

Report from Jill Kehaulani Esch, Esq.
Ombudsperson for American Indian Families
February 27, 2018

Report for the Period 11/21/2017 through 2/26/2018

Duties of the Ombudsperson for American Indian Families

The Ombudsperson for American Indian Families investigates complaints for non-compliance of the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, Rules and DHS Policies that involve child protection cases. The Ombudsperson also collaborates with tribes, agencies, counties, community organizations, courts, schools and other organizations to develop policies, rules and laws to improve outcomes for American Indian Families involved in the child protection system, as well as collaborating on prevention programs. The Ombudsperson is advised and reports to the Community Specific Board, who are all appointed by the Minnesota Indian Affairs Council.

Geographical locations of phone calls

Becker, Beltrami, Bemidji, Carlton, Carver, Cass, Chippewa, Chisago, Cloquet, Detroit Lakes, Duluth, Fond du Lac Reservation, Grand Rapids, Hastings, Hubbard, Itasca, Leech Lake Reservation, Mahnommen, Mille Lacs, Minneapolis, Morton, Red Lake Nation, St. Paul, Scott, Shakopee Women's Correctional Facility, Steele County, White Earth Nation, and States of Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington and Wisconsin.

Tribes

Bad River Band of Lake Superior Tribe of Chippewa Indians, Bois Forte Band of Chippewa, Cherokee Nation, Cheyenne River Sioux, Fond du Lac Band of Lake Superior Chippewa, Fort Peck Assiniboine, Lac Courte Oreilles Tribe, Leech Lake Band of Ojibwe, Lower Sioux Indian Community, Menominee Indian Tribe of Wisconsin, Mille Lacs Band of Ojibwe, Northern Cheyenne, Oglala Sioux, Ponca Tribe of Nebraska, Prairie Island Indian Community, Red Lake Band of Chippewa Indians, Rosebud Sioux, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux, Turtle Mountain Band of Chippewa Indians, and White Earth Nation.

Investigations: 51 Open Investigations.

Some Issues from Cases for the Period of This Report

- Foster parents' motion for party status was granted.
- Foster parents filed the Petition for Transfer of Custody, not the County.
- Foster parents were extremely upset that the native grandmother was granted transfer of custody and they were denied continued visits with the children after the children were placed with grandmother. Foster parent wrote a very racist letter to the mother making very disparaging comments about her, the social worker, the guardian ad litem, the tribal representative and the grandmother.
- On a confirmed ICWA case, no attempt to contact the tribe; no one in the court hearing mentioned it was an ICWA case; no finding by the Court to deviate from the ICWA placement preferences (children were in non-native, non-relative placement); no finding by the court on any active efforts, despite the written court order stated the Court found there were active efforts.
- Children were placed in a non-relative, non-ICWA home instead of being placed with grandmother.
- Adoptive maternal grandmother is unable to continue to care for grandchildren who were transferred to her custody.
- Tribes are continually not notified that there is a possibility of out-of-home placement. Tribes are not learning about the cases until well after the cases are filed and several hearings have been held.
- Neither parents, nor tribes are being consulted on case plans; the case plans are solely being written by the social worker.
- Children who are severely allergic to pets were placed in a home with pets, which resulted in severe skin allergies.
- In several cases, children reported to their parents/grandmother that they were being hit while in a foster home. In one case, the county returned the children to the abusive foster home. In another case, the maternal grandmother traveled 5 hours to attend the court hearing and when it was brought to the Court's attention about the abuse, she asked and was allowed to have grandchildren placed with her while the county conducted its investigation. The tribe then moved to transfer the case to tribal court.
- Tribal representative reported that the social worker is making decisions regarding medications for the child.
- Despite the court ordering visits, the counties are not complying and parents are going weeks and months without visitations. A mother who has been incarcerated since August 2017 reported on February 15, 2018, that she has only had 4 visits with her children since August, despite the court ordering that visits occur.
- Parents are told to work their case plans, but copies of written case plans are not being provided to the parents.
- Parents are frustrated that their attorneys do not understand ICWA and therefore not adequately advocating for them.

