

Testimony of Judge Kami Hart, Gila River Children's Court

My name is Kami Hart. I am Akimel O'Odham (Pima) and an enrolled member of the Gila River Indian Community. I have a bachelor's degree in Behavioral Science from Western International University and a Master's Degree in Public Administration from the Harvard University, Kennedy School of Government. I am a Children's Court Judge and currently the Acting Chief Judge for the Gila River Indian Community. I have been serving my Community as a Judge for over 11 years hearing exclusively child welfare and juvenile justice cases. Prior to my appointment on the juvenile court bench, I worked for my Community's Tribal Social Services Department as a Child Protective Services worker for eight years. Since the day I became a Judge I have been working on collaboration with the state, tribes, and other agencies that work in juvenile justice and child welfare. I have reached out to organizations that specialize in child welfare including the National Council of Juvenile and Family Court Judges, Casey Family Programs, the National American Indian Court Judges Association, and the National Indian Child Welfare Association to name a few. This has helped me establish relationships in an effort to improve the child welfare and juvenile justice systems in the Gila River Indian Community.

Indian Child Welfare Act

In 2012, Kathleen Quigley, Pima County Presiding Judge, and I approached the Arizona State, Tribal, Federal Forum ("the Forum") to propose creating an Indian Child Welfare Act (ICWA) subcommittee. The Forum unanimously granted the creation of the ICWA subcommittee and appointed Judge Quigley along with myself as co-chairs of the subcommittee, where we remain to this day. The subcommittee consists of representatives from tribes and state, including judges, child welfare representatives, attorneys, as well as representatives from the Arizona State University, the University of Arizona, and the Casey Family Programs. The ICWA subcommittee has created an Arizona ICWA guide as well as helped collaborate several multidisciplinary training with the help of the Arizona Administrative Offices of the Court. During trainings with the ICWA subcommittee the majority of the participants welcome training and discussion around ICWA, however, there has been pushback from some state court judges and parent attorneys that believe ICWA requires them to do more work. But we just continue to train over and over as to the requirements of the law. It is a recommendation of the Gila River Indian Community to work diligently with the tribes to create trauma informed, culturally appropriate ICWA Court and state laws that follow or mirror ICWA.

ICWA has been labeled the “gold standard” for all child welfare cases and children across the country. It is imperative that states and tribes receive the proper funding to support family placement and reunification. With challenges to ICWA, the Community recognizes the importance of ICWA and the impact ICWA makes on multiple generations and to the tribe as a whole. Understanding this, the Community has created an ICWA team that consists of ICWA attorneys, ICWA case workers and Qualified Expert Witnesses that quickly respond to ICWA matters. The Community intervenes in every and all ICWA matters involving Community member children. It is important to support tribes with the proper personnel to address ICWA matters immediately to ensure compliance with the law.

Customary Adoptions

Tribes across the country have been granting customary adoptions to relatives that are raising children since the beginning of time. In a customary adoption, a parent’s rights are suspended rather than terminated. The children are usually with relatives who will raise the children but the children will know the biological parents and even have a relationship with them but the parents can never regain custody. In traditional state court adoptions, the parent’s rights are terminated, it is meant to sever all ties and the relationship of the biological parents and the child permanently. In tribal communities this permanent severing of ties rarely happens. The Gila River Indian Community has granted at least three customary adoptions in cases that have open state ICWA cases. These are ongoing state dependency cases in which the state court agrees with a case plan of customary adoption. The tribe will file for customary adoption in the tribal court. Once the tribal court grants the customary adoption the state recognizes the tribal court order and closes the state dependency cases. This does require the state courts to respect tribal courts and give full faith and credit to tribal court orders. However, if all tribes and states were to do this, tribes will need to have funding for attorney representation of the parents and a Guardian ad litem or attorney representation for the children. In our first case, the parents did not have an attorney representing them, they agreed to the customary adoption after the Judge explained in detail the proceeding. However, the state sent the matter back to the tribal court to assign the parents an attorney to ensure the parent’s rights were being preserved. Gila River Indian Community is in a better situation than many tribes in that we have a Defense Services Office located in the Community and have conflict attorneys on contract as needed. We have also been working with the Southern Arizona Legal Aid Services to assist in these cases as the Guardian Ad Litem. Granting the customary adoption allows the adopting relative to receive adoption subsidies through the state that

they would not have otherwise had access to since the tribe does not have the resources for adoption or guardianship subsidies.

Tribe Taking Jurisdiction

In areas immediately surrounding the Gila River Indian Community, the Community's Child Protective Services (CPS) office has been working with the neighboring counties to improve their relationship. This was done by continuously having communication with the Arizona Department of Child Safety (DCS). There is now a great working relationship with the Community's CPS. If a case involves a child that is an enrolled member of the Gila River Indian Community, the state and tribe have dual jurisdiction. The Arizona DCS will defer the case to the tribe and the tribe has taken jurisdiction without the state opening a dependency court case. The state DCS workers have appeared in tribal court cases as witnesses in trials. The tribe does not have any written agreement with the state for this. It is done based on mutual respect and understanding. Both Gila River Indian Community and the State of Arizona should consider creating an inter-governmental agreement to ensure this practice can withstand any changes in personnel.

Murdered and Missing Indigenous Persons

The Community actively participates in the Murdered and Missing Indigenous Women state and federal collaborations and task forces. The Community has committed to focus on multidisciplinary collaboration within the Community by creating a Murdered and Missing Indigenous Persons task force. As many already know, foster care and the child welfare programs are breeding grounds for child sex trafficking. As a country we have to collaborate the efforts of all of these task forces when it comes to our missing and runaway youth involved in child welfare. Resources have to be devoted to improve education and trauma informed responses to our vulnerable youth.

Thank you for the opportunity to appear before you today. I look forward to your questions.