



Minnesota Department of **Human Services**

May 19, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Actions
Indian Affairs
U.S. Department of the Interior
1849 C Street NW, MS 3642
Washington, D.C. 20240
Docket ID: BIA-2015-0001

Dear Ms. Appel:

This letter is in response to the proposed rule to federal regulations for state courts and agencies in Indian child custody proceedings.

The Minnesota Department of Human Services, Children and Family Services Administration, acknowledge and appreciate the special trust relationship between the United States government and Indian tribes, tribal members, and federal responsibility to protect the best interests of Indian children. When the Indian Child Welfare Act (ICWA) was enacted in 1978, Congress found an alarmingly high percentage of Indian children being removed from their families; often these removals were unwarranted. Congress declared that it is national policy to promote the stability and security of Indian tribes and families by establishing minimum federal standards for removal of children from their families. Congress further established placement preferences for foster and adoptive homes that reflect the unique values of Indian culture.

Minnesota Department of Human Services staff emphatically supports the proposed rule to federal regulations for state courts and agencies regarding Indian child custody proceedings. These regulations will support the Department's efforts and commitment to implementing ICWA and reducing the disproportionate number of American Indian Children in Minnesota's foster care system.

The regulations update definitions, replace notice provisions, promote early identification of Indian families, and clarify court requirements. In addition, the Department is pleased that the proposed rule rejects the "existing Indian family exception." Since 1985, Minnesota law has required that a determination of whether ICWA applies cannot be based on whether an Indian child is part of an existing Indian family; or based on the level of contact a child has with their Indian tribe, reservation, society, or off-reservation community.

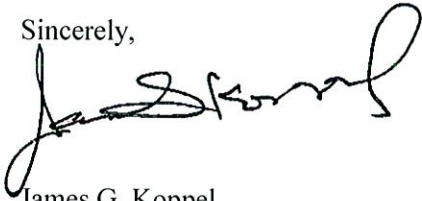
To further enhance the proposed rule, the Minnesota Department of Human Services supports strengthening of:

- Cultural considerations and tribal participation when working with American Indian families
- Engaging parents, including fathers, and protecting their rights.

In addition to this letter, I am enclosing some recommended changes to the regulations and additional comments for consideration.

Thank you for the opportunity to express support for the Bureau of Indian Affairs proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings. Department staff believes these changes will improve ICWA implementation and provide stability and security of American Indian families and tribes.

Sincerely,

A handwritten signature in black ink, appearing to read 'James G. Koppel', written in a cursive style.

James G. Koppel
Assistant Commissioner
Children and Family Services Administration

Encl

Bureau of Indian Affairs Proposed Rule

Minnesota Department of Human Services

1. On page 14885, **§23.2 Definitions. Active efforts.**(8) Completing a comprehensive, including cultural, with the assistance and participation of the local or surrounding tribal social services, assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal. **Comment:** We recommend adding this as some Native American families may not have access to cultural resources or may not have had much exposure to culture, including naming ceremonies, puberty rites ceremonies, sweat lodge ceremonies, other traditional ceremonies, pow-wow dancing and singing, creating regalia and other similar cultural practices or traditions. If there is a cultural assessment conducted, it would give the worker an idea as to what type of cultural resources they could refer a family to in that respective tribal community. Further, they would have to include the assistance and participation of the local tribal social services people as they, most often, know the tribal resources in their respective communities. This is important as one of the keys for success for Native families is becoming more immersed in their own culture and regaining those core family values of honesty, love, integrity, honor, compassion, and nurturing.
2. On page 14885, **§23.2 Definitions. Active efforts** (11) Identifying community and tribal resources, including housing, financial, transportation, mental health, substance abuse, including tribal or culturally appropriate chemical dependency programs or groups, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources. **Comment:** We recommend adding this to include tribal resources that may include culturally appropriate chemical dependency programs/groups where parents may identify more with for successful treatment and aftercare.
3. On page 14885, **§23.2 Definitions. Active efforts** (13) Providing consideration of alternative ways of addressing, including cultural, the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available. **Comment:** We recommend adding this to include the cultural needs of the Indian child's parents and extended family as they may have cultural needs that should be addressed at the front line.
4. On page 14885, **§23.2 Definitions. Active efforts** (Add (16) Ensure parents and Indian custodians are advised of their rights, including their right to an attorney, to deny the petition, to receive notice and all documents regarding their case or case plans. **Comment:** Indian custodians and parents should be advised of their respective rights by the social worker and by the court to ensure they know and understand their rights respective to a child protection case and understand what a maltreatment finding can mean later on for potential consequences, i.e. unable to become a licensed foster parent.

