

RULE 29. COURT'S INQUIRY OF INDIAN ANCESTRY AND HERITAGE**Rule 29.01. Initial Hearing**

Pursuant to 25 C.F.R. section 23.107(a), at the initial hearing in any juvenile protection matter, the court shall make a thorough on-the-record inquiry as to whether the child has Indian ancestry or heritage. If, upon such inquiry, the court finds that an Indian tribe has determined that a child is an Indian child, the court shall comply with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and these rules. If the court is unable to make such a finding but has reason to know that the child is an Indian child, the court shall direct the petitioner to further investigate the child's ancestry or heritage and shall treat the matter as if ICWA applies pending the investigation.

Rule 29.02. Court's Duty of Continued Inquiry

Unless the court has made a finding that the child is an Indian child, the court shall at all stages in the proceedings, continue to inquire whether the child has Indian ancestry or heritage. If, at any time during the proceedings, the court has reason to believe that the child has Indian ancestry or heritage, the court shall direct the petitioner to continue to investigate whether the child is an Indian child.

2019 Advisory Committee Comment

It is important for the court to make a thorough inquiry regarding a child's ancestry or heritage to avoid proceeding in a case without properly applying the Indian Child Welfare Act (ICWA), which can have serious repercussions for all parties. A continued inquiry can provide additional information about whether ICWA applies, especially from parties or participants who did not attend the initial hearing.

In cases where the court has reason to know that ICWA applies, the court shall proceed pursuant to the requirements of ICWA unless or until a determination is otherwise made in order to fulfill the congressional purposes of ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. section 1914, 25 C.F.R. section 23.107(b)(2), and Rule 28.09.