

Indian Law Bar Exam Question – Sample #2

Robert Big Eagle is a member of the Cheyenne River Sioux Tribe and a resident of the Cheyenne River Sioux Reservation in South Dakota. Mr. Big Eagle is the biological father of twins, Karl and Katie Big Eagle, who were born in Sioux Falls, South Dakota in 2008. The biological mother is Ms. Mary Smith, a non-Indian resident of Sioux Falls, South Dakota. The twins are both enrolled members of the Cheyenne River Sioux Tribe.

The children have resided continually since birth with Ms. Smith in Sioux Falls, South Dakota. Mr. Big Eagle has had little or no contact with the twins due to alcohol-related problems and service in the military. Ms. Smith, herself, has recently fallen on hard times with a loss of employment and associated alcohol abuse issues.

The South Dakota Department of Social Services has filed an abuse and neglect petition in circuit court in Minnehaha County. The petition seeks to remove the children from their mother's household and place them in foster care.

Pursuant to the Indian Child Welfare Act (ICWA), Mr. Big Eagle has filed a motion in circuit court to transfer the case to the Cheyenne River Sioux Tribal Court. Ms. Smith has filed a motion in opposition to the transfer. In addition, Ms. Smith has filed a separate motion asserting that the case does not satisfy the jurisdictional requirements of ICWA because there is no existing Indian family. The Cheyenne River Sioux Tribe has filed a separate motion pursuant to ICWA to intervene in the state court proceeding. How should the circuit court rule on these four motions?