

Episode 5 Qualified Expert Witness (QEW)

Carrie Owens ([00:32](#)):

Hello everyone. I just spoke to you in the Dakota language and I spoke to you in the Dakota language because that's one of the original languages of Minnesota. And what I said was, my native name is Ishta maza win, which means Iron Eyes Woman and I currently live at the Prairie Island Indian Community, one of the 11 reservations in Minnesota. And I'm also a member of the Omaha Tribe, enrolled member of the Omaha Tribe of Nebraska. And I'm a member of the Meskwaki Tribe of Iowa. And I'm also part Dakota. I'm one of the three ICWA Compliance Consultants in the American Indian Wellbeing Unit within the Department of Human Services, Child Safety and Permanency Division. I'm very excited about this podcast. These first six podcasts focus on six major provisions of the Indian Child Welfare Act, also known as ICWA and the Minnesota Indian Family Preservation Act, also known as MIFPA.

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It is our hope that these six podcast sessions assist in expanding your knowledge of ICWA and MIFPA implementation and practice application, which we hope to result in increased ICWA MIFPA compliance for county and private agencies who work with Indian children and families within the state of Minnesota. Compliance of these laws equals protection for all our native children and families who reside in Minnesota. Previously, the unit was utilizing webinars called the ICWA Coffee Talks, but we really felt like it was necessary to broaden our network. I also will mention that during the course of these sessions, you may hear our team referenced as the ICWA Unit and the American Indian Wellbeing Unit. Recently we changed our name from the ICWA Unit to the American Indian Wellbeing Unit. So you may hear the two being used interchangeably. We made this change to encompass the wide range of services our unit provides beyond ICWA.

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Each podcast will begin with the legal definitions, which can be dry and seem like legal jargon, but please bear with us as the legal language is important and guides the application and practice, which is foundational. Then a team member will go over frequently asked questions and then we'll end each podcast with the story regarding provisions, highlighting the importance that impacts ICWA and MIFPA. In the future, we hope to bring forward other podcast series to bring alive personal stories and history of federal state laws along with the agreements. We thought it was important to share a Dakota prayer song at the beginning of each series. As you have heard, the Dakota Song sums up our beliefs that creator comes first before anything else and is often sung in the household by women in the morning to start the day. A way of acknowledging our children are sacred and gifts from the creator.

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I'd like to also mention I am honored to be on a team with such talented, knowledgeable people, my coworkers, which in native tradition equate to my relatives. Each of them bring their cultural knowledge from their diverse tribal backgrounds. These are things that you cannot learn in any college or higher education setting. It must be lived and they also bring their profound professional knowledge as well. And lastly, I want to say Mitakuye Oyasin, which is a central part of the Dakota worldview, defining our relationship to each other and the land, meaning we are all related. Thank you.

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Today we're going to be talking about the provision, which is the Qualified Expert Witness. The Qualified Expert Witness is covered under the Indian Child Welfare Act and also under state statute the MIFPA Act. So I'll be reading a little about the laws from each of the Federal Act and the state law. So for federal, no foster care placement may be, may be ordered in such proceeding in the absence of a determination supported by clear and convincing evidence, including testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious

emotional or physical damage to the child. Also for parental rights or termination orders. No termination or parental rights may be ordered in such proceeding in the absence of a determination supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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In our MIFPA or state statute, it states that in any involuntary foster care placement proceeding, the court must determine by clear and convincing evidence, including testimony of a qualified expert witness that continued custody of children by parents or Indian custodian, again, is likely to result in serious emotional or physical damage to them as defined by ICWA. In termination of parental proceedings, the court must determine by evidence beyond a reasonable doubt, including testimony of a qualified expert witness that continued custody of children by parent or Indian custodian is likely to result in serious emotional or physical damage to them. As defined again by ICWA. Qualified expert witness means an individual who has specific knowledge of an Indian child's tribe's culture and customs. They provide testimony as required by the Indian Child Welfare Act regarding out-of-home placement or termination of parental rights relating to an Indian child.

