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### The Lumbee Tribe of NC Is Fully Federally Recognized; ICWA Now Applies in A/N/D and TPR Actions for Indian Children Affiliated with the Lumbee



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The Lumbee Tribe of North Carolina (Lumbee) has received full federal recognition through the Lumbee Fairness Act, which was included in the National Defense Authorization Act. The law was signed by the President, granting full federal recognition to the Lumbee on December 18, 2025. This is an extraordinary time for the Lumbee, who will have access to services and resources (such as support with education, health care, and housing) from the Bureau of Indian Affairs (BIA) as well as the right to self-governance.

One immediate change is the application of the Indian Child Welfare Act (ICWA) to the Lumbee. This change impacts abuse, neglect, dependency (A/N/D) and termination of parental rights (TPR) action. (It also impacts all adoptions of minors (including stepparent adoptions but that is beyond the scope of this post)

There are additional protections ICWA provides in A/N/D and TPR proceedings when an Indian child is involved. An **Indian child** now includes a juvenile who is either (1) a member of the Lumbee or (2) eligible for membership with the Lumbee and who have a biological parent who is a member of a fully federally recognized Indian tribe. See 25 U.S.C. 1903(4) & 25 C.F.R. 23.2 (definition of "Indian child"). There are new steps the court and participants must follow when an Indian child who is affiliated with the Lumbee is the subject of the suit. Although these changes are effective now (and started on December 18, 2025), this is a time of significant transition for the Lumbee, where procedures and policies are being created and implemented.

#### The Lumbee Tribe of North Carolina

The Lumbee are the 575<sup>th</sup> Indian tribe to be fully recognized by the U.S. They have over 62,000 enrolled members and are the largest Tribe east of the Mississippi. Although members of the Lumbee reside throughout the country, their service area (or jurisdiction) has been recognized by the Lumbee Fairness Act as Robeson, Hoke, Cumberland, and Scotland counties. Currently, the Lumbee do not have tribal land. However, under the Lumbee Fairness Act, North Carolina may reach an agreement with the Lumbee to transfer land in Robeson County to the federal

government, who would place that land into trust for the benefit of the Lumbee. No land transfer may occur until at least two years after any agreement between the Lumbee and North Carolina is reached. Should a land transfer and trust be established, that land will be a reservation for territorial (versus service) jurisdiction purposes. If that happens, there will be an impact on subject matter jurisdiction for certain cases where ICWA applies.

To learn more about the Lumbee, see their website, <https://www.lumbeetribe.com/>.

## **What Does Full Federal Recognition for the Lumbee Mean for ICWA**

ICWA applies to fully federally recognized Indian tribes, of which there are now 575. ICWA does not apply to state-only recognized tribes (there are now six such tribes recognized by North Carolina; see G.S. Chapter 71A). ICWA is a federal law that establishes minimum standards that must be followed in “child custody proceedings,” which are defined as what we call in North Carolina A/N/D; TPR; and all adoptions of minors (including stepparent adoption) proceedings. See 25 U.S.C. 1903(1) & 25 C.F.R. 23.2 (definition of “child custody proceeding”). If the court has “reason to know” the child is an Indian child, ICWA provisions must be followed. See 25 C.F.R. 23.107.

Prior to December 18, 2025, a child who was affiliated with the Lumbee was not an “Indian child” for ICWA purposes because the Lumbee was a state-recognized tribe and was only partially recognized by the federal government. See G.S. 71A-3 (state recognition); 1956 Lumbee Act (partial federal recognition); In re A.L., 378 N.C. 396 (2021) and In re A.D.L., 169 N.C. App. 701(2005) (both holding ICWA does not apply to children of the Lumbee tribe). That is no longer the case. With the full federal recognition of the Lumbee and the number of enrolled members, the impact on child welfare cases in North Carolina will be significant as there will be an increased number of Indian children involved in these “child custody” proceedings. Inevitably, delays in A/N/D and TPR cases will result as courts ensure ICWA is complied with to protect both the Lumbee as a whole, the Indian family, and the individual child’s best interests. See 25 U.S.C. 1901–1902 (congressional findings; purpose of ICWA).

