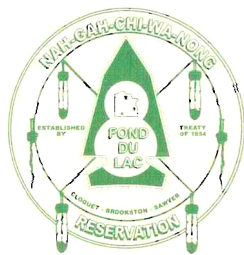


Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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May 19, 2015

Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

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Wally Dupuis

Dist. II Representative
David R. Tiessen, Jr.

Dist. III Representative
Kevin R. Dupuis, Sr.

Executive Director,
Tribal Programs
Chuck Walt

Executive Director,
Enterprises
Michael Himango

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

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

Dear Ms. Appel,

The Fond du Lac Band of Lake Superior Chippewa strongly supports the proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings. The Notice of Public Rulemaking was published in the *Federal Register* on March 20, 2015, pages 14880-14894. We believe that the proposed regulations are long overdue, and we are pleased to endorse them.

While we generally support the proposed regulations, we are particularly supportive of the following:

- **Active efforts:** Section 23.2 finally provides a clear definition of what active efforts are required before an ICWA-eligible child can be removed from her home and before parental rights can be terminated. In addition to

the proposed definition and examples, the rules should require detailed documentation of active efforts in the court record and should require courts to consult with tribes about locally-appropriate active efforts.

- ***Tribal membership***: Section 23.108 appropriately recognizes tribes' exclusive authority to determine tribal membership.
- ***Existing Indian Family Exception (EIF)***: Section 23.103(b) of the proposed rule clarifies ICWA applicability and codifies that despite the judicially-created idea of an Existing Indian Family exception to ICWA, there is, in fact, no EIF exception to ICWA.
- ***Emergency removal***: Section 23 113 provides proper direction for emergency removal of Indian children under state law
- ***Good cause not to transfer to Tribal Court***: Section 23 117(c)-(d) spells out what the courts may *not* consider when determining whether good cause exists not to transfer to Tribal Court; the rules should include some examples of what the courts may consider.
- ***Qualified Expert Witness***: §23 122 provides excellent direction regarding who can be used in court as a QEW

While we strongly support these regulations, the Band also recommends the following additional changes:

- In order to avoid the wrong information being provided to the wrong people, and thus ICWA-eligible cases falling through the cracks, states should have a consistent process/format to inform tribes of ICWA-eligible cases.
- The rules should provide a structure for sanctions against non-compliant states.

- In order to ensure state compliance and oversight, the rules should provide for strong data collection.
- The regulations should explicitly address the *Adoptive Couple v. Baby Girl* case, clarifying that it should not be applied outside of the private adoption context.

These proposed rules provide the clarity and certainty necessary for all parties involved in child welfare and private adoption proceedings to comply with the law and promote the best interests of Indian children.

Thank you in advance for consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Karen R. Diver". The signature is written in a cursive style with a large initial 'K'.

Karen R. Diver

Chairwoman