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As I stated earlier, I'm an ICWA Compliance Consultant. We've been doing these reviews in the state for about five years and I'm happy to say that the QEW has really improved in terms of compliance in the state of Minnesota. People are finding it important to get a QEW as it mentioned in here QEW is someone who has knowledge of the child's customs and the child's tribe and they give testimony saying, yes, we agree that this child needs to be out of home. And prior to the Indian Child Welfare Act, people were just removing children without that qualified expert witness. So when I say that there's improvement, I think it's a really good thing because we're getting agreement from the tribe saying, yes, this child needs to be an out-of-home placement and this is what the child needs. So I just wanted to share a little piece of that improvement that I see in the QEW. Now I'm gonna turn this over to my coworker Sommer, who will be going over some of the frequently asked questions.

Sommer Dey [\(08:00\)](#):

Thanks Carrie. Now that you know the law for QEW, our qualified expert witness, I'm gonna go into some of the questions we received in the American and Wellbeing Unit about the law for qualified expert witness. The first question I wanna share with you is when is a QEW required? A QEW is required in all involuntary foster care placement and those that are termination of parental right proceedings in an involuntary foster care placement proceeding, the court must determine by clear and convincing evidence that continued custody of children by their parents or Indian custodian is likely to result in serious emotional or physical damage to them. In termination of parental rights proceedings, the court must determine by evidence beyond a reasonable doubt, including testimony of a QEW that continued custody of children by their parents or Indian custodian is likely to result in serious emotional or physical damage to them.

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The next frequently asked question that I wanna share with you is one that we get quite a bit as well in the American Human Wellbeing Unit. The question is who may qualify as an expert witness and what qualifications must they possess? Well, as Carrie mentioned when she had gone over QEW law and what it states in the Minnesota Statute, 260.755 definition of QEW. A QEW is someone designated by an Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of that

Indian Child's tribe. Agency caseworkers may not serve as a QEW. A QEW must be designated by the Indian Child's tribe. A QEW can also have specific knowledge of Indian children's tribal culture and customs, as well as substantial experience and delivery of child and family services to those Indian children and families.

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Extensive knowledge of the prevailing social and cultural standards as well as contemporary and traditional child rearing practices of the Indian child's tribe or tribes. Moving on to the next question. Can qualifications of a QEW be challenged? No qualifications of a QEW cannot be challenged. Tribally designated qualified expert witnesses or an expert witness shall not be subject to challenges in Indian child custody proceedings according to Minnesota statute 260.771 subdivision 6B. So what happens if a county agency fails to use a qualified expert witness or QEW. While failure to use a QEW will deprive a court of its ability to, number one, meet those statutory requirements in foster care placements and termination of parental rights proceedings, which can result in grounds to invalidate the proceeding. And that's extremely important for a county agencies to really understand the law when it comes to following and utilizing QEW's.

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So one question that we receive in our email quite a bit is, how is a QEW located and what can be done if a QEW cannot be found? Well, there are several resources available, but the best resource is the tribe involved in this child custody proceeding because it will have the personnel, and knowledge of tribal members who can actually speak to the issue of tribal specific social and cultural norms and practices that a QEW must be aware of for that Indian child specific tribe. But if an agency cannot obtain testimony from a tribally designated QEW, they're required to submit to the court those diligent efforts made to obtain a tribally designated QEW. Agencies must demonstrate to the court that a proposed QEW is in descending order preference. Number one, a member of a child's tribe recognized by Indian children's tribal communities as knowledgeable in the tribal customs pertaining to family organization and those child rearing practices, or two, an Indian person from an Indian community who is experienced in delivery of child and family services to Indian families, has that extensive knowledge of prevailing social and cultural standards.

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And again, those contemporary and traditional child rearing practices of an Indian child's tribe or two Indian person from an Indian community who has substantial experience in the delivery of child and family services to Indian families, that extensive knowledge of the prevailing in social and cultural standards and again, the contemporary and traditional child rearing practices of Indian Children's tribe. Now, if there's clear and convincing evidence that establishes that diligent efforts were made to obtain a qualified expert witness meeting the criteria that I just mentioned, but efforts were unsuccessful or a county agency was just unable to find the appropriate qualified expert witness, a party may use an expert witness as defined by Minnesota Rules of Evidence Rule 702. Just to make a reference of which rule I'm referring to. However, they must have substantial experience in providing services to Indian families with substantial knowledge of the social and cultural norms and standards.

