



WellnessCourts.org
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INDIAN CHILD WELFARE IN HEALING TO WELLNESS COURTS

Wisconsin Association of
Treatment Court Professionals

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▶ DISCLAIMER

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▶ TRIBAL HEALING TO WELLNESS COURT TEAM

The Tribal Law & Policy Institute's (TLPI) Healing to Wellness Court Team consists of members of federally recognized Tribes with expertise in Tribal court management, legal practice in Indian country, development, implementation, and enhancement of healing to wellness courts; substance misuse counseling, family services, and mental health services



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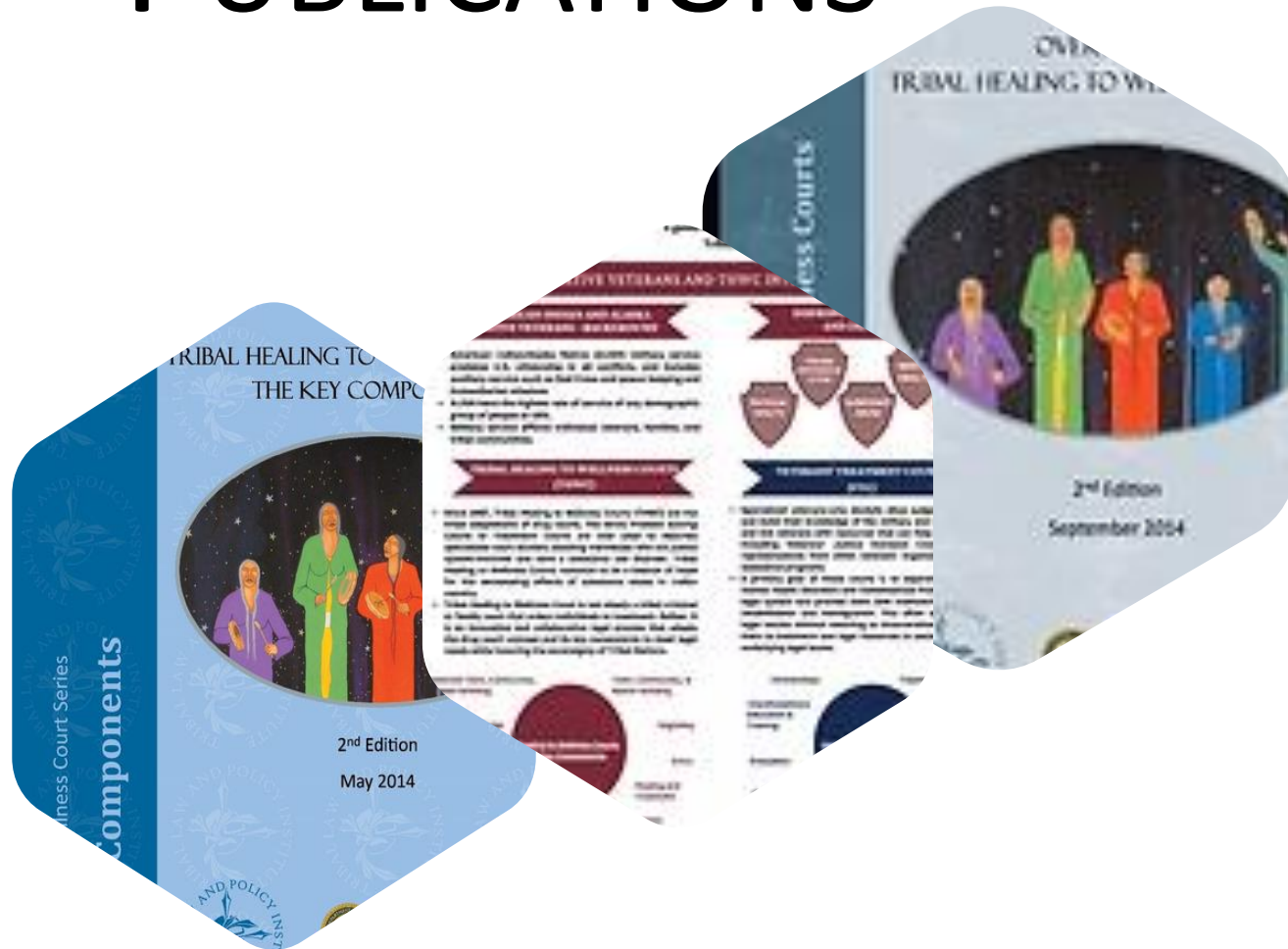
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▶ TRIBAL LAW AND POLICY INSTITUTE PUBLICATIONS



