

INDIAN CHILD WELFARE ACT COMMISSION

Agenda

Saturday, October 8, 2005

Days Inn (Exit 59)

Rapid City, South Dakota

9:00 Opening prayer and welcome

9:05 – 9:10 Approve minutes

9:10 – 9:30 Collaborative Circles – Virgena Wieseler and Teresa Nieto – a forum for continuing the work of the Commission

9:30 – 10:00 Outline and discussion of a draft report to the Governor

10:00 – 10:15 Break

10:15 – 11:15 Break out sessions: UJS, DSS, Legislation, Tribes

11:15 – 12:00 Additional recommendations to include in report

12:00 – 1:00 Lunch – On your own

1:00 – 1:30 Strategies for Implementing Recommendations

1:30 – 2:00 Report due November 30: dissemination of draft for input; release of final report

2:00 – 2:15 Discussion regarding press release

**Governor's ICWA Commission Minutes
October 8, 2005
Day's Inn (Exit 59), Rapid City, SD**

Commissioners Present: Kathleen Trandahl, Keith Bonenberger, Joni Cutler, Tracey Manywounds, Rose McCauley, Dave Valandra, Teresa Nieto, Virgena Wieseler, Sara Olson, Garrie Kills A Hundred, Doug Herrmann, Jim Bradford, Deb Fischer-Clemens, Raymond Cournoyer, Bob Walters, Co-chair Janine Kern, Co-Chair BJ Jones, Steve Emery

Commissioners Absent: Bob Gray, Theresa Two Bulls, Cordelia White Elk, DJ Hanson, Jack Von Wald, Michael Schad, Renee Eggebraaten, Bill Whitelance, Sr. Mary Curran, Tami Maroney Bern, Ann Holzhauser

Others Present: Margaret Bad Warrior, Hazel Bonner, Barry LeBeau, Dena Palmier, Terrence Veo, Bev Tuttle, Julia Monczunski, Heather Wood

9:00 a.m. Opening Prayer and Welcome

The meeting started at 9:10 a.m. with Rose McCauley saying the opening prayer.

9:05 - 9:10 a.m. Approve Minutes

Judge Kern asked Raymond Cournoyer if he had been able to resolve his concerns with the Charles Mix County Clerk of Courts. A question had arisen as to whether he needed to file, in every case, a copy of the Yankton Sioux Tribe's resolution appointing him to represent the tribe in abuse and neglect proceedings. Raymond said he didn't have a lot of time to deal with it just yet. Judge Kern then provided a brief overview of Raymond's concern which was addressed at the September 9, 2005 meeting. Judge Jones asked if any other tribes are having problems with tribal representatives being able to appear in court. Judge Kern said to contact Keith Bonenberger if there are any more problems. It's probably a learning issue as it is a new statute.

Steve Emery said he is very dissatisfied with the response he received from the state regarding 4E Compact negotiations. He was supposed to carry out negotiations for the tribe, but Virgena Wieseler said that she is getting requests from other people from the tribe (RST) as well. She was not sure who exactly had authority to speak for the tribe. It was resolved that she would be working with Steve Emery.

Motion to approve minutes:

Motion made by Kathleen Trandahl;

Seconded by Keith Bonenberger

Ayes: 18 Nays: 0

Motion carries

9:10 - 9:30 a.m. Collaborative Circles – Virgena Wieseler and Discussion of the commission

Virgena Wieseler provided an overview of the draft of the Collaborative Circle. The first section details the background and history of the group. One of the challenges facing the group is inconsistent attendance which makes it hard to develop consistency and continuity. They have asked for technical support through Adopt US Kids, a national resource center for foster care and kinship placements which help states with recruitment and retention.

The Collaborative Circle is a collaboration between state and tribal entities. The vision of the Collaborative Circle is to develop a system of child and family services and supports in South

Dakota that ensures that each Native child is safe and thriving in a permanent, appropriate home, that families are supported in their communities, and that communities themselves take responsibility for ensuring that this vision becomes a reality.

Membership (discussed on page 8) is comprised of up to 36 members, including tribal representatives, families/consumers, state officials and other partner representatives. Two representatives from each of the nine tribes and a designated alternative were selected for continuity. Currently there are no tribal reps from: Rosebud, Cheyenne River, Crow Creek, or Lower Brule, although Rosebud and Cheyenne River currently have unofficial representatives.

