# Indian Probate Training

## Probate, AIPRA and Indian Wills

Mary Thorstenson
Indian Probate Judge
U.S. Department of the Interior
Office of Hearings and Appeals
Probate Hearings Division
Rapid City, South Dakota

*Materials authored by Chief Judge Earl J. Waits

# Why are you here?

# Today We'll Discuss

## Indian Probate

## AIPRA

25 U.S.C.

§ § 2201, 2206

## Indian Wills

# Indian Probate Authority

*See*

*Estate of Robert Lawrence Wourinen,*

59 IBIA 314, 317 (2015)

# Indian Probate Process Summary

1. Someone died
2. BIA Prepares Probate File
3. OHA Adjudicates Probate
4. BIA Receives Decision*
5. LTRO Distributes Land
6. OST Distributes IIM
7. The END

# Indian Probate Process Summary

1. Someone died

2. BIA Prepares Probate File

# Indian Probate Process Summary

## 3. OHA Adjudicates Probate

# Indian Probate Process Summary

## 4. BIA Receives Decision

- 45 Days *
- Prepares for Distribution
- Notifies OST

# Indian Probate Process Summary

5. LTRO Distributes Land
6. OST Distributes IIM
7. The END*

# Indian Probate Process Summary

## 3. OHA Adjudicates Probate

AIPRA

# American Indian Probate Reform Act of 2004

25 U.S.C. §§ 2201 - 2221

AIPRA

# Definitions

# Indian …

# Eligible Heirs …

**25 U.S.C. §§ 2201(2) and (9)**

# Northern Cheyenne Probate Code

# Other Definitions

## Indian

## Common Law Marriage

## Real Property / Trust Land

**Northern Cheyenne Probate Code, Title IX, Part 2: § 9-2-1 Definitions**

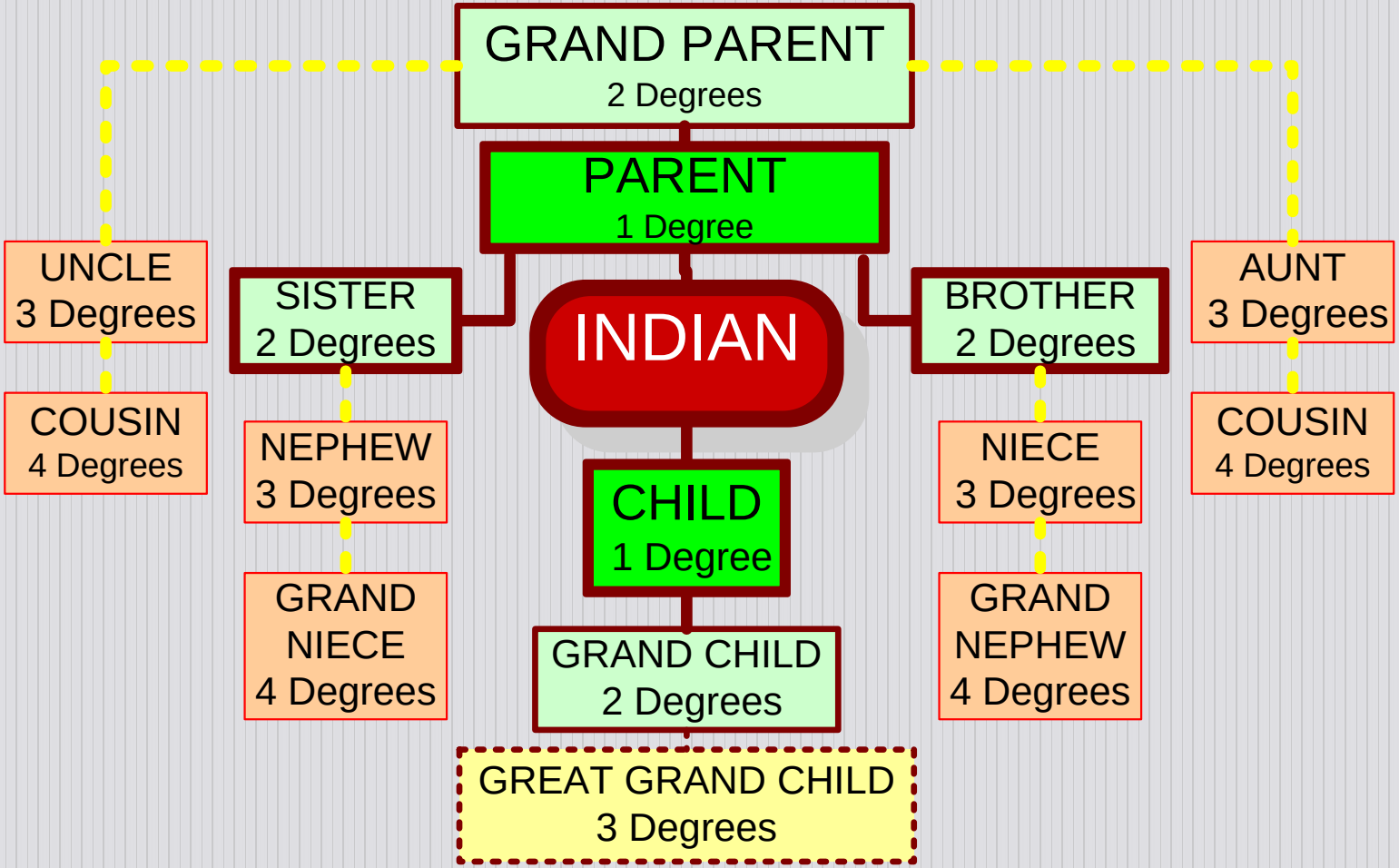
