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May 19, 2015

Via Regulations.gov

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: Proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings, Docket ID: BIA-2015-0001

Dear Ms. Appel:

I am writing to provide comments on behalf of the Quinault Indian Nation. The Quinault Indian Nation generally supports the BIA's proposed rule. There is a recurring theme throughout the proposed rule of clarifying and explaining the requirements of ICWA that will be very helpful to both Tribes and States. The addition of a definition for "active efforts" in § 23.2 will clarify for all parties in ICWA-applicable cases the requirements necessary to maintain and reunite Indian children with their families and tribal communities. By enacting this definition, BIA will make it clear that additional effort beyond just reasonable efforts is required. This will benefit the many Indian families who will, as a result, receive extra assistance.

The addition of definitions for continued custody, custody and domicile in § 23.2 is a helpful codification of current case law. The inclusion of tribal custom as a source of demonstrating custody or defining the extended family recognizes that an Indian family does not always follow traditional western ideas, and validates such a perspective. However, QIN is concerned about the new definition of "domicile" in § 23.2. It states that in the case of an Indian child whose parents are not married to each other, the child's domicile is with the mother. No alternative is provided for the situation where the mother is not in the picture, such as if the mother is deceased. QIN recommends that this section be revised to state as follows: "(2) For an Indian child, the domicile of the Indian child's Indian custodian." This revision would cover parents and anyone else who has legal custody of the Indian child.

The addition of Subpart I (§§ 23.101 through 23.138), with its question and answer format, is a very user friendly approach to topics that are extremely important, but that most State practitioners only have

occasional interaction with. It is, however, the content of those answers that the Quinault Indian Nation appreciates most. Section 23.103 makes it clear that Existing Indian Family (EIF) doctrine is not the intent of Congress and should not be used to circumvent the ICWA. Section 23.115(c) clarifies that the right to request a transfer is available at any stage of an Indian child custody proceeding. The Nation supports proposed § 23.117. Spelling out several factors that may NOT be used by the State to prevent a transfer will help ensure that the preference for Tribal court is honored.

The provision in § 23.115(d) that courts should allow alternative methods of participation by tribes and family members in State court proceedings is insufficient. If a State Court Rule does not already allow it, this suggestion will not cause it to happen. These cases are too important, the rights involved too fundamental, to allow a case to proceed without the tribe's participation. Telephone conferencing on behalf of a court is not too burdensome and can allow a tribe to participate in proceedings that would otherwise be impossible. This section should be revised to state that the court "must allow alternative methods of participation."

Thank you for this opportunity to comment on the proposed regulations.

Respectfully,

Lori Bruner

Lori Bruner
Acting Attorney General