## **“Indian child” and Reason to Know: The Court Inquiry**

Under 25 C.F.R. 23.107, the trial court must ask each participant in an A/N/D and TPR proceeding whether they know or have reason to know if the child is an Indian child. This inquiry must be made at the commencement of each proceeding. Note, the inquiry is not required at every hearing within the same proceeding. See 25 C.F.R. 23.107(a); BIA Guidelines 2016, p. 11. When the inquiry is made, the responses must be on the record. The court must instruct the parties to inform the court if they later receive information that provides reason to know the child is an Indian child. 25 C.F.R. 107(a).

The court has reason to know a child is an Indian child if

- The child or any participant, officer of the court, Tribe, Indian organization, or agency informs the court that the child is an Indian child or has discovered information indicating the child is an Indian child;
- The court is informed the child's, their parent's, or their Indian custodian's (if applicable) domicile or residence is on a reservation;
- The court is informed the child is or has been a ward of Tribal court; or
- The court is informed that either parent or the child has an identification card indicating membership in a Tribe.

25 C.F.R. 23.107(c), quoted in *In re C.C.G.*, 380 N.C. 23 (2022).

The NC Supreme Court has stated the inquiry into whether an Indian child is involved in the proceeding

. . . is focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child's parent is a citizen of the Tribe and the child is also eligible for citizenship. Indian Child Welfare Act Proceedings; Final Rule, 81 Fed. Reg. at 33,804. The inquiry "is not based on the race of the child, but rather indications that the child and her parent(s) may have a political affiliation with the Tribe [as defined in 25 U.S.C. § 1903].

*In re C.C.G.*, 380 N.C. at 29 (alteration in original) (citation omitted) quoting *In re M.L.B.*, 377 N.C. 335, 340 ¶16 (2021).

Further the NC Supreme Court has stated that "Indian heritage, which is racial, cultural, or hereditary does not indicate Indian tribe membership, which is political." *In re C.C.G.*, 380 N.C. at 30. As a result, the supreme court held that statements made by mother of Cherokee Indian Heritage and the possible distant Cherokee relation on her side does not provide reason to know the child is an Indian child. *In re C.C.G.*; see *In re M.J.*, 286 N.C. App. 380 (2022) (unpublished) (relying on *In re C.C.G.* and *In re M.L.B.* to hold mother's testimony that neither she nor the child were members of any tribe and her unreliable testimony that her grandfather was Cherokee did not give the court reason to know). *But see*, *In re A.P.*, 260 N.C. App. 540 (2018). Although not binding, the BIA Guidelines 2016 state that the statutory definition of "Indian child" "is based on the child's political ties to a federally recognized Indian tribe... [and] ICWA does not apply simply based on a child's or parent's Indian ancestry. Instead, there must be a political relationship to the Tribe." (p. 10).

## **What Happens Now with Lumbee Recognition?**

If a party in an A/N/D or TPR proceeding knows or has reason to know the juvenile is an Indian child now that the Lumbee have been fully federally recognized, that party must inform the court. See 25 C.F.R. 23.107(a). The party should consider filing a motion before the court to hold an ICWA inquiry. This should occur in all pending A/N/D and TPR actions where there is now knowledge of or reason to know the child is an Indian child, including those actions where a judgment may have been rendered but the order has not yet been entered. See *In re O.D.S.*, 247 N.C. App. 711 (2016) (discussing rendition versus entry of an order under Civil Rule of Procedure 58). The court should schedule a hearing where the inquiry about the parties' knowledge of or reason to know the child is an Indian child is made and if necessary evidence should be taken. If there is reason to know, ICWA must be followed until the court determines on the record that the child does not meet the definition of Indian child. 25 C.F.R. 107(b)(2). If the court fails to make the inquiry when there is reason to know the child is an Indian child and there is an appeal, there will be a remand. See *In re M.L.B.*, 377 N.C. 335.

### **ICWA Requires Notice to the Tribe and Regional BIA Office**

When there is knowledge of or reason to know the child is an Indian child, the court must ensure DSS in an A/N/D action and the petitioner or movant in a TPR action exercised due diligence to identify and work with the applicable Tribe(s) to verify whether the child meets the definition of "Indian child." 25 U.S.C. 1912(a); 25 C.F.R. 23.107(b). The petitioning or moving party must send notice to the applicable Tribe(s) by certified or registered mail, return receipt requested. 25 C.F.R. 23.111. Notice must also be sent to the child's parents and the Indian custodian (if applicable). *Id.* A copy of the notice must be sent to the regional director of the BIA. *Id.*; 25 C.F.R. 23.11. The notice must include the requirements of 25 C.F.R. 23.111(d). See *In re E.J.B.*, 375 N.C. 95 (2020) (remanding for legally sufficient notices to be sent to applicable tribes).