5. On page 14885, **§23.2 Definitions. Indian child's tribe means:** In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts, which may include, but not be limited to relative or extended family contacts, kinship contacts, trips home for cultural events, funerals or other similar events. **Comment:** This simply defines what a significant contact may mean when it comes to how Natives interact with each other at any given time and yet there may be other times when they have significant contacts.
6. On page 14886: **§23.2. Definitions.** Add 23.116: When does active efforts terminate: at termination of parental rights and adoption. **Comment:** This is critical as this is often requested by local social services agencies that want to know when their duties are complete. Also, parents have a right to know when active efforts end as that is when a social worker no longer has jurisdiction or authority over their case.
7. On page 14887, **§23.107. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?** (a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. if there is reason to believe that the child is an Indian child, the agency must obtain verification, through tribal enrollment or other similar tribal entity, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child. **Comment:** This gives local social services agencies guidance and direction on who to contact at the Tribal agencies as tribes make the determination as to enrollment, citizenship or membership.
8. On page 14887, **§23.107. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?** (1) In requiring this certification, from tribal enrollment or other similar entity, the courts may wish to consider requiring the agency to provide: (i) genograms or ancestry charts for both parents, with the assistance of tribal enrollment or other similar entity... If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts, including written evidence of contact with tribal enrollment or other similar entity, to work with all tribes of which the child may be a member to verify, with written documentation, whether the child is in fact a member, a citizen, or eligible for membership, or citizenship, in any tribe, under paragraph (a) of this section. **Comment:** This is important because tribal enrollment should be the entity assisting with genograms or other evidence for verification of who the child descends from. A local social services agency should also provide written verification for the court that they have contacted or attempted to contact tribal enrollment or the Bureau of Indian Affairs for verification of tribal descendancy. Citizenship is included as some tribes identify their members as citizens.
9. On page 14889, **§23.112 What time limits and extensions apply?** (d) The court shall allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members, parents and tribes such as telephone, videoconferencing

other similar methods, such as skype. **Comment:** Shall is added to mandate that parents, family members and tribes should have alternative options for making a court appearance as some tribal members live in rural areas and have transportation issues with court attendance. Skype is a function that many currently have on their phones or other electronic media.

10. On page 14889, **§23.113, What is the process for emergency removal of an Indian child?** (a) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible Each involved agency or court shall: (3) immediately terminate or dismiss the emergency removal or placement once the court possesses sufficient evidence to determinate that the emergency has ended or that a solid safety plan is in place. **Comment:** A dismissal is warranted when the case ends, the court should dismiss it as well. If there is a solid safety plan in place, there may be an option for dismissal at the early stages of a case, depending on the each circumstances.
11. On page 14890, **§23.112 (6) Maintain , and share records with the tribe and parents or Indian custodian** that detail steps taken to any required notification under §23.111. **Comment:** This would ensure that tribes, parents or Indian custodians are entitled to have a copy of everything in their social services and court file.
12. On page 14890, **§23.112 (3) What is the process for emergency removal of an Indian child.** Add: (3) If such persons are unknown or have been unable to locate their current domicile or residence, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate BIA Regional Director, and tribal social services agency, including submission of an Affidavit of Service by Publication. Other avenues of service to the parents and/or Indian custodian can include contacting the tribal social services agency, tribal enrollment and posting on a tribal bulletin board or tribal newsletter. **Comment:** This is for parents who are difficult to locate. This often occurs in tribal courts as well. The should be an alternative to serving a parent as it is very difficult to locate some parents.
13. On page 14890, **§23.112 What is the process for emergency removal of an Indian child?** Add: (2) Extraordinary circumstances exist, which may include, egregious physical abuse or evidence of sexual abuse, egregious evidence of chronic substance abuse including opiod dependency, methamphetamine dependency and other similar substance abuse dependency. **Comment:** This is defining extraordinary circumstances such as substance abuse that interferes with the parental responsibility to be a fit parent.
14. On page 14891, **§23. 121 What are the applicable standards of evidence?** (d) Evidence that only shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, provided this substance abuse does not interfere with the parenting, the nurturing, the caretaking of the child (ren) and that this substance abuse or dependency does not interfere with the positive upbringing of the child in a safe, stable and nurturing environment that most simulates or emulates a Native American Indian family. **Comment:** This is critical

because most Native children are removed from their parents due to substance abuse issues. It is at an epidemic or crisis state. In Minnesota, Native American mothers have the highest rates of giving birth to babies who were exposed to drugs/substances in utero. Further, Minnesota has the highest rates for disproportionate and disparities for out of home placement for Native American children. Substance abuse is often the reason for removal although the cause is reflected in the data as neglect. Children are being neglected often times due to substance abuse by the parents.

15. On page 14891, **§23.123 What actions must an agency and State Court undertake in voluntary proceedings?** Add (b) When a county department, local social services agency receives a child protection report of an unborn child or child living within off reservation boundaries and has reason to know that the child is an Indian child, the department shall provide 24 hour notice to the tribal agent, consisting of the name and address, if known, of the Indian child or expectant mother and that a report has been received: Best practice: Apply standard to all tribes. **Comment:** This provision is important because Minnesota has a Safe Harbor law where in a mother can leave their newborns at hospitals. If this is a Native child tribal agencies are not identified or notified.
16. On page 14891, **§23.124 how is consent obtained?** (c) a certificate of consent my accompany a written consent, by both mother and father, and must certify that the terms and consequences of the consent were explained, understood and acknowledged, in detail in the language, and in plain and understandable terms by laypersons, of the parents or Indian custodian. **Comment:** This is due to the Baby Veronica case wherein the father, Dustin Brown, did not know the proper procedures for obtaining consent. Parents should understand and acknowledge in layperson's terms what exactly they are giving up, i.e. their parental rights.
17. On page 14891, **§23.125 What information should a consent document contain?** (a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other similar indication of child's membership or citizenship in the tribe, and the names and address of the consenting parent, non-custodial parent, or Indian custodian. **Comment:** This should be added as some tribes refer to their members as citizen. Also, the non-custodial parent is often overlooked or left out of this process as what occurred in the Baby Veronica case.