There are five standing committees in the Collaborative and anyone can participate on those committees. A number of suggestions were made by the commission regarding the criteria for membership. Recommendations/questions that will be taken back to the Collaborative Circle are: 1) Will this impede tribal sovereignty?; 2) Why should appointments be different for the tribes?; Background checks should be required for everyone; 3) Should tribal members be selected based on recommendations rather than on formal tribal appointments? Wieseler said she'd take these issues back to the Collaborative Circle. Steve Emery requested that the requirement for a member to "have knowledge of child and family service issues and ICWA" be reworded to "have experience working with child and family service issues and ICWA."

There will be four quarterly meetings of the Collaborative Circle. The standing committees will be meeting more often. The tribal ICWA directors were contacted and if there was not a response from them, contacts were made with tribal leaders to obtain representation.

Legislation is not necessary to formalize the Collaborative Circle. However, the standing committees may introduce legislation as needed.

9:30 - 10:00 a.m. Outline and Discussion of draft report to the Governor

The Commission went through the National Center for State Courts' recommendations. As the Commission received the finalized recommendations a week before it expired in 2004, they did not previously finalize the report that was submitted or respond back to the review team.

- Recommendation 1:
- Recommendation 2: ND is going to be working on an ICWA bill
- Recommendation 3: DSS can implement through policy and UJS through judges
- Recommendation 4: DSS through policy; UJS through enforcement. This should also include the private adoption agencies
- Recommendation 5: Legislature has passed already and it is a statutory fix (state's attorneys). A form has been created and will be sent out to the commission.
- Recommendation 6: State's attorneys issue (HB 1226) was passed. Courts, DSS, and state's attorneys need to assure new form is being utilized.
- Recommendation 7: The DSS website now contains a list of ICWA directors and tribal judges. Commission members indicated there could be a problem as the person assigned to the case is not always the ICWA director. The issue has not been raised in court yet. This fits in with Raymond Cournoyer's problem – it was decided that he should attach a copy of the resolution of appointment to each motion to intervene.

- Recommendation 8: UJS thinks this has been accomplished but will check for verification (register of actions). Judge Jones asked if this applies when a tribal judge talks to a state judge regarding a case. Keith Bonenberger did not think so.
- Recommendation 9: Within the next year UJS will be doing ICWA training for all judges.
- Recommendation 10:
- Recommendation 11: it is on UJS's to-do list as well as the training. The clerks of court will be getting training on this issue this fall.
- Recommendation 12: UJS and DSS have designated ICWA reps (Teresa Nieto and Keith Bonenberger). Information has not yet been received from the private adoption agencies. Virgena Wieseler and Keith Bonenberger will compile what's been accomplished in the final report.
- Recommendation 13: Needs to be completed in order for training to start.
- Recommendation 14: It would be helpful if the tribes could develop standardized motions for intervention. Dakota Plains Legal Clinic is redoing some forms. Cheyenne River has developed legal forms. Peg Bad Warrior will send those to Judge Jones and Judge Kern. The Collaborative Circle has an ICWA component to it and that could be the venue for tribes to sit down and standardize the forms.
- Recommendation 15: UJS – Every judge has received this. The Bench Book needs to be updated also. Judge Gors has agreed to work on this.
- Recommendation 16: Accomplished.
- Recommendation 17: The clerk of courts has this list. The attorneys either received the training directly or viewed training tapes that were sent out by the Supreme Court.
- Recommendation 18: Training issue.
- Recommendation 19: Who is an ICWA expert witness? DSS caseworkers should not serve as ICWA experts in their own cases.
- Recommendation 20: DSS should contact people on the reservation to set up cultural activities for kids in foster care to learn more about their heritage. There are activities that are not on the tribe's websites that are part of community life.
- Recommendation 21: Accomplished. There have been two family locators hired – one in Rapid City and one in Pierre.
- We recommend that the Governors' office appoint a statewide workgroup with representatives from above listed agencies to address this issue and update the "Bench book" and "green book" where appropriate and develop appropriate training. Doug Herrmann would be willing to chair this group as DOC representative.
- Judge Kern briefly went through the rest of the recommendations.

10:45 - 11:00 a.m. Break

11:00 - 12:00 p.m. Breakout sessions: UJS, DSS, Legislation, and Tribes

The Commission decided to skip this as it was done in the previous session. The Commission also decided to work through lunch to finish the meeting by 1:00 p.m.

