

**December 14, 2004 ICWA Agenda
Pierre, SD**

9:00 – 9:15 Welcome and Review of Commission Minutes

9:15 – 10:15 Dawn Rubio, National Center for State Courts;
Brenda Bellonger, North American Indian Legal Service, Inc.

10:15 – 10:30 Break

10:30 – 11:00 Discussion with Commissioners

11:00 – 12:00 Identify and prioritize recommendations from Review Team for inclusion in report to Legislature

12:00 – 1:15 Lunch

1:15 – 3:00 Discussion and preparation of Commission Report to Legislature

3:00 – 4:00 Proposed legislation

a) Rule change – SDCL 26-8A-33

b) State ICWA bill – Roger Campbell

**Governor's ICWA Commission
December 14, 2004, Pierre, SD
Meeting Minutes**

Commissioners Present: Janine Kern, B.J. Jones, Tami Bern, Sara Olson, Tracey Manywounds, Robert Duxbury, Jack Von Wald, Virgena Wieseler, Ann Holzhauser, Jim Bradford, Dave Valandra, Cordelia White Elk, Mike Schad, Bob Walters, Steve Emery, Doug Herrmann, Bill Whitelance, Deb Fischer Clemens, D.J. Hanson, Keith Bonenberger, Mary Curran, Renee Eggebraaten, Denice Murphy, Mike LaPointe

Commissioners Absent: Kathleen Trandahl, Ramona O'Connor, Jackie Barse, Joni Cutler, Rose McCauley

Others Present: Patricia Catches, Julie Snavelly, Bev Tuttle, Emily Iron Cloud-Koenen, Lorna Turgeon, Susan Campbell, Jeremy Schad, Vernon Ike Schmidt, Roger Campbell, Hedi Bogda-Cleveland, Lori Walking Eagle, Judy Hines, John Usera, Tom Magedanz, Bob Mercer, Michael Putzler, Mike Kelly, Marie Kent Singleton, Raymond Cournoyer, and Jim Ellenbecker, Secretary of the Department of Social Services

1. Welcome and Review of Commission minutes

The commission reviewed and approved, by motion, the three sets of minutes from the meetings held on: May 25, 2004; August 10, 2004; and October 12, 2004.

2. Dawn Rubio, NCSC; Brenda Bellonger, NAILS, Inc.

Dawn Rubio, Brenda Bellonger, and Mary Beth Kirven (NCSC) presented the report of the Review Team to the Commission. Rubio appeared in person before the Commission and Bellonger and Kirven appeared telephonically. The draft report is 100 pages and contains: introduction, methodology of findings, recommendations and concluding remarks. The Appendix is comprised of: Appendix A – federal laws and regulations; Appendix B – sample casework and legal documents; Appendix C – data collection instruments used to collect information; Appendix D- maps of UJS Circuits, DSS districts, and the reservations; Appendix E – state survey results; Appendix F- tribal survey results; Appendix G- state focus group results; Appendix H-tribal focus group results; Appendix I – intensive file review information. In their presentation, the Team focused on the objective and quantifiable data they reviewed. The Commission asked the reviewers a number of questions. The Commission suggested changes to several of the Review Team's recommendations including: 1) that the recommendation, that DSS workers not be allowed to testify in their own cases, be amended to reflect a prohibition against allowing DSS workers to testify as an expert witness in their own cases; and 2) that attorneys be appointed for parents served by publication in ICWA cases. The Commission thanked the Team for their hard work and excellent report produced in such a short time frame.

The review team made 30 recommendations to improve compliance with the Act.

3. Discussion with Commissioners

Judge Kern briefly discussed the listening sessions. She asked that each Commissioner review the notes for accuracy. Judge Kern indicated that any proposed changes could be e-mailed to her. She asked that the Commissioners consider SDCL 26-8A-33, which would allow tribes to designate non-attorneys to appear in court in ICWA cases. If the Commission wanted to submit the statute, it would be necessary to testify before the South Dakota Supreme Court at the rules hearing. Steve Emery made a motion to add the Great Sioux Nation ICWA Consortium's original version of Senate Bill 211 in the appendix of the ICWA Commission's report. This motion passed.

