

## Episode 4 Active Efforts

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 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 live 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 I'm gonna be going over Active Efforts. Active Efforts is covered under the Indian Child Welfare Act and also under MIFPA, the Minnesota Indian Family Preservation Act. So under active efforts under the ICWA, it talks about remedial services and rehabilitative programs or preventive measures. So any party seeking to affect a foster care placement of, or termination of parental rights to Indian child under state law shall satisfy the court that active efforts have been made to provide remedial and rehabilitative programs designed to prevent breakup of the Indian family. And these efforts have proven

unsuccessful active efforts under the MIFPA. The Minnesota Indian Family Preservation Act states that active efforts includes acknowledging traditional helping and healing systems of an Indian child's tribe and using these systems as core to help and heal the Indian child and family. So we're gonna go into some frequently asked questions about active efforts, but I do wanna talk a little bit about active efforts versus what's in normal cases or non ICWA cases would be reasonable efforts. Reasonable efforts and active efforts are very two very separate things as you're gonna be able to tell in the frequently asked questions. Active efforts are just as it says in the title, it's active, it's doing things beyond reasonable efforts, going that extra step and that action part is really important when it comes to the Indian Child Welfare Act and providing services to families. So now I'll turn it over to my coworker who will be going into frequently asked questions.

Cindi Miller [\(06:22\)](#):

Hello there. My name is Cindi Miller and I am an ICWA Compliance Consultant in the American Indian Wellbeing Unit at DHS. And I am going to go over some frequently asked questions about Active Efforts. What service requirements are imposed on a party seeking to make a foster care placement or termination of parental rights. So whether it's the agency that's looking to make this placement or private party, ICWA and MIFPA require a party seeking foster care placement or TPR as we call it, to provide active efforts and rehabilitative programs designed to prevent breakup of Indian families. And that such efforts have been proven unsuccessful. As Carrie touched on a little bit before about what is the difference between active efforts and reasonable efforts. Active efforts standard requires more effort, obviously, than reasonable efforts. The term active efforts by definition implies heightened responsibility compared to passive efforts.

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Active efforts takes into consideration a client going through steps of a plan and going through that with them, rather than requiring a plan and having them perform that plan on their own. As part of an active effort, a party shall be taking into account prevailing social and cultural conditions and the way of life of an Indian Child's tribe. Active efforts includes engaging families while reasonable efforts offer referrals to families, leaving it to them to seek the assistance. So who must be provided active efforts in a case? Active efforts must be provided to both tribal and non-tribal members of Indian child's family as well as relatives considered primary placement options for Indian children. Agencies must also notify and consult with extended family to assist in identifying appropriate cultural services and supports for children and parents in identify and serve as placement and permanency resources for children.

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Why do we have the active efforts requirement? Under ICWA, when ICWA was initially enacted back in 1978, Congress found that an alarmingly high percentage of Indian families were broken up by removal of children from their families, often unwarranted by non-tribal, public and private agencies. A high percentage of these children were placed in non-Indian foster and adoptive home and institutions, state governments exercising recognized jurisdiction over custody proceedings of Indian children through administrative and judicial bodies often failed to recognize the tribal relations of Indian people and cultural and social standards prevailing in communities. Thus, a lot of these children were placed away from their families. Often many of them were adopted into white families, and that is why they determined that they should have active efforts in ICWA cases. How should active efforts be documented? This is really important for us in the American Indian Wellbeing Unit. When we're doing our reviews, but also just documentation proves that these active efforts have been done by the agency.

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They should document their efforts in SSIS using the active efforts tabs in the ICWA file and should be recorded quarterly and also noted in Chronology Notes. Each active effort provision mirrors active efforts required in MIFPA. That is our state Minnesota Indian Family Preservation Act. Another question that some folks ask is, do active efforts need to be provided? If there is a reason to know a family is Indian, but tribal affiliation is unknown, absolutely. When a court knows or has reason to know that a subject of a foster care placement or a TPR proceeding is an Indian child or may be an Indian child, ICWA and MIFPA must be followed until written determination by a tribe that ICWA does not apply. This includes, among other things, providing active efforts. I hope that answers some of the questions that you have about active efforts. And now I'm gonna turn it over to my colleague Richie Smith for a story about active efforts.