A copy of the notice and the returned receipt or other proof of service must be filed with the court. 25 C.F.R. 23.111(a)(2). This way, the district court can ensure compliance with this ICWA provision.

### **Who Receives Notice for the Lumbee?**

Currently, an ICWA notice should be sent to

Cherry Maynor Beasley, PhD, MS, RN, FAAN

Director of Health and Human Services

6984 NC Hwy 711 West

Pembroke, NC 28372

Her office number is 910.522-5465. Note, the designated Lumbee ICWA contact for notice purposes is not the tribal enrollment office.

For A/N/D and TPR proceedings conducted in North Carolina, a copy of the notice must also be sent to the

Eastern Regional Director

Bureau of Indian Affairs

545 Marriott Drive, Suite 700

Nashville, TN 37214.

25 C.F.R. 23.11(b).

## **Lumbee Membership**

The Lumbee enrollment office will determine whether the juvenile is (1) a tribal member or (2) eligible for membership when a biological parent is a member such that the juvenile is an “Indian child” under ICWA. On October 16, 2025, the Lumbee amended their tribal enrollment ordinance, which addresses their enrollment criteria and procedure.

When certified as an enrolled member, the individual will obtain a unique enrollment number. For members who are younger than 55 years of age, recertification of their tribal enrollment is required every 7 years. For minor children, the recertification is completed by a parent, guardian, or other sponsor, e.g., social worker. Tribal membership cards have an expiration date such that the member is “inactive.” This means the member cannot vote or receive services during their inactive period, but they are still an enrolled member of the Tribe and can achieve active status by recertifying.

## **The Tribe's Response to Notice**

The Tribe should respond to the notice by addressing whether (1) the child is a member of the Tribe or (2) the child is eligible for membership and one of their biological parents is a member. If the child is an Indian child, the tribe has the right to intervene in the A/N/D and/or TPR proceeding. 25 U.S.C. 1911(c); 25 C.F.R. 23.111(d)(6)(iii). ICWA does not provide a timeline for when the Tribe must respond. The NC Supreme Court has referred to the failure of a Tribe to respond to multiple written notices. *See In re E.J.B.*, 375 N.C. 95.

If the Tribe fails to respond to the notice, assistance must be sought from the BIA. *Id.*; 25 C.F.R. 23.105(c). Notice must be sent to the regional office of the BIA or the Central Office in Washington, DC seeking assistance in contacting the Tribe. 25 C.F.R. 23.105(c); *In re D.J.*, 378 N.C. 565 (2021). This notice is separate from the copy of the notice to the Tribe that was previously sent to the regional director of the BIA.

The ICWA regulations only require a Tribe receive one notice by certified or registered mail, return receipt requested. It is, therefore, reasonable to believe subsequent written notices may be sent by regular mail, fax, or email. *See* 25 C.F.R. 23.111(c).

## **The Tribe's Right to Intervene**

The notice that is provided to the Tribe must include the Tribe's right to intervene. *See* 25 U.S.C. 1911(c); 25 C.F.R. 23.11(a); 23.111(d)(6)(iii). As a result, the Lumbee have a right to intervene in A/N/D and TPR proceedings.

## **Active Efforts Required**

When ICWA applies, DSS must provide "active efforts" that provide remedial services to prevent the breakup of the Indian family. 25 U.S.C. 1912(d); 25 C.F.R. 23.120. Active efforts are defined at 25 C.F.R. 23.2 and consist of thorough, active, affirmative, and timely efforts that are intended primarily to maintain or reunite an Indian child with their family and are provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's Tribe. The NC Court of Appeals explained that active efforts are more than passive efforts and distinguished between creating a case plan and expecting the parent to find and access resources versus assisting the parent through the steps of a case, including accessing needed services and resources. *In re N.D.M.*, 288 N.C. App. 554 (2023).

The federal regulations require that active efforts be documented in detail in the record. 25 C.F.R. 23.120. Active efforts should be provided in cases where the juvenile is an Indian child affiliated with the Lumbee. The court should be making findings and conclusions of both reasonable efforts and active efforts that have or have not been made. *See In re E.G.M.*, 230 N.C. App. 196 (2013).