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And again, those child rearing practices within an Indian community. The court or any party may even request assistance of Indian Children's Tribe or even the Bureau of Indian Affairs Agency serving Indian children's tribes and locating a person qualified to serve as an expert witness. But the county agency will need to provide that clear and convincing evidence to establish that they, they did their best to locate a QEW through diligent efforts. So when, when a qualified expert witness is appointed or designated by

Indian Child's Tribe, um, when they're providing testimony, testimony by a qualified expert witness is usually provided in an affidavit form or even on the record. The court may also allow some alternative methods of participation from a qualified expert witness, which can be testimony by phone. You know, they can do video conferencing, you know, there's other methods as well. But it is best practice to file affidavits in MGA, also known as the Minnesota Government Access System. Most county agencies are aware of that system. So those are the qualified expert witness, uh, frequently asked questions that I have to share with you today. Thank you so much for listening. I'm gonna turn it over to my coworker Richie Smith, who's gonna share a story.

Richie Smith ([14:57](#)):

Anin. Hello, my name is Richie Smith. I'm an enrolled tribal member of Leech Lake Band of Ojibwe. I'm an ICWA Compliance Consultant. I've been with DHS for five years now. I'm gonna tell you a story about QEW, qualified expert witness. I was assigned to a case that had been open for almost about a year, two weeks before trial. It was two weeks before trial. I was assigned on a case. We were looking at a termination of parental rights for just the father. I was a guardian ad litem at that time, and my, uh, supervisor said, Richie, this is a slam dunk case. Um, we're just looking to have a termination for the the father. Um, the tribe supports it. Said, okay, this is easy, right? Well, it wasn't. I interviewed the social worker. I was told by the social worker that the mom supported the termination of parental rights.

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I was told that the child had no connection with this, with this father. And I was told that the tribe supported the TPR. So, um, like my colleagues have been saying relationships, if you heard that word, that's a strong word that we use here at Indian Country. So I met with the mom and I developed a relationship with her. I met her at her home where she felt more comfortable to speak to me. She wasn't that comfortable in the courtroom talking to me cuz she didn't wanna be heard. So when I spoke to her, she told me, Richie, I don't support this termination of parental rights, but I love my child and I will do anything to protect my child. if I, if I went against the county, I'm afraid they'd start looking at me. And I love my child. So when I met with that child, I asked her, I said about her father, I said, do you, have you uh, seen your dad lately?

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And she says, um, no, I haven't seen my dad lately since this case has been open. But we did have a strong connection. But this last year we have not saw each other much, but I'd really like to see him. I spoke to the father, the father was exhausted. This case has been open for one year and we're looking at termination of parental rights coming up in a few days. And he says, I, I love my child, I wanna be with him. But he was just exhausted from the politics of a year of working in the, in the county. So with all this information, I contacted the tribe in South Dakota. And like I said, relationships. I knew from the Minneapolis American Indian Center. A travel rep told me that you can only get ahold of this tribe before 9:00 AM. And so I called this tribe before 9:00 AM and then the phone rang and rang and finally it got picked up and the tribal rep said, you're lucky.

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I was almost ready to hit the road, hit the road of South Dakota. And so I was thankful that she picked it up. So I spoke to the tribe, I told her the information that I had collected about the daughter, having that connection with the father, about the mom not supporting the TPR, that she felt threatened by the county, that if she, if she didn't support that TPR, they would look at her. The tribe said, well, what can we do? And I said, well, I know you can pull the qualified expert witness. And so I had talked, spoken to her. And um, the next day at trial, the judge pulled us all aside. We had a mini conference with the

judge, said the tribe has pulled their QEW, qualified expert witness to terminate the parental rights of his father. And so what happened to that case? The greatest thing that you would want to happen, the judge dismissed that TPR and the children, the mom, dad, and the family were all connected. So that's important. I wanna say having a qualified expert witness from the tribe, it's important to do that. Cause that keeps the, that kept the, the mom, the dad, the family and the tribe altogether. So I just wanna end on that point and say miigwech.

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