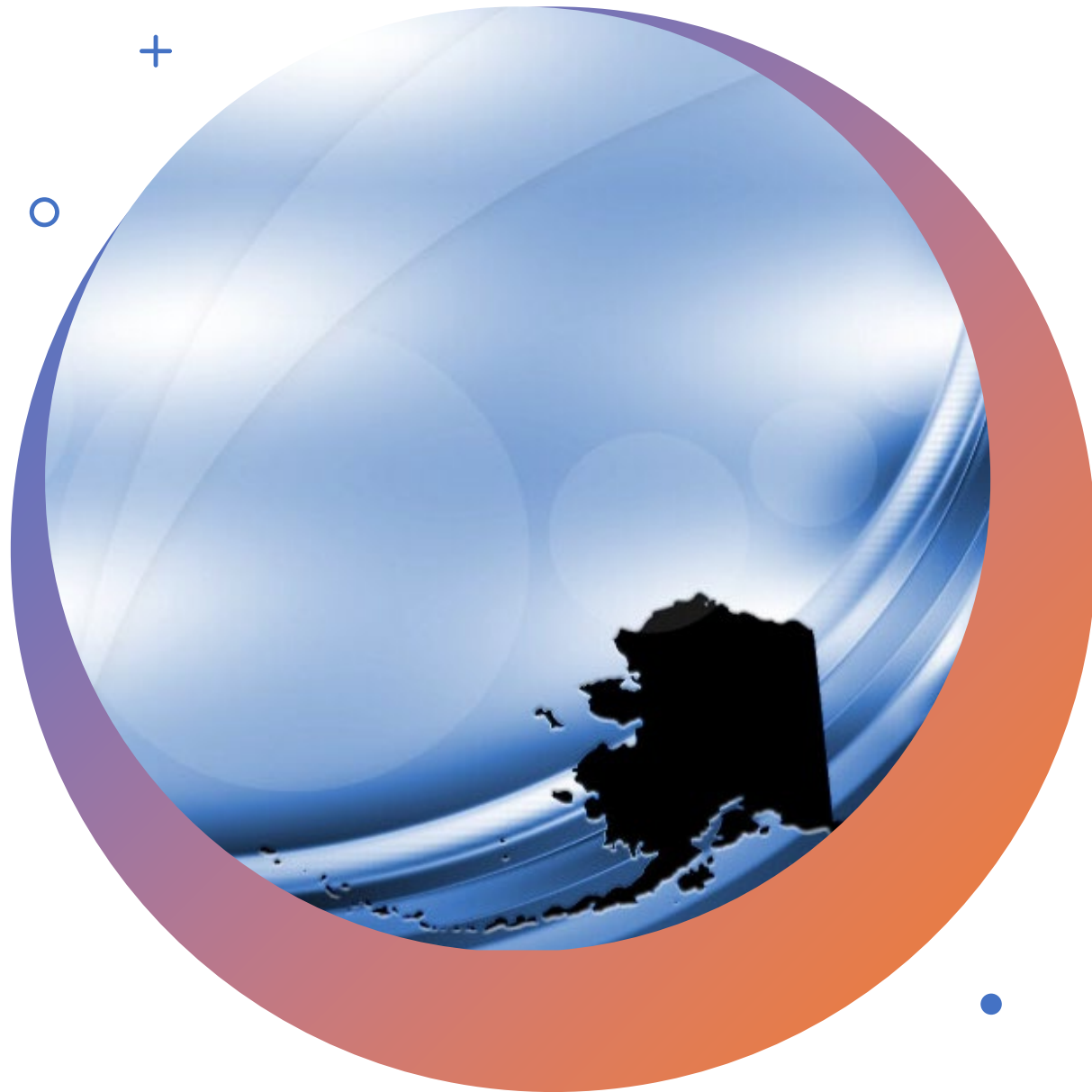


ACTIVE EFFORTS

Alaska Native Justice Center Child Welfare Conference
September 27, 2023





Presenter Introductions: Lenora Walker

- Kwaashki kwaan (Raven Owl) from Yakutat.
- Four adult children and twenty two grandchildren.
- Central Council of Tlingit & Haida Indian Tribes of Alaska for 10 years as an ICWA worker.

Presenter Introductions: Ali Wykis



- Originally from Soldotna, Alaska.
- Daughter of Jean Steichen & Mick Wykis. Granddaughter of the late Merlin & Ruth Legner and the late Walter & Jeanette Wykis.
- Has been working as the Child Welfare Attorney for Kawerak since January 2020.
- Based in Anchorage.
- Previously was an ICWA worker at Nome Eskimo Community and a parent's & child's attorney for the state.



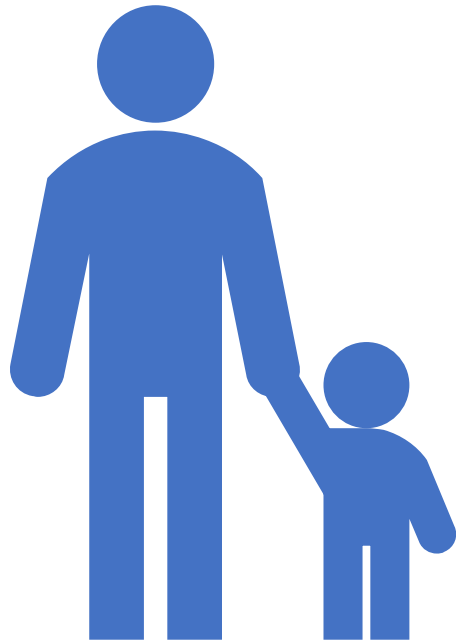
Attendee Introductions

What's Your Name?