11:00 - 1:00 p.m. Additional recommendations to include in report

The commission went through their top 30 recommendations and decided what had been accomplished, what remains to be done, and which agency should take the lead. The executive report also needs to be condensed.

Hazel Bonner asked if OLC could contract with DSS to provide the training for licensure of Indian foster homes plus an additional 15 hours of college credit. Virgena Wieseler responded that it depends on what the budget will be for 2006 and that she'd know more by the end of February.

- Recommendation #4: Roger Campbell and Virgena Wieseler will set up meetings with the tribal leadership to discuss 4E agreements. It will be done by next week.
- Recommendation #5:
- Recommendation #6:
- Recommendation #7:
- Recommendation #8:
- Recommendation #9: done through statute
- Recommendation #10: recommend need for funding to utilize contract dollars with universities.
- Recommendation #11: ties back into #4
- As indicated from recommendation #22 earlier, we recommend that the Governors' office appoint a statewide workgroup with representatives from above listed agencies to address this issue and update the Bench book and green book where appropriate and develop appropriate training. Doug Herrmann would be willing to chair this group as DOC representative.
- Recommendation #13: because of funding issues, it's still unresolved; the report should emphasize this still needs to be accomplished.
- Recommendation #14:
- Recommendation #15: Judge Kern thinks it is very important
- Recommendation #16: Funding issue – will need either FTEs or contract dollars.

- Recommendation #17: UJS has NICWA brochure and could draft one to make it more detailed. Hazel Bonner's class at OLC is currently updating one. It should be done in about a month and she will send it to the Commission.
- Recommendation #18: Goes with numbers 4 and 11 – still needs to be done. DSS and ICWA directors could draft a model to delineate a protocol for transfer.
- Recommendation #19: Funding issue – FTEs or contract dollars. Has not been accomplished yet.
- Recommendation #20:
- Recommendation #21: private agencies
- Recommendation #22: State and Tribes should have their own list of experts available to litigants in cases.
- Recommendation #23: Accomplished.
- Recommendation #24: Working on.
- Recommendation #25:
- Recommendation #26: A letter should be sent to the Governor updating him on the South Dakota Supreme Court rulings (Judge Jones). Also goes with #18. 4E money should apply if everyone follows compact rules, if no one follows compact rules, no money.
- Recommendation #27: Collaborative Circle.
- Recommendation #28:
- Recommendation #29: Has been mailed out to the judges. Will also go into the Green Book and Bench Book updates.
- Recommendation #30:

The Commission discussed the mechanics of the final report to the Governor. Wieseler agreed to provide a narrative draft. Jones, Kern and Trandahl will review the draft. They will send out draft to the Commission and they will e-mail back any changes. A second draft will be sent out again and Commissioners will respond with suggestions or changes.

Jones, Kern, Trandahl – 1st draft to be done by November 8, 2005. Changes to draft to be submitted by November 15, 2005. Finalized draft out for one last review by November 22, 2005.

Deadlines:

Wieseler – October 25, 2005

Motion to approve minutes by e-mail/electronically:

Motion – Emery, Second – Herrmann

Aye – 18, Nay – 0
Motion passed.

Kern asked if there were any other issues. Emery would like #9 (uniform notification) to be rewritten to include a requirement that the ICWA director receive notice. Fischer Clemens asked that SDCL 26-7A-15.1 be rewritten to include a requirement for certificates of mailing that delineate the documents sent. Bad Medicine suggested that Kinship be put under #19. Jones suggested that the report also work in the recommendations of the review team.

Motion to approve putting in recommendations of review team

Motion – Emery, Second – Fischer Clemens

Aye: 18, Nay: 0

Motion approved.

1:00 - 1:15 p.m. Discussion regarding press release

Because there has been much progress towards improving ICWA compliance, there should be a press release summarizing the work of the Commission. A copy of the final report should be sent to everyone who attended the public hearings.

Bradford suggested that Tom Van Norman be recognized in the press release as he was the one who initially suggested the Commission.

Campbell's office will put out the press release and will also mention the Collaborative Circle as the body now working to further the Commission's objectives.

Steve Emery said the closing prayer and the meeting adjourned at 1:15 p.m.

¹¹ Minutes were approved via e-mail: 20 – Aye, 0 – Nay, 8 - Abstaining