4. Identify and prioritize recommendations from Review Team for inclusion in report to Legislature

Dr. John Usera (Chiesman Foundation) worked with the Commissioners to prioritize the recommendations from the review team (30) and the commissioners' recommendations (75).

Each recommendation was read and placed into one of eleven categories, to wit: Notice; State's Attorneys; Courts; DSS; Training; Funding; Legislation; Tribal Support; Placement; Private Agencies; and Other. The Commissioners prioritized the recommendations by voting for their top 36 recommendations.

Visitors from the Great Sioux Nation ICWA Consortium: Paul Valandra, Diane Garreau, Bev Tuttle, Dawn Bad Warrior, Roger Trudell, Frank Lamere, Tasonke Glinanjiwin, Arlana Bettolyoun, Robert Clifford, Mary Bear Heels McCowan, Jewel Starr and Connie Bear King (additional persons attended the meeting, but their signatures were not clearly readable on the roster)

Chairman Roger Trudell (Santee Sioux Nation, Nebraska): Spoke to the ICWA Commission on behalf of the Great Sioux Nation ICWA Consortium. He indicated the visitors were there in support of a state ICWA bill. He suggested that the Commission ask the Governor or Legislature to extend the time of the commission to do a good job on behalf of the tribal children in DSS care. Because of time constraints, not all of the visitors were permitted to speak of their concerns before the Commission; but the Commission encouraged written comments. Suggestions received from Frank Lamere were considered by the Commission during their deliberations.

5. Discussion and preparation of Commission Report to Legislature

There was discussion about making a recommendation to the Legislature to extend the Commission through next year. Steve Emery moved to recommend to the Legislature and the Governor that the Commission be extended for one year to ensure implementation of its recommendations. Robert Walters seconded the motion, which was passed unanimously by the Commission. The Commission selected December 27, 2004 as the last day for written submissions to the Commission.

Steve Emery suggested the Commission submit a short letter of explanation to the Legislature, followed by the Commission's recommendations, an executive summary, and the body of the report. The report will contain an executive summary, a historical analysis, a summary of SD Supreme Court opinions, a section regarding delivery of child protection services by DSS and the work of the Commission.

The GSN ICWA Consortium has prepared a state ICWA bill which it intends to submit to the Legislature.

6. Proposed Legislation

a. Rule change – SDCL 26-8A-33

The following statute could be submitted to the Supreme Court as a proposed rule rather than introducing a bill before the Legislature. The language is based on California Court Rules 1412(i)(1).

26-8A-33: In any abuse or neglect proceeding involving a child covered by the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, the tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on behalf of the tribe. When the tribe appears as a party by representative of the tribe, the name of the representative and a statement of authorization for that individual or agency to appear as the tribe must be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

Bern moved to submit the proposed statute to the Supreme Court for consideration. Schad seconded the motion which was approved unanimously. The proposed statute must be submitted to the Supreme Court by December 17, 2004.

b. State ICWA bill – Roger Campbell, Executive Director of Tribal Government Relations

Several preliminary meetings have taken place between representatives from the Department of

Social Services and members of the Great Sioux Nation ICWA Consortium. Campbell stated it would be premature to comment on the results of these meetings because all of the stakeholders were not at the table. Interested parties continue to dialogue about passage of a state ICWA bill.

A member of the Great Sioux Nation ICWA Consortium announced that its next meeting will be held on December 16th and 17th from 8 am to 4 pm at the Rapid City Civic Center. All were invited to attend.

7. Further Meetings

Judge Kern indicated that the report was not finished and that the Commission could either appoint an executive committee to finish the report or hold a further meeting. Steve Emery suggested that the Commission hold an additional meeting before January 1. After considerable discussion, the Commission voted to hold a final meeting on December 30, 2004, at the Ramkota in Pierre.

Sister Mary Curran closed the meeting with a prayer.

The meeting ended at 4:15 p.m. on December 14, 2004.