Where Do You Live?

Where Do You Work?

What Question Do You Have
About Active Efforts?



Where Does the Term “Active Efforts” Come From?

- Indian Child Welfare Act, which is a federal law passed in 1978. (25 U.S.C. § 1912(d))
- Active Efforts were further defined in the Federal Regulations, which were enacted in late 2016. (25 CFR § 23.2)
- In cases not governed by ICWA, OCS is required to provide “reasonable efforts.”

What Are “Active Efforts”?

- “Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family” that must be provided by the party seeking removal (usually the state).
- Active efforts must include assisting a parent “through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.”

What Are “Active Efforts”?

- “To the maximum extent possible, active efforts should be
 - provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and
 - conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe.”
- Efforts must also be documented in detail.
- “Active efforts” has been considered the “gold standard” of child welfare.

Some examples of active efforts include:

- **Identifying, notifying, and inviting Tribe's representatives** to participate in support and services and in team meetings, permanency planning, etc.
- Conducting a **diligent search** for the Indian child's **extended family members**, and contacting and consulting with extended family members to provide family structure and support for the child and parents.
- Using **culturally appropriate family preservation** strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe.

Examples of Active Efforts



What Are Additional Examples of Active Efforts?

- Supporting
 - regular **visits** with parents or Indian custodians in the most natural setting possible
 - **trial home visits** of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.
- Identifying **community resources** including housing, financial, transportation, mental health, substance abuse, and peer support services.
- **Actively assisting** the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing resources.
- Taking steps to **keep siblings together** whenever possible.

Ensuring Efforts Are Cultural Appropriate: Collaboration With Tribe

- When providing efforts to the parents, OCS should be consulting with the Indian child's Tribe to ensure that the services the parents are being asked to do are culturally appropriate.
- OCS is required to invite the Tribe to the parent's case planning meeting. (CPS Manual 2.7.1)
- OCS is required to consult the Cultural Guide. (CPS Manual 2.7.2)
- OCS should consider if Cultural Support Services are appropriate. (CPS Manual 2.7.2)



Cultural Appropriate Efforts: Availability of Resources



OCS's consultation with the Tribe is also important, because of the Tribe's awareness of available services.



When case planning, OCS should consider both

The resources available in the area the parent is living now AND

The resources available in the area(s) when the parent & ancestors are from

Qualified Expert Witnesses' Evaluation of Active Efforts

- The testimony of a Qualified Expert Witness (QEW) is required when a parent is challenging removal or termination of their parental rights.
- Testimony requirements:
 - “Whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child” and the
 - “Testimony [should be] reflected and informed by the prevailing cultural and social standards of the child’s Tribe.
- The QEW may also be asked to evaluate active efforts, including whether those efforts were culturally appropriate.





Documentation of Efforts

“Documentation is required by ICWA and is critical to compliance with ICWA's purpose and key protections.”

–*Bill S.*, 436 P.3d 976, 983 (Alaska 2019)

“While documentation is related to OCS's duty to *make* active efforts, documenting those efforts is a separate responsibility. The act of documentation is not itself an ‘active effort.’”

–*Bill S.*, 436 P.3d 976, 983 (Alaska 2019)

“Active efforts must be documented in detail in the record.” -25 C.F.R. § 23.120

Evaluating Efforts Over Time

- Active efforts need to be continually re-evaluated by the court over the life of the case.
- Efforts need to be tailored to the parents' needs, which can change over time.
- As more services become available, the efforts should also change.

Concerned About a Lack of Efforts?

To Evaluate Efforts:

- Email to OCS worker following up on telephone call or meeting
- Email to parents regarding services provided by OCS
- Review all documents in discovery

When There Are Concerns About Lack of or Inadequate Efforts:

- Email asking OCS to have discussion about active efforts
- Ask OCS how can I support active efforts
- Forward email to parent attorney or include legal parties in emails
- Share with the court, such as through a oral or written report

Alaska Case Law on Active Efforts

- Active efforts determinations are made on a **case-by-case basis**. -*N.A. v. State, DFYS*, 19 P.3d 597, 603 (Alaska 2001)
- In providing efforts, the Department has the **discretion to tailor these efforts** to each parent’s “individual capabilities” and “to prioritize which services should be provided to a family based on **the specific needs** of the case.” -*Lucy J.* 244 P.3d 1099, 1116 (Alaska 2010)
- When evaluating efforts, the courts consider the **entirety of the state’s involvement** and its “overall handling of the case,” rather than considering isolated instances of efforts or the lack thereof. -*Jon S.*, 212 P.3d 763 (Alaska 2009) & *Dale H.*, 235 P.3d 203 (Alaska 2010)
- Efforts **need not be perfect, ideal, or exemplary** to be considered “active.” -*Jude M.*, 394 P.3d 543, 557 (Alaska 2017)
- “[T]he fact that **OCS could have done more does not undermine** the other active efforts that OCS made.” -*Pravat P.*, 249 P.3d 272 (Alaska 2011)
- There is “**no pat formula exists** for distinguishing between active and passive efforts.” -*Jon S.*

Questions?

