

May 18, 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**

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:

It is nationally and globally important that the proposed ICWA regulations be passed and that the recently-released guidelines supported. My name is Tom Lidot and I am a member of Chilkat Indian Village of the Tlingit Nation. I am a trainer and educator who promotes collaboration between tribes and government agencies to improve outcomes for Indian children in the child welfare system. I am also the product of relocation and assimilation, as my mother (Christina Gloria Lidot) and grandmother (Lucille Kasko Gloria), both attended boarding schools and I was born and raised in San Diego, CA – far away from my mother and grandmothers' homeland in Alaska.

Although I support the advancement of science and education I am also a traditionalist who believes that the ancient tribal beliefs and values hold an important key to human survival. These values include: emphasis on the whole group (as opposed to the individual), emphasis on extended family, emphasis on being a good person rather than a rich person, emphasis on extended family and elders, and honoring our traditions and all those who went before us. Key and central to these values is the acknowledgement that human nature (based on our unique cultural evolution) is to maintain connection to your origin(s) – or as the elders would remind me when I was growing up “Know who you are and where you’re from.” As a member of the Native community I’ve seen firsthand the drive and will-power of folks longing to re-connect to their origins, their personal history, their cultural teaching, and tribe. It’s as if you’re left wondering who you are...eternally searching, until you connect to something greater. That’s what ICWA, the new guidelines, and the proposed regulations represent – our commitment to ensuring Indian children remain connected to something “greater.”

As I attempt to keep abreast of the recent scientific studies that cite addiction and obesity are related to unresolved grief and early childhood trauma, I am also seeing sweeping healthcare and child welfare reforms emphasizing well communities. The old research that had shown laboratory rats only ingested cocaine-filled water when they were alone, when there were part of a group they had less interest in the stimulation (and ensuing self-destructive behaviors) the cocaine added water provided. I’m not going to cite these references – they’re out there.

My point in writing this letter is to state that ancient tribal values will come to light as key reminders of what has been lost in a world where children are bought and sold like property, and the easiest ones to sell are those from disenfranchised communities, and communities with little interest interacting with justice systems. I support the issuance of proposed ICWA regulations by the Bureau of Indian Affairs. I believe that regulations are critically important if states are to fully comply with the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.*

The ICWA was enacted in 1978 in response to a crisis affecting Indian children, families and tribes. Studies revealed that large numbers of Indian children were being separated from their parents, extended families, and communities and placed in non-Indian homes. Congressional testimony documented the devastating impact this was having upon Indian children, families and tribes. As a result, Congress enacted mandatory legal requirements to be followed by state courts who are adjudicating the rights of Indian children and their families who live outside of an Indian reservation.

Although progress has been made as a result of ICWA, out-of-home placement of Indian children is still much greater for Indian youth than it is for the general population and Indian children continue to be regularly placed in non-Indian homes. Compliance with the ICWA by states is erratic and state court decisions inconsistent. There is a great need for the federal government to provide binding regulations to ensure that the ICWA is enforced and applied properly in all states so that our children and families are fully protected.

I particularly support the following provisions in the proposed regulations:

- Requiring that agencies and courts ask in every proceeding whether a child is Indian. This will help ensure that all of our children are identified and accorded ICWA protections.
- Recognition of a tribe's exclusive authority to determine tribal membership. I very much support the affirmation of this key principle of tribal sovereignty.
- Rejection of the Existing Indian Family Exception. This section ensures that the ICWA will be applied to all Indian children in any child custody proceeding and that no Indian children will be left behind.
- Notice to tribes in voluntary cases. We are *parens patriae* for our children. By providing notice, this ensures that we will be able to assert our jurisdiction (which may be exclusive) and/or intervene in the case if necessary. Notice to the tribe is also critical if the state court is to confirm (as it is required to do) whether the child is an Indian child and covered by the ICWA.
- Defining active efforts to prevent the breakup of Indian families and requiring that such efforts begin immediately. This provision is vitally important to keeping Indian families together, a central and critical purpose of the ICWA.
- Limiting the discretion of state courts to deny transfer of a case to tribal court. Too often state courts refuse to transfer a case because they think that a tribal court will

make a decision with which they disagree. The regulations make clear that this is not an appropriate reason to deny transfer.

- Emphasizing the need to follow the placement preference and limiting the ability of agencies to deviate from the preferences. The failure of state courts and agencies to place Indian children in relative, tribal and Indian homes is one of the biggest problems with the Act's implementation. Keeping children with their families and within their tribal communities and cultures is vitally important to their well-being and a central purpose of the ICWA.

I would note that the legal basis for regulatory action is strong. The statute provides that "the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act" which is a broad grant of authority. The Act was designed to establish "minimum federal standards" governing state court proceedings. In the last 35 years, however, there have been divergent interpretations of a number of ICWA provisions by various state courts and uneven implementation by state agencies. This undermines ICWA's purpose to create consistent minimum federal standards. In addition, case law decided since 1979 supports the exercise of regulatory authority by the BIA.

Although I strongly support these regulations in general, I have a few recommendations to advance for consideration. I believe that it is important that the rationale for the authority to regulate be carefully explained and that individual provisions should be justified with references to supportive cases, state regulations and policies that reflect best practices, and legislative history. I also believe that the regulations should explicitly address the *Adoptive Couple v. Baby Girl* case: 1) clarifying that it should not be applied outside of the private adoption context; and 2) providing guidance on how the Supreme Court interpretation of the law should be effectuated in state court and agency practice. Finally, I urge you to carefully consider technical recommendations that will be provided by national organizations and attorneys who have expertise in the ICWA from the tribal perspective.

ICWA supports well-being, permanency, and safety and is best practice for family reunification and placement. Without someone who cared for us in our past where would any of us be? We have a duty and responsibility to keep tribes intact and to support the well-being of Indian children who will manage future tribal affairs and government-to-government relations.

Sincerely,



Tom Lidot
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