Richie Smith ([10:57](#)):

Anin. Hello, my name is Richie Smith. I'm an enrolled tribal member of Leech Lake Band of Ojibwe. Right now I currently work at DHS and I'm an ICWA Compliance Consultant for five years. Before that I have, I have over 21 years of representing American Indian children in the court system as an ICWA GAL, and also as a youth intervention specialist out of the Minneapolis American Indian Center. So I have lots of stories, um, good stories and bad stories. This can be a good story. This is regarding active efforts. The case was, I was assigned to the case early, which was nice, um, at the beginning, but it was getting determined that this case was gonna be non-ICWA. Mom was an enrolled Red Lake Band member. Um, we had a determination letter stating that the child was not eligible on, and this was before the, you know, when Red Lake changed their enrollment status.

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Um, so with one determination letter from the tribe saying, this child not eligible. So that's always a, a downer when you're trying to provide ICWA active efforts. Uh, the second letter we were hoping, like we got the second letter from the dad's tribe. The dad's tribe was from the Red Cliff Band of Ojibwe over in Wisconsin. The dad's tribe saying this child was not eligible, but it did say like at the bottom of the page, if we have more information on the mom, um, let us know. So that left us, so it left it open-ended. But at Hennepin County, when you lose, you know that status of ICWA you lose like the social workers, the ICWA social workers you lose the ICWA judges, you lose basically everyone except for the ICWA Guardian ad Litem. So it was, it was hard. So it goes on ICWA. And you get the pa and instead of, of a TLC going to grandma, it could be, it'll be a potential termination of parental rights and we didn't want that.

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So, um, with that letter, that termination letter from the tribe of the Red Cliff Band of Ojibwe asking for more information, the county was looking to go in on ICWA. So I went up to Red Lake and I saw the grandma and, you know, up in Red Lake, it's like five hours away, so you're traveling up there. And so I went and saw her, I saw the child, I, you know, I started to develop a relationship with them. I started telling her about, you know, that maybe we could get this, uh, child, you know, get, um, this child enrolled into a tribe. And, uh, I talked, I talked to her about the, um, certificate of Indian blood. It's, uh, it's a, basically it's a form that's, it states that you're enrolled tribal member, uh, and how much blood quantum, um, that that person has. But that's, you know, it's really, um, having that, that piece of paper is like really personal.

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And so you have to build a lot of trust, um, with, with the, the family members you're working with. Cuz it says like, exactly, you know, how much blood quantum you have. But that's what we needed. So, um, she trusts me enough, um, to give me that, that document after going up to Red Lake, like I said, it

wasn't just once, it was probably about three times plus going up there and talking to her and she handed me this document. It was the Blood Quantum Document. And with that document I was able to contact, I handed that over to the Red Cliff Band of Ojibwe. And with that, that information from the mom side who was not a Red Cliff band member, they, um, added the Red Lakes mom's information to Red Cliff and that child became, ICWA eligible. So that was, that's in the best interest of the child.

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That's by keeping the child, the tribe and the family connected. We didn't have any of that stuff before. And so instead of from a termination of parental rights, we have a transfer legal custody. And so that's one of the active effort stories I wanted to share with you. That always, you know, if it says, you know, if they have that, that caveat in the box saying, you know, if we have more information, you know, on another family member that still could be, you could provide active efforts. Everyone else had quit. I mean, the whole county, everyone else had quit, stopped saying, we're not gonna, this is not gonna be a ICWA case. But by going up there and developing a relationship with that grandma and reaching out to her, uh, talking to the tribe and giving that information, that child is now protected and living happily, you know, ever after with his grandma. Miigwech.

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Speaker 4 ([15:07](#)):

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