AIPRA

# Consanguinity

# by blood

# AIPRA

# Degrees



AIPRA

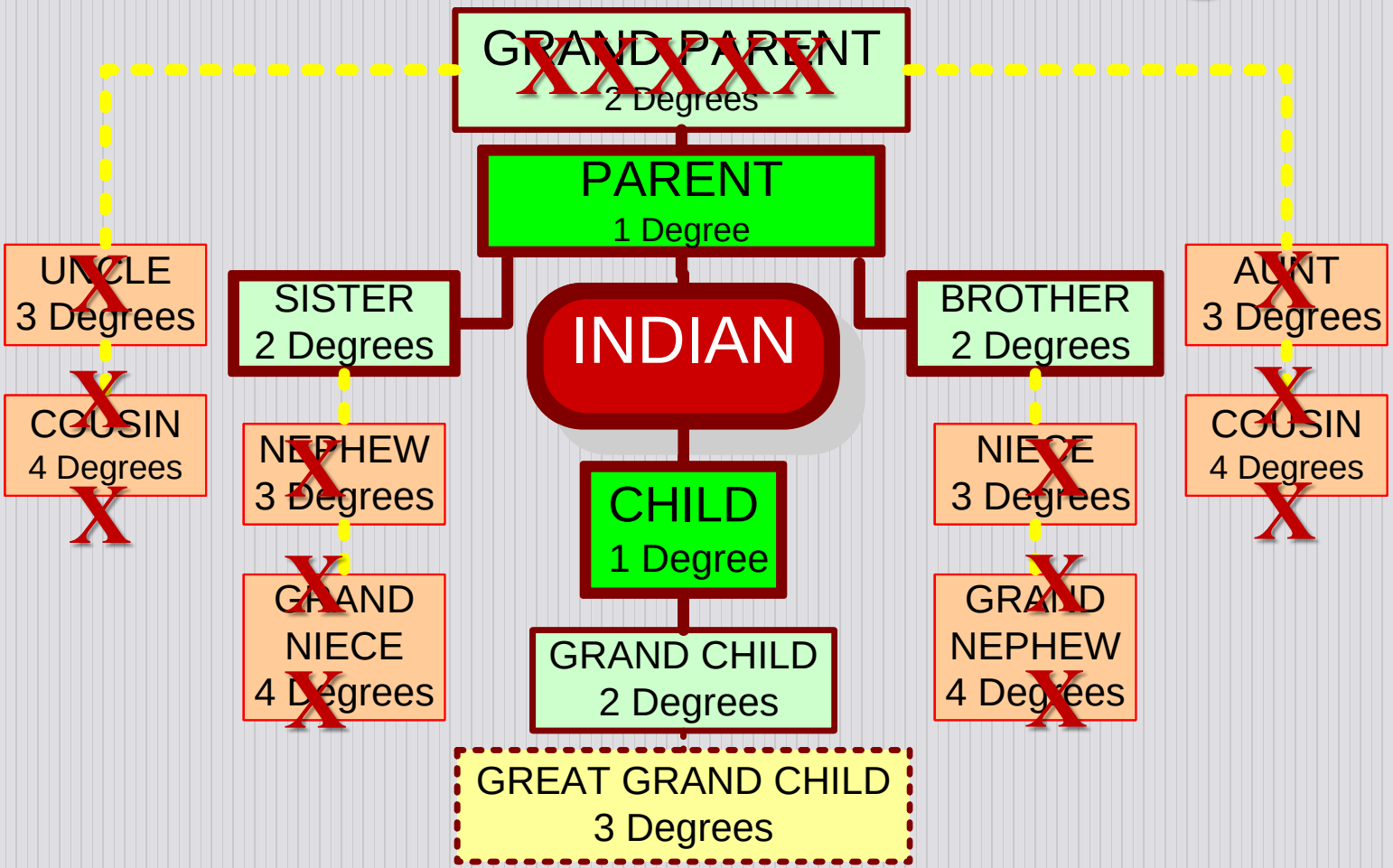
# Intestacy

## 25 U.S.C. § 2206(a)
## NCPC Part V: §§ 9-5-1 et seq.

# Who does NOT inherit?

# AIPRA

# Degrees



# Who does inherit?

AIPRA

Intestacy

# 3 Categories

AIPRA

# Intestacy

## IIM (Individual Indian Money)

**25 U.S.C. §§ 2206(b)(2)(A)**

AIPRA

# Intestacy

# LAND ≥ 5%

**25 U.S.C. §§ 2206(b)(2)(A)**

AIPRA

Intestacy

# LAND < 5%

# (Single Heir Rule)

**25 U.S.C. §§ 2206(b)(2)(A)**

AIPRA

# Indian Wills

25 U.S.C. § 2206(b)

# Who can Make a will?

## 25 C.F.R. § 15.3

# Requirements of Indian will?

## 25 C.F.R. § 15.4

# Self Proved Wills

## 25 C.F.R. § § 15.7 – 15.9

AIPRA

# Indian Wills

# What can be willed?

$ $ $

25 U.S.C. § 2206

43 C.F.R. §30.102

# Will it stay in trust?

# Trust Personalty

# Trust Realty in fee?

# IRA Reservation

# Joint Tenancy?

# D-I-V-O-R-C-E

# Lapsed, Failed or Invalid Devises

# Pretermitted Heirs; Adoption

# Class Devises

# Consolidation

# Killing

# Questions?

# Thank you!

Mary Thorstenson

Indian Probate Judge

USDOI/OHA/Probate Hearings Division

1011 Indian School RD NW, Room 322

Albuquerque, New Mexico 87104

Telephone: 505.563.5330