

DEPARTMENT OF SOCIAL SERVICES

744 "P" Street, Sacramento, CA 95814



December 17, 1981

ALL COUNTY INFORMATION NOTICE NO. 1-154-81

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: Indian Child Welfare Act (ICWA) -- Payment of
Court Appointed Counsel

The Indian Child Welfare Act establishes special rights to legal counsel for Indians in child custody proceedings. Through correspondence with Del Norte County, a written procedure relating to means of obtaining payment of legal counsel in ICWA cases has come to our attention. The procedure is used for requesting and securing Bureau of Indian Affairs reimbursement for the payment of court-appointed legal counsel under provisions of the Indian Child Welfare Act of 1978.

This notice serves to bring to your attention the procedure as described in 25 CFR 23.13 attached.

For further information, contact your Family and Children's Services program management consultant at (916) 445-7653.

Sincerely,

Claude E. Finn
by WBT

CLAUDE FINN
Deputy Director

Attachment

cc: CWDA

Charles Toyebo

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Bureau of Indian Affairs Area office designated for that state in § 23.11 of this part. The notice shall include the following:

(1) Name, address and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C.1903(1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9), or the child's Indian custodian as defined in 25 U.S.C.1903(6);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice of the Area Director of appointment of counsel is incomplete; or

(6) No funds are available for such payments.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice shall include written reasons for that decision together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of the 25 CFR Part

(d) When determining attorney fees and expenses the court shall:

(1) Determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency proceedings.

(2) Submit approved vouchers to the Area Director who certified eligibility for Bureau payment together with the court's certification that the amount requested is reasonable under the state standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under state law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

(g) Failure of the Area Director to meet the deadlines specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraphs (f) of this section.