

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)

Dear Ms. Appel,

I am pleased to be able to offer a few comments in favor of the proposed ICWA rule for several reasons. I am an attorney and have spent a great deal of my personal time reviewing ICWA cases from around the country. I am constantly amazed by the inconsistent application of ICWA from state-to-state and even from court-to-court. My legal training taught me about statutory interpretation and the important role of the courts in meting out justice. However, when it comes to ICWA cases, I not only do not see consistent interpretations of the law but often find widely divergent interpretations. It is impossible to predict how the law will be interpreted and applied. No party can ever fully know what to expect. For the children and families involved in these highly emotional cases, the insecurity that comes from this lack of consistency makes an already difficult situation so much more frightening and painful.

I am also amazed by how many judges, attorneys, and social workers are unfamiliar with the law. ICWA has been in place since 1978. How is it possible that so many people still have either not heard of it or are unfamiliar with the statutory requirements? I believe that one reason for this lack of knowledge and understanding is the lack of accountability. While books have been written and videos made explaining the historical context that led up to the law, many still have not made it a priority to learn the responsibilities associated with ICWA. Others are openly hostile to ICWA and choose to abuse their discretionary authority in order to avoid ICWA application. Binding language appears to be the only way to get professionals to take the law seriously. I cannot think of many other examples of federal laws that have been given so little respect by state courts.

I am particularly concerned about the disproportionate rates of American Indian/Alaska Native children in the foster care system. According to current data, American Indian/Alaska Native children are overrepresented in foster care at a rate of 2.5 times their rate in the general population. (NCJFCJ, 2015) Foster care children are at increased risk for lower well-being measures (Casey Family Programs) such as:

- Negative health outcomes and increased risk for chronic diseases

- Increased rates of teen pregnancy, sexually transmitted infections and HIV
- Serious emotional problems and mental health issues
- Increased risk for suicide
- Decreased educational attainment
- Higher rates of unemployment
- Increased likelihood of incarceration
- Increased rates of poverty

Recent studies have also linked involvement with child welfare services and vulnerability to human trafficking. According to the State of Alaska Task Force on the Crimes of Human Trafficking, 50 to 80% of all identified human trafficking victims are or have been involved with child welfare services at some point in their lives.

If all of these vulnerability and risk factors are not enough, removing American Indian/Alaska Native children from their homes can cut their cultural and traditional connections. Entire organizations have been created to assist those who were removed from their traditional cultures. Many still grieve years after they have found their way back to their tribal communities. Our children deserve better. Remaining connected with culture is most definitely in the best interests of Native children.

I applaud those who have worked hard to propose this rule so that we can finally have some consistency in ICWA compliance around the country. While the Guidelines have been helpful, it has become clear that we need binding language if we are ever going to have nation-wide compliance. Right now, we can only hope that we get the right social worker, attorney, or end up in the court of one of the state court judges who are sincerely trying to comply with both the letter and spirit of the law. Our children deserve better odds than what presently exist.

I am an Ojibwe woman, and I credit my Elders and the cultural teachings I have been given with helping me find the strength to go to college, to get several degrees, and to spend my life involved in work that I hope will help not just my community but all communities in this country. I wish this for all children.

G'chi Miigwech,

Thank you very much,

Victoria Sweet, JD