

At a term of the Family Court of the State of New York,
held in and for the County of _____,
at _____, New York, on _____, _____.

P R E S E N T:

Hon.
Judge

.....
In the Matter of

CIN #

Docket No.
ADDENDUM TO ORDER— FINDINGS OF
FACT AND CONCLUSIONS OF LAW --
INDIAN CHILD WELFARE ACT

.....
An order having been issued by this Court, dated {specify}: _____, involving
an unmarried child under the age of 18 (or a foster child under 21 who entered foster care before the age
of 18), who may be covered by the *Indian Child Welfare Act*, 25 U.S.C. §§1901-1963, in which [check
applicable box(es)]:

- the child is placed in out-of-home care pursuant to a:
 - Person In Need of Supervision proceeding [Article 7 of the Family Court Act]
 - Child protective proceeding [Article 10 of the Family Court Act]
 - Destitute child proceeding [Article 10-C of the Family Court Act]
 - Voluntary placement proceeding [Social Services Law §358-a]
 - Permanency hearing [Article 10-A of the Family Court Act]
- custody of the child is granted to a non-parent pursuant to section 651, *et seq.*, of the Family
Court Act or section 72 of the Domestic Relations Law;
- parental rights to the child are terminated pursuant to section 634 of the Family Court Act or
section 384-b of the Social Services Law;

¹ ***An Addendum to the main order using this form must be issued in all cases in which the Family
Court retains jurisdiction and issues an order involving an unmarried child under the age of 18 (or a foster
child under 21 who entered care before the age of 18), who may be covered by the Indian Child Welfare Act,
25 U.S.C. §§1901-1963, in which :***

- *the child is placed in out-of-home care under Articles 7, 10, 10-A or 10-C of the Family Court Act
or section 358-a of the Social Services Law; or*
- *custody of the child is granted to a non-parent pursuant to section 651, et seq., of the Family Court
Act; or section 72 of the Domestic Relations Law;*
- *parental rights are terminated pursuant to section 634 of the Family Court Act or section 384-b of
the Social Services Law or are surrendered pursuant to section 383-c or 384 of the Social Services Law; or*
- *the child is adopted pursuant to section 114 or 116 of the Domestic Relations Law; or*
- *a guardian is appointed for the child pursuant to section 661 of the Family Court Act.*

- parental rights to the child are surrendered pursuant to section 383-c or 384 of the Social Services Law;
- the child is adopted pursuant to section 114 or 116 of the Domestic Relations Law;
- a guardian is appointed for the child pursuant to the Family Court Act or the Surrogate's Court Procedure Act.

And the following having been duly notified [check applicable box(es)]:

- parent(s)/caretaker(s) [REQUIRED] tribe/nation [REQUIRED]
- United States Secretary of the Interior [REQUIRED if tribal contact undetermined];

And the tribe/nation having [check all applicable box(es)]:

- appeared and participated as a party;
- responded to the notice but did not appear;
- neither responded to the notice nor appeared;

And the Court, after hearing the proof and testimony offered in relation to the case, finds and determines the following as required by the *Indian Child Welfare Act*, 25 U.S.C. §§1901-1963:

1. The child's tribe or nation is [specify]:

This tribe or nation is [check applicable box(es)]:

- recognized by the US Bureau of Indian Affairs
- not recognized by the US Bureau of Indian Affairs or New York State
- recognized by New York State but not by the US Bureau of Indian Affairs²
- recognized by another state [specify]:

2. [Check all applicable box(es), if any]:

- The child is enrolled as a member of the tribe or nation.
- The child is eligible for enrollment as a member of the tribe or nation.
- The child's biological and/or legal parent³ is a member of the tribe or nation and is
 - domiciled or resides neither domiciled nor resides on the reservation or tribal land.
- The child is Native-American and resides or is domiciled on the reservation or tribal land.
- The child is is Native-American and is a ward of the court of the tribe or nation.
- Information regarding the child's tribal status is unknown but the child may be subject to the

Indian Child Welfare Act for the following reason(s)[specify]:

3. a) The tribe or nation has taken the following position [check applicable box(es)]:

- requested transfer of jurisdiction;⁴

² Note: *Unkechaug Nation only.*

³ "Biological and/or legal parent" includes: the birth mother, father married to birth mother at time of the birth or father who signed an acknowledgment of paternity or obtained an order of filiation and Native-American adoptive parent of a Native-American child. *See* 25 U.S.C. §1903(9).

