

**Rule 49. Qualified Expert Witness Requirement Under The Indian Child Welfare Act****49.01 Timing - Temporary Emergency Custody**

Absent extraordinary circumstances, temporary emergency custody of an Indian child shall not be continued for more than ninety (90) days without a determination by the court, supported by the testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Added effective August 1, 2009.)

**49.02 Foster Care Placement**

In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness, as defined in Rule 2.01(21), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Added effective August 1, 2009.)

**49.03 Termination of Parental Rights**

In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Added effective August 1, 2009.)

***2008 Advisory Committee Comment***

*Voluntary Versus Involuntary Termination of Parental Rights. Minnesota law distinguishes between voluntary and involuntary termination of parental rights. The Indian Child Welfare Act (ICWA) does not distinguish between voluntary and involuntary termination of parental rights and, for that reason, Rule 49 simply restates the ICWA.*

*Qualified Expert Witness. Rule 49 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under the ICWA. Rule 49.03 is a restatement of the Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereinafter BIA Guidelines) regarding the timing of qualified expert testimony when there is an emergency removal of an Indian child. See BIA Guidelines, 44 Fed. Reg. 67,584, 67,589-90 at B.7(d) (Nov. 26, 1979). Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that the ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination of parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(21)(b) or (c).*