

Report from Jill Kehaulani Esch, Esq.

Office of Ombudsperson for AMERICAN INDIAN Families

July 29, 2022

Report for the Period 4/27/2022 through 7/29/2022

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, the Minnesota Indian Family Preservation Act, Tribal State Agreement, Minnesota Statutes, Court Rules and DHS Policies that involve child protection cases, including placement, public education and housing issues related to child protection that impact American Indian children and families. The Ombudsperson also collaborates with tribes, agencies, counties, community organizations, courts, schools, other organization and stakeholders 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 American Indian Community Specific Board, who are all appointed by the Minnesota Indian Affairs Council.

Geographical locations of phone calls and emails

Anoka, Becker, Bemidji, Blackduck, Buffalo, Brainerd, Cambridge, Carlton, Carver, Cass, Crosby, Duluth, Fond du Lac Reservation, Grand Rapids, Hallock, Itasca, Leech Lake Reservation, Lower Sioux Indian Community, Mille Lacs, Minneapolis, Red Lake Nation, Red Wing, St. Cloud, St. Paul, Shakopee, Thief River Falls, Virginia, White Earth Nation, and States of Arizona, Michigan, North Dakota, Virginia and Wisconsin.

Tribes

Bois Forte Band of Chippewa, Cherokee Nation, Cheyenne River Sioux, Crow Creek Sioux Tribe, Fond du Lac Band of Lake Superior Chippewa, Leech Lake Band of Ojibwe, Lower Sioux Indian Community, Miami Tribe of Oklahoma, Mille Lacs Band of Ojibwe, Navajo Nation, Northern Cheyenne, Oglala Sioux, Omaha Tribe of Nebraska, Red Cliff Band of Lake Superior Chippewa, Red Lake Band of Chippewa Indians, Rosebud Sioux, San Carlos Apache Tribe, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux, Turtle Mountain Band of Chippewa Indians and White Earth Nation.

Agency Update

- Community Open House held on June 1, 2022 – Attended by over 130 people, including Senator Mary Kunesh, Prairie Island Indian Community President Johnny Johnson, Department of Human Services Commissioner Jodi Harpstead, Retired Minnesota Supreme Court Associate Justice Esther Tomljanovich, Board Members, Community Members, Stakeholders and Partners.
- Board Member assisting on developing and creating Agency Website – expected to “go live” in August 2022.
- Board Members assisting on grant application.

Some Issues from Cases for the Period of This Report

- Numerous violations regarding Notice issues in Third-Party Custody Matters.
- Placement preference and active efforts violations.
- Social workers discouraging foster care providers from attending court hearings.
- A social worker reportedly told a Non-Native parent it is best not to have tribe involved.
- Youth attorneys are not keeping in contact with their clients on a regular basis.
- Parent did not understand that default is like a forfeit and that not attending a court hearing resulted in default being taken against the parent.

ICWA Education, Trainings and Continued Community Outreach

- Meeting with Circle of Resources for Incarcerated Individuals.
- Discussions with Elders regarding Circle of Elders.
- Ramsey County ICWA Advisory Board Meeting.
- MUID Family Preservation Monthly Meetings.
- Carlton County ICWA Court Committee Meetings.
- Citizens Review Panel Monthly Meetings for Hennepin and Ramsey.
- Children's Justice Initiative Meetings: Carver, Dakota, Itasca, Ramsey, Saint Louis County – Duluth, Scott and Stearns.
- Attended child welfare trainings and ICWA trainings.
- CJA Task Force and CJA Subcommittee Meetings.
- Observed ICWA court proceedings around the State.
- Discussion with Courts and Judges to allow tribes to determine the best way for them to participate in court hearings – in person or via Zoom.

Feedback from the Community

The Office of the Ombudsman for American Indian Families was instrumental in assisting our county in the resolution of a complex child protection matter involving the out of home placement of an American Indian Child due in part to that child's significant mental and behavioral health needs. An American Indian Tribe had intervened in the case and the mother in the case had secured the support of several advocates from mental health and behavioral health communities/programs throughout the state. An ICWA Guardian Ad Litem was assigned and the County was involved. As well as a number of attorneys for the individuals and entities in the case.

The idea of some kind of mediation or other alternative dispute resolution process was floated between the attorneys and discussed for quite some time. The mother's wish was to have that process facilitated by somebody who had expertise in ICWA. The mother's attorney and counsel for the County attempted many avenues to locate an appropriate individual, but were unsuccessful. The involved tribe attempted to locate an elder able and willing to facilitate and was unable to do so. One individual was eventually identified by the mother, but it was determined by counsel for mother and the County after speaking with this individual, that although the individual was highly and appropriately qualified, the type of dispute resolution that individual provided (shuttle mediation) was not a good fit for the dynamics and needs of this case given the number of parties and other interested individuals involved.

Eventually, Ms. Esch was able to secure a willing and able tribal elder who agreed to facilitate a Traditional Ojibwe Talking Circle. The County coordinated with the Elder to secure a space on the County's campus to conduct the Talking Circle which included a Pipe Ceremony and Spirit Dish Ceremony as well as a meal shared together. All parties who desired to attend were able to do so either in person or via Microsoft Teams and the circle was conducted in a hybrid fashion. Most attendees were in person.

The Elder was able to facilitate a robust conversation between all parties and interested persons addressing some very disputed and difficult topics. The Elder was able to provide cultural input and insight where appropriate and did so in a way that was welcoming to all in the room. An agreement as to how to proceed with the case was not reached the day of the Talking Circle, but additional discussions following the meeting led to a resolution in the case shortly thereafter. Without the connections and expertise of Ms. Esch and the Office of the Ombudsman for American Indian Families, the likelihood that this Circle would have occurred with a tribal Elder was looking very small. Ms. Esch's knowledge, connections, communications and efforts led to the outcome in this case.

5/9/2022 – Assistant County Attorney