § 16.1-282.1 B.
2. Provide notice of the hearing and a copy of the petition, pursuant to Virginia Code §§ 16.1-282.1 and 16.1-282, to the following at addresses provided on the attached transmittal form:
 - Child, if he/she is 12 years of age or older;
 - Guardian *ad litem* for child;
 - Child's parents, Indian custodian, and any person standing *in loco parentis* at time agency assumed custody;
 - Foster parents or other care providers of the child;
 - The Indian tribe.
 - Petitioning board of social services or other child welfare agency; and
 - Such other persons as the court may direct, including, but not limited to, pre-adoptive parents, if any.
3. Enter a finding that:
 - The agency has identified the child's Indian tribe or has made the following active efforts to identify the child's Indian tribe:

.....

 - Active efforts have been made have not been made by the agency to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and eliminate the need for placement of the child outside of the home with his or her parents, Indian custodian, guardian or other person standing *in loco parentis* to the child and these efforts have have not been successful.
 - The board or agency has identified a permanent goal for the child other than returning the child home and active efforts have been made have not been made to achieve the permanent goal identified in the foster care plan.
 - Continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child.
4. Enter an order of disposition that adopts and approves the attached foster care plan for the child.
5. Schedule a future hearing date and give notice to all parties of the following:
 - a second permanency planning hearing pursuant to Virginia Code § 16.1-282.1 B to be held within six months of this permanency planning hearing, if a continuation of foster care is the interim plan for the child.
 - a foster care review hearing in 6 months pursuant to Virginia Code § 16.1-282.1 A2 to review the foster care plan for a child who is placed in another planned permanent living arrangement.
 - an annual foster care review hearing within 12 months pursuant to Virginia Code § 16.1-277.01 E, § 16.1-277.02 D, § 16.1-278.3 E, or § 16.1-283 F.

.....
PUBLIC OR PRIVATE CHILD-PLACING AGENCY

.....
DATE

.....
PETITIONER

Subscribed and sworn to before me this
DATE

.....
[] INTAKE OFFICER [] CLERK

FOR NOTARY PUBLIC'S USE ONLY:	
State of [] City [] County of	
Acknowledged, subscribed and sworn to before me this day of, 20	
..... NOTARY REGISTRATION NUMBER NOTARY PUBLIC (My commission expires:)