**Recommendation to Tribal Clients by the Alaska Native Justice Center**

RE: Tribal Resolution Reordering Indian Child Welfare Act placements under U.S.C. section 1915(c)

Please find attached a suggested resolution reordering the placements under the Indian Child Welfare Act so that the Tribe’s wishes for placement are recognized before all other preferences. The reason we recommend all of our Tribal clients adopt such a resolution is to ensure that the Tribe, and only the Tribe, can legally designate the first placement priority under the Indian Child Welfare Act.

The original order of the ICWA placement preferences lists extended family as the first preference. A Tribally specified home is the second preference. This can cause the Tribes’ wishes to take a backseat to the definition of ‘extended family’ set down in ICWA. Poor results can include a distant relative (second cousin seven times removed) who is a member of a different Tribe living elsewhere to have priority over a Tribal home or relative in the Tribal community.

Reordering the placement preferences as we suggest does not mean the Tribe cannot also use the extended family definition or rely on any other factor the Tribe feels is important. The reordered placement preference simply means that the Tribe is the sole determinant of the home that will be a first preference for the placement of Tribal children. In the example above the Tribe could still decide that it is best for the Tribe and the child to designate that distant relative’s home as the first preference placement. The reordered ICWA placement preferences legally places the Tribe’s wishes first.

It is important to note that reordering the preferences does not rule out a challenge to the Tribes’ designated placement. However, it does mean that the challenging party will need to show clear and convincing evidence of good cause to override the Tribal placement designation. This is a fairly high burden to meet for any party opposing a Tribal decision.

If you have any questions or want us to discuss our recommendations further with the Tribal Council we would be pleased to do so.

Sincerely,

Chad W. Holt, Supervising Attorney Josh Ahsoak, ICWA Attorney

Alaska Native Justice Center Alaska Native Justice Center