❖ History

The Tribal Law & Policy Institute (TLPI) has an extensive history developing publications, including resources centered around the Tribal 10 Key Components, judicial leadership, intergovernmental collaboration, policies and procedures, and overviews of Tribal Healing to Wellness Courts

❖ Usage

TLPI provides its resources free online and consistently uses the publications during trainings and conferences - grantees also reference the resources when planning and implementing their healing to wellness courts

❖ Future

TLPI is in the process of substantial updates to the Tribal Ten Key Components



► PRESENTERS

- ❖ Jacob Metoxen, Legal Specialist,
Tribal Law and Policy Institute
- ❖ Nicholas Layland, Prosecutor,
Ho-Chunk Nation



▶ LEARNING OBJECTIVES

1. Learn foundational information about the creation of the Indian Child Welfare Act (ICWA), its intent, and how ICWA can affect Tribal Healing to Wellness Courts
2. Learn procedural considerations Tribal Healing to Wellness Courts take into account when ICWA cases are involved
3. Learn from real-life case examples that could be applicable to your own Tribal Healing to Wellness Court



▶ WHAT IS ICWA?

- ❖ Federal law enacted in 1978 in response to the forced removal of Indian children from their families and communities
- ❖ Sets federal standards for child custody cases involving Indian children in state court
- ❖ Mandates efforts to keep families intact



▶ IDENTIFYING ICWA APPLICABILITY

- ❖ Applicable to Indian children (as defined by 25 U.S.C. 1903)
- ❖ Starts in child custody proceedings (state court)
- ❖ Tribe gets involved when there is “reason to know” child is an Indian child
- ❖ Tribe can intervene and possibly transfer the case



▶ ACTIVE EFFORTS STANDARD

- ❖ Active efforts prevent breakup of Indian family
- ❖ Active efforts are required when an ICWA proceeding is underway
- ❖ Tribe researches and participates in hearings
- ❖ THWC can support active efforts!



▶ TRANSFER PROCESS

- ❖ Tribe gets notified
- ❖ THWC can be a consideration
- ❖ Transfer timing matters
- ❖ Declination of transfer can happen



▶ PARENTAL RIGHTS

- ❖ Right to counsel
- ❖ Right to notice of hearings
- ❖ Right to object to or agree to transfer
- ❖ Right to have opportunities for services



▶ ICWA CASES AND HEALING TO WELLNESS COURTS

- ❖ Frequency
 - ❖ Action plan can help
 - ❖ Preparing the team
 - ❖ Communication is key



▶ ICWA CASES AND HEALING TO WELLNESS COURTS

- ❖ Departments Involved
 - ❖ Identifying employees
 - ❖ Training others
 - ❖ Raising awareness



▶ ICWA CASES AND HEALING TO WELLNESS COURTS

- ❖ Practical Considerations
 - ❖ Tribal Code updates
 - ❖ Information in operational manuals
 - ❖ MOUs



▶ CASE EXAMPLE 1

- ❖ Mary is a single mother and domestic violence survivor, who lives in Milwaukee. She has a substance use disorder and recently had her children removed by the state due to criminal charges involving possession of a controlled substance. She has decided to move back to Black River Falls to be closer to her family support network. The state transferred the child custody proceedings to Ho-Chunk Nation Tribal Court, where Mary is working with the Tribe's Social Service Department to regain custody of her children.



▶ CASE EXAMPLE 2

- ❖ Shawn lives in Black River Falls and was recently arrested for his third Operating While Intoxicated (OWI) offense. His children were placed with family members by the state while he awaits arraignment. Tribal Social Services is involved but the case has not yet been transferred to Tribal Court.



▶ CASE EXAMPLE 3

- ❖ Chris lives in Green Bay and is in Tribal Healing to Wellness Court (THWC). Police recently charged him for OWI with his kids in the car. He had been one of the best participants leading up to his arrest. He has yet to be arraigned but the THWC team is aware of the situation as the state probation agent notified team members over the weekend.





QUESTIONS?

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