⁴ Requests for transfer may be made orally on the record or by petition (General Form GF-19) and an order determining the request must be issued using General Form GF-20. Where a Native-American child is domiciled or residing on a tribal or nation reservation or land and where the tribal court exercises exclusive jurisdiction over child custody matters and/or the child is a ward of the court of the tribe or nation, the tribe or nation has exclusive jurisdiction and transfer is mandatory. *See* Bureau of Indian Affairs, US Dept. of the Interior, *Guidelines for State Courts: Indian*

- declined to assume jurisdiction;
- other [specify tribe's or nation's position]:

b) The tribe or nation has not taken a position.

4. [REQUIRED where child is placed out of the home pursuant to Article 7, 10, 10-A or 10-C of the Family Court Act or Social Services Law §358-a; if not, SKIP; check applicable box(es)]:

a. The agency in whose custody the child resides:

has made the following active efforts to prevent the placement of the child [specify]:

has not made active efforts to prevent the placement of the child.

b. The placement of this child is supported by clear and convincing evidence, including the testimony of one or more Qualified Expert Witnesses, that retention of the child in the home would be likely to result in serious emotional or physical damage to the child.

c. The Court's placement of this child out of the home is made in accordance with the foster care placement preferences of the *Indian Child Welfare Act* in that [specify]:⁵

The following good cause supported a departure from the foster care placement preferences of the *Indian Child Welfare Act* [specify]:

5. [REQUIRED where the child is placed or continued in foster care placement as a result of a permanency hearing or termination of parental rights; if not, SKIP; see 25 U.S.C. §1912(d)]:

The agency in whose custody the child resides:

has made the following active efforts to provide remedial services and programs designed to prevent the breakup of the Indian family, but the efforts have proven unsuccessful [specify]:

has not made active efforts to provide remedial services and programs designed to prevent the breakup of the Indian family.

6. [REQUIRED where the child's parental rights are terminated pursuant to Social Services Law § 384-b or Family Court Act §§631(c), 634 ; if not, SKIP]:

The Court's order terminating parental rights is based upon proof beyond a reasonable doubt, including the testimony of one or more Qualified Expert Witnesses, that returning custody to the parent(s) would be likely to result in serious emotional or physical damage to the child.

Child Custody Proceedings ¶B-4, *Fed. Reg.* (Nov. 26, 1979); Social Services Law §39; 25 U.S.C. §1911.

⁵ Foster care placements must be in the least restrictive, most homelike setting that meets the child's special needs and that are as close as possible to the child's home, taking such needs into account. Unless the tribe or nation establishes otherwise, The order of preference for a foster care placements is: (i) a member of the child's extended family; (ii) a foster home certified, specified or approved by the tribe or nation and approved by the local social services district; (iii) a Native-American foster home certified or approved by an authorized foster care agency; or (iv) an institution approved by a tribe or nation and operated by a Native-American organization and meeting the child's special needs. See 25 U.S.C. §1915(b); 18 N.Y.C.R.R. §431.18(f)(1).

7. [REQUIRED where the parent has voluntarily surrendered the child pursuant to Social Services Law §§383-c or 384 or consented to an adoption pursuant to Domestic Relations Law §§111, 115-b(2) ; if not, SKIP]:

The surrender or consent was executed in writing before the Court more than 10 days after the birth of the child..

By this Supplemental order, this Court hereby certifies that the terms and consequences of the surrender or consent instrument were explained to the parent in detail in the parent’s primary language and that the parent appeared to have understood the terms, including the right of the parent to withdraw the consent or surrender in writing at any time prior to issuance of an order of adoption.

8. [REQUIRED where the child is placed in an adoptive home; if not, SKIP]:

The Court’s placement of this child in an adoptive home is made in accordance with the adoptive placement preferences of the *Indian Child Welfare Act* in that [specify]:⁶

The following good cause supported a departure from the adoptive placement preferences of the *Indian Child Welfare Act* [specify]:

[Applicable if information regarding the child’s tribal status is unknown but the child may be subject to the *Indian Child Welfare Act*, as indicated in ¶2, above; if not, SKIP]:

NOW, THEREFORE, IT IS ORDERED that [specify]: _____, take the following actions to ascertain if the child is subject to the *Indian Child Welfare Act of 1978* and to report all actions and responses to the court and all parties by [specify date]:

AND IT IS FURTHER ORDERED that [specify]:

ENTER

Judge of the Family Court

Dated: _____

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]: _____

Order received in court on [specify date(s) and to whom given]: _____

⁶ Adoptive placements must be in the least restrictive, most homelike setting that meets the child’s special needs and that are as close as possible to the child’s home, taking such needs into account. Unless the tribe or nation establishes otherwise, the order of preference for an adoptive placements is: (i) a member of the child’s extended family; (ii) another member of the child’s Native-American tribe or nation; or (iii) another Native-American family. See 25 U.S.C. §1915(a); 18 N.Y.C.R.R. §431.18(g)(1).