## Qualified Expert Witness Required

An Indian child may not be placed in foster care or be the subject of a TPR order until and unless the court hears testimony from a “qualified expert witness” (QEW) about whether continued custody with their parent is likely to result in serious emotional or physical damage to the child. The court must make this determination by clear and convincing evidence in an A/N/D proceeding and beyond a reasonable doubt in a TPR proceeding. 25 U.S.C. 1912(e), (f); 25 C.F.R. 23.121(a),(b). There must be a causal relationship between the particular conditions in the home and the likelihood that continued custody with the parent would result in serious emotional or physical damage to the child. 25 C.F.R. 23.121(c).

The person qualified to be an expert witness should be able to testify to the prevailing social and cultural standards of the Tribe and may be designated by the Tribe as being so qualified. 25 C.F.R. 23.122(a). The testimony by the QEW must be part of the hearing that results in a foster care placement and cannot be based on testimony received in an earlier hearing. *In re E.G.M.*, 230 N.C. App. 196. The DSS social worker cannot be the QEW. 25 C.F.R. 23.122(c). The BIA Guidelines 2016 recognize that the regulations do not limit a QEW to an individual with particular knowledge about the child’s Tribe and gives an example of an expert on the sexual abuse of children as qualified to testify about whether the child’s return to a parent who sexually abused them is likely to result in serious emotional or physical damage. See p. 54.

The Lumbee are currently working on designating individuals who can serve as a QEW. A request for assistance in locating a QEW may be made to the Tribe or regional office of the BIA. 25 C.F.R. 23.122(b).

## Placement Preferences

ICWA requires that an Indian child be placed outside of their home using the placement preferences designed by the statute or the Tribe, if the Tribe has their own placement preferences. 25 U.S.C. 1915; 25 C.F.R. 23.130 & 23.131. The Lumbee have not identified their own placement preferences. As a result, absent good cause as specified in 25 C.F.R. 23.132(c), an Indian child should be placed in an out-of-home setting in an A/N/D proceeding in this order of priority:

- a member of the child’s extended family;
- a foster home licensed, approved, or specified by the Tribe;
- an Indian foster home approved by a non-Indian authority; or
- an institution for children approved by a Tribe or operated by an Indian organization that has a program suitable to meet the child’s needs.

25 U.S.C. 1915(b); 25 C.F.R. 23.131.

## **Subject matter jurisdiction and the Lumbee**

Although ICWA provides for the Tribe to have exclusive as well as concurrent subject matter jurisdiction over “child custody proceedings” involving an Indian child, the provisions do not currently apply to the Lumbee. See 25 U.S.C. 1911(a),(b); 1919; 25 C.F.R. 23.110. This is because the Lumbee currently do not have jurisdictional territory (i.e., a reservation). Although the Lumbee have a tribal court, that court system does not have jurisdiction to preside over state child custody proceedings. The Lumbee also do not have their own laws addressing A/N/D and TPR matters for their courts to preside over. As a result, the NC district court has jurisdiction over A/N/D and TPR actions involving an Indian child affiliated with the Lumbee.

Separately, arguments have been made to the NC appellate courts that the failure to follow ICWA provisions results in a lack of subject matter jurisdiction in the A/N/D or TPR action in state court (e.g., failing to send the required ICWA notice to the applicable Tribe(s)). The NC Supreme Court has rejected this argument. See *In re D.J.*, 378 N.C. 565. Although concern has been raised by the NC Court of Appeals that an action may be brought by a parent, Indian custodian, the child, or the Tribe to invalidate an A/N/D or TPR action under 25 U.S.C. 1914 when ICWA is not followed, that possibility does not mean the NC court lacks subject matter jurisdiction. Such an invalidation action may only be brought when certain, not all, provisions of ICWA are not complied with. Further, if such an action is never brought, or if it is and it is denied, the orders entered in the NC A/N/D or TPR action remain in effect and are enforceable. Subject matter jurisdiction in the state court exists even with the potential for an action that results in the invalidation of the state A/N/D or TPR action.

## **Resource**

For additional information and resources discussing ICWA, see Chapter 13, section 13.2 of the A/N/D TPR Manual. Note an updated edition current through December 31, 2025 is forthcoming.

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