

April 28, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action-Indian Affairs
U.S. Department of the Interior
1849 C Street NW
MS 3642
Washington, DC 20240
via comments@bia.gov

Re: Proposed Indian Child Welfare Act Regulations

Dear Ms. Appel:

We are writing you on behalf of the judges of the Michigan Tribal-State Judicial Forum ("Judicial Forum"). Established by Supreme Court order in June, 2014, our Judicial Forum consists of twelve appointed state judges, and twelve tribal Court judges. Our mandate includes improving state compliance with the Indian Child Welfare Act (ICWA) and the Michigan Family Preservation Act (MIFPA). After a vote by the members of the Judicial Forum, we offer these comments on the ICWA Regulations with the goal of strengthening the implementation of ICWA for the future, and ensuring clarity and certainty for Native families.

On February 21, 2014, Secretary Kevin Washburn sent a "Dear Tribal Leader" letter asking for comments on the Bureau of Indian Affairs Guidelines for the Indian Child Welfare Act. 25 U.S.C. §§ 1901 et seq. As a result of those comments and testimony, on March 20, 2015, the Bureau of Indian Affairs released a proposed rule that would add a new subpart to the Department of the Interior's regulations implementing ICWA. Specifically, this proposed rule would establish a new subpart to the regulation implementing ICWA at 25 CFR Part 23 to address Indian child welfare proceedings in state courts. This tremendous step forward in ICWA enforcement is appreciated. The inconsistency in state court interpretation of ICWA provisions has led to uncertainty for children, tribes, and the state. Federal regulations that strongly support the goals and intent of ICWA will provide a strong underpinning to the work of our judicial forum.

Congress passed the Indian Child Welfare Act (ICWA) in 1978 to address the widespread practice of State entities removing American Indian children from their homes without an understanding of traditional American Indian child-rearing practices. Throughout the 1960s and 1970s, American Indian / Alaskan Native children were six times more likely to be placed in foster care than other children. See H.R. Rep. No. 95-1386 (1978), at 9. Congress found "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions . . ." 25 U.S.C. § 1901(4).

Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.” H. Rep. 95-1386, at 8 (emphasis added). ICWA thus articulates a strong “federal policy that, where possible, an Indian child should remain in the Indian community.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 37 (1989) (citing H. Rep. 95-1386 at 24). We are hopeful that federal regulations supporting this policy will help create clarity and certainty in ICWA decisions in Michigan and throughout the states.

We are also proud to note the numerous places where the proposed regulations mirror our own state law, the Michigan Indian Family Preservation Act. Passed in 2013, the Act was a result of years of collaboration between tribes and states at all levels of government—collaboration that led directly to the establishment of our forum. One of the goals of MIFPA was to provide clarity for state court judges attempting to interpret different provisions of ICWA. Some examples of where the proposed regulations and our existing state law are consistent include:

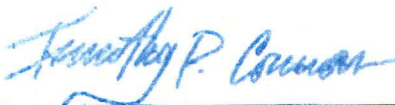
Definition of Active Efforts:	MCL 712B.3(a) and 25 CFR §23.2
Definition of Extended Family Member:	MCL 712B.3(f) and 25 CFR §23.2
Access to Reports and Records:	MCL 712B.11 and 25 CFR §23.119
Placement Preferences:	MCL 712B.23 and 25 CFR §23.128, 129, 130
Notice for Voluntary Placements:	MCL 712B.27(3) and 25 CFR §23.123(b)
Rights of Adult Adoptees	MCL 712B.27(4) and 25 CFR §23.134(a)

As state court judges applying ICWA and MIFPA in our courtrooms, and the tribal court judges who work with them, we applaud the work of the Department of Interior to propose regulations that will help state courts achieve consistency and clarity in their Indian child welfare cases. These proposed regulations can only help Native children, families, and tribes.

Sincerely,



Hon. Allie Greenleaf Maldonado
Chief Judge for the Little Traverse Bay Bands of Odawa Indians
Co-Chair of the Michigan Tribal-State Judicial Forum



Hon. Timothy P. Connors
Washtenaw County Circuit Court
Co-Chair of the Michigan Tribal-State Judicial Forum