Policy Changes/Initiatives

- Attended Annual Meeting of the Citizens' Review Panel, 11/16/17.
- Attended training -- Child Welfare Liability and Data Practices, 12/4/17.
- Member of the ICWA Collaboration Committee and attended meeting, 12/15/17.
- Attended Juvenile Rules Committee Meeting, 12/19/17.
- Attended hearing -- Legislative Task Force on Child Protection, 1/9/2018.
- Met with Korina Barry, Guardian Ad Litem Board Member, to discuss policy changes and initiatives, 12/21/17.
- Attended Juvenile Rules ICWA Sub-Committee meeting, 12/21/17.
- Public comments provided to the Guardian Ad Litem Board, 1/10/18; attended Board Meeting to answer questions, 2/8/18.
- Inquired at DHS re: status of the ICWA Compliance Review System that was to have been in place in January 2018, 1/29/18.
- Attended Juvenile Protection Rules ICWA Sub-Committee re: my recommendation made to the Supreme Court, 2/1/18.
- Attended Senate Human Services Reform Finance & Policy Committee Hearing on Child Protection, 2/21/18.
- Attended CJJ Permanency Workshop in Anoka, 2/26/18.
- Attended monthly board meetings, United States Ombudsman Association.
- Continued discussions with the State and Counties on importance of ICWA Training [BIA regs effective December 2016.]
- Continued discussions with the State, Counties and DHS to ensure that the tribes and the Native community are at the planning and discussion table for rule changes, legislation, trainings, conferences, seminars, and collaborations regarding child protection and placement.
- Attended and observed court proceedings in the Metro Counties as well as Carlton, Chisago and Itasca.

ICWA Education and Continued Community Outreach

- Attended training -- Human Trafficking and Sexually Exploited Youth, 11/16 and 11/17/17.
- Letter sent to county judge highlighting some applicable ICWA amendments that became effective on December 12, 2016 and the 2015 statutory amendments to the Minnesota Indian Family Preservation Act because the case involved a third-party custody action filed in Family Court and the Petitioners' attorney was moving for default against the mother. Advised the Court that the ICWA and MIFPA laws applied in Family Court because it was an American Indian child, 11/20/17.
- Presentation before Mankato State University social workers on my duties, powers and the work that I do, 12/8/17.
- Provided brief ICWA education and solicited donations for Mini MUID Annual Meet and Greet, 12/12 and 12/13/17.
- Attended ADYC WAIF Meeting, 1/17/18.
- Attended training -- Identifying and Preventing Human Trafficking, 1/25/18.
- Meeting with Leech Lake Urban Office, 1/30/18.
- Attended training -- Beyond Historical Trauma with Nancy Bordeaux and Family, 1/30 and 1/31/18.
- Discussions with USOA Children and Families Chapter re: ICWA training at annual conference, 1/18 and 2/12/18.
- Attended MUID Meeting, 1/30/18.
- Attended training -- Convicting Sexual Traffickers in the Modern World, 2/9/18.
- Attended St. Paul Indians in Action meeting, 2/14/18.
- Met with three mothers incarcerated at Shakopee Correctional Facility and with Parenting Coordinator, 2/15/18.
- Commenced discussions re: a presentation to incarcerated native mothers who have child protection cases, 2/16/18.
- Attended training -- Race on the Brain-Implicit Bias, 2/16/18.
- Telephonic meeting with Minneapolis American Indian Center ICWA Program Director, 2/20/18.
- Meeting with Prairie Island Tribal Attorney, 2/21/18.
- Meeting with Leech Lake Urban Child Welfare Office, 2/22/18.
- Attended monthly meetings: Ramsey County CJJ, ICWA Work Group and Ramsey County ICWA Advisory Board.
- Continued discussions with counties on the importance of complying with ICWA and MIFPA; provided resources.

Result and Feedback from Community

Letter written by a father seeking resources and information on his son's child protection case- *I picked up one of your Ombudsperson packet when I was in the waiting room at Indian Health Board in Minneapolis. I am just getting out of prison...[I am writing because] I always end up forgetting things and am not always the best at explaining things over the phone when it comes to one of my children. I feel it is important that everything is said...I was hoping that you could at least point me in the right direction. I guess the help that I am seeking is just help to be able to be a part of my son's life. I don't have a lot of money but I am willing to do whatever it takes to be a part of his life. Whether that be supervised visits or whatever. I just know that he is 4 years old and I don't want to be the dad that didn't at least try and make things happen to be part of his life. I believe that I am at least starting in the right direction. I have been sober 8 months and am working at doing things the right way.*

The father was provided with resources and information; referred several individuals to the office and sent a thank you - *You and the resources you have provided me have been a great help to me and other people as well. Thanks for everything. I do believe that I am making the changes I need to make a wonderful life. I am forever grateful for you and your work. Have a good week. I will keep in touch as I am sure I will have many people who also need your services. Thanks again.*