

CEDARVILLE RANCHERIA TRIBAL OFFICE

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May 19, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
Indian Affairs, U.S. Department of the Interior
1849 C Street NW, MS 3642
Washington, DC 20240

Re: Notice of Proposed Rulemaking, Regulations for State Courts and Agencies in Indian Child Custody Proceedings, RIN 1076-AF25 Federal Register (March 20, 2015) Docket ID: BIA-2015-0001

Dear Ms. Appel:

The Cedarville Rancheria of Northern Paiute Indians is pleased to provide comments on the Notice of Public Rulemaking regarding Regulations for State Courts and Agencies in Indian Child Custody Proceedings. 80 Fed. Reg. 14,880-94 (Mar. 20, 2015) (to be codified at 25 C.F.R. pt. 23) [hereinafter “the Proposed Rules”].

We welcome the opportunity to add our comments. We were present, and provided oral comments at the Tribal Consultation in Portland, OR, on April 20, 2015. We add these written comments.

The Cedarville Rancheria is a small tribe in Northern California, located near the town of Alturas, CA. We have ___ adult and ___ members under the age of 18 as of the date of this letter.

In our time, we have seen the state courts struggle with compliance with the Indian Child Welfare Act (“ICWA”) over the years. This struggle on their part has resulted in ties to our Tribe being broken when children have been removed. We founded our own Tribal Court in late 2013 to help ensure that children in need of care are assisted through our own Tribe and processes. These Proposed Rules will help ensure that our children will remain connected to our culture and our people, even if their particular case is not initially addressed through our own court. We recently completed the first case involving a child in need of care, and the first adoption through our Tribal Court. We are proud of our own efforts and exercise of our own tribal sovereignty during these cases.

Our comments are similar to other tribes’ comments. We wish to state that we echo and agree with the oral comments made at the April 20, 2015, Tribal Consultation, that were later submitted in writing, by the Shoshone-Bannock Tribes of Fort Hall. Many of those comments went beyond the Proposed Rules and added other changes and clarifications that are needed.

In addition, we ask that you ensure that the Notice to the Tribes be required to include the correct, true and full name of each parent, and the date of birth of each. It is difficult, if not impossible, to identify whether a child is enrolled or enrollable in our Tribe without this vital information. We ask that you include a rule that a court must find that failure to provide all of this information is deemed inadequate notice under ICWA, and therefore courts may not consider this to be in compliance with the notice provisions of ICWA and the Proposed Rules. See Section 23.111(d) and generally, section 23.109 of the Proposed Rules. This may also be added as a reason for dismissal of the action under Section 23.110.

Next, we would like to see an addition to the Proposed Rules that requires social workers, attorneys who have any role in state court in ICWA cases, and the state court judges who hear potential ICWA cases, to attend annual training on the new final rule, and ICWA compliance in general. At most, this training should be every other year. Our experience has been that ignorance by various state court actors, whether social workers, attorneys, or judges, fail to comply with ICWA not out of ill will, but out of ignorance and lack of understanding.

We also would like clarification of what monitoring of ICWA cases will occur? What oversight will occur? Will the federal government monitor and document the actual numbers of these cases and the general results? Documentation and monitoring of this sort, by the federal government, would assist in identifying states and counties where failure to comply with ICWA is occurring. Thereafter, those courts could be addressed more directly to ensure future compliance, as well as to address issues that arose due to a failure to comply.

The Proposed Rules do not address any sanctions for state courts that fail to comply with ICWA. We suggest that federal funds that are given to state courts and local governments – e.g. county social services agencies, tied to use in ICWA cases, be refunded to the federal government if the state court is found to deliberately or recklessly fail to comply with ICWA.

We also request that in the case of adoptions of Indian children by non-Indians, the final adoption decree somehow address encouraging, if not requiring, the adoptive parents to maintain ties to the tribe in question for the benefit of the child. At the very least, the child's adoption documentation should address his or her tribal affiliation. This could be added after determining there is "good cause" to depart from placement preferences under Sections 23.128(d) and 23.131(c)(4).

We would like to see encouragement and assistance by the federal government to help increase the number of Indian families as foster care givers for our tribal children.

We ask that the final rule include comments that clarify to the general public that ICWA is not a race-based preference, but is a political decision because of the government-to-government relationship between tribes and the federal government. Due to ignorance of this fact, many people mistakenly believe that ICWA compliance is based on a racial preference and therefore is unfair and wrong. This could be added to Section 23.101.

In the change for the definition of "active efforts," Section 23.2, it is unclear how many of the items listed would be needed to find that "active efforts" have occurred. The Final Rule should address this with a minimum number, or preferably with identification of each and every item in the list and whether that item has occurred, as well as identifying all reasons for non-compliance with each item. In addition, the court may address other criteria in addition to this list, ensuring that it is a non-exhaustive list.

Conclusion

We thank and commend DOI for their work on the Proposed Rules. The lack of guiding regulations or clarity in the past has resulted in misapplication of, and misunderstanding of ICWA since its inception. As a result, Native families have been broken up, and our children have suffered further instability. We need and deserve clarification of the Proposed Rules.

Sincerely,
Melissa Davis, Chairwoman
Cedarville Rancheria of Northern Paiute Indians