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JAN 16 2018

January 15, 2018

Clerk of the Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688
Sent via U.S. mail and email clerk@wicourts.gov

**CLERK OF SUPREME COURT
OF WISCONSIN**

**Re: Petition 17-09—in the matter of the petition for amendment to SCR 10.03(4)(b)(2)
relating to Pro Hac Vice Applications**

Dear Honorable Justices of the Wisconsin Supreme Court,

I am the Director of the Indian Law Clinic at Michigan State University College of Law, and in that role, I run the ICWA (Indian Child Welfare Act) Appellate Project. The ICWA Appellate Project provides high quality research and technical assistance to tribes faced with an ICWA appeal in state court. The Project provides this service for free to tribes, and is partly funded to do so by Casey Family Programs. Because this service is free, and because we at times draft briefs for tribes, a large cost of our work is state pro hac vice fees. In addition, finding local counsel to associate with at the appellate level can be particularly difficult and also costly. As such, I am writing this letter in support of comments by Menominee Tribal Attorneys Tourtillott & Zawieja. (See attached comments dated January 8, 2018).

I recognize the importance of the work Wisconsin Access to Justice Commission (WATJC) is doing to serve low-income communities in the pursuit of justice for all. Indeed, the work of our Clinic is dedicated to supporting tribes and tribal citizens in the area of Indian child welfare. I am writing in support of the rule change to include an exemption for nonresident ICWA counsel from having to pay pro hac vice fees and associate with local counsel. Because of the Clinic's unique role in Indian Country, we have provided support for tribal attorneys and judges across the country who have passed similar rules for out of state tribal ICWA attorneys. Most recently, both Michigan, MCR 8.126, and Oregon, UTCR 3.170, have passed such a rule. A similar rule is currently up for comment in Washington, and under consideration in at least one other state.

Thank you for your time and consideration of this rule change. I am more than happy to answer any questions or submit additional testimony regarding the issue of representation in ICWA cases across the country.

Sincerely,

/s/ Kathryn E. Fort (P69451)
Director
Indian Law Clinic, Michigan State University College of Law
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MENOMINEE INDIAN TRIBE OF WISCONSIN

DEPARTMENT OF LEGAL SERVICES

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**Re: Petition 17-09—in the matter of the petition for amendment to SCR 10.03(4)(b)(2)
relating to Pro Hac Vice Applications**

Dear Honorable Justices of the Wisconsin Supreme Court,

Right now, you have before you a proposed amendment by the Wisconsin Access To Justice Commission (WATJC) to increase pro hac vice fees by \$50 for a total of \$300.00 and have those funds go to the WATJC. We support this proposed rule change because the work WATJC engages in positively impacts justice for all individuals including those with ties to our tribal communities.

However, we write to inform you that nonresident counsel appearing in Wisconsin Indian Child Welfare Act (WICWA) cases would continue to face an undue burden with a \$300.00 fee per case and the requirement to find and associate with an active member of the state bar of Wisconsin. WICWA protects the best interests of Indian children while promoting stability and security of Indian tribes and families by establishing minimum standards for removal and placement of Indian children that reflect the unique values of Indian culture. Yet, there is still work that needs to be done to ensure undue burdens do not negatively affect WICWA requirements. This is an opportunity to address a particularly ominous undue burden.

Specifically, we personally faced an undue burden in another state ICWA case involving Menominee enrolled children when a judge raised the question of how we could appear on behalf of the Menominee Tribe without getting local counsel to sponsor us and without paying pro hac vice fees. Pro hac vice only became an issue after the Tribe notified the court of its intention to file a motion for a change in placement, even as the Tribe had been participating for well over a year. In the end, the issue was moot on other grounds and the children returned to Wisconsin with extended Menominee family. This would not have happened without the Menominee Tribe's involvement.

We can and should squarely address this issue in Wisconsin, so that it never is a barrier to Wisconsin judges, courts, tribes, and the best interests of Indian children. Therefore, we would like to propose an amendment to WATJC's petition, which would exempt nonresident ICWA counsel from having to pay pro hac vice fees and associate with an active member of the State Bar of Wisconsin.

In fact, the Wisconsin Supreme Court Rules already allow an exemption from fees and an exemption from associating with an active member of the State Bar of Wisconsin for nonresident military counsel to appear on behalf of military personnel. 10.03 (4)(b)(2)(c). Our proposed amendment would simply expand this exemption to include nonresident ICWA counsel in WICWA proceedings in Wisconsin courts. Similar rules and/or laws have been enacted in the states of Oregon, Michigan, and Nebraska and are currently being considered by the State of Washington.

The current rule at 10.03 (4)(b)(2)(c) reads:

“A court in this state may allow a nonresident military counsel to appear and participate in a particular action or proceeding representing military personnel without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.”

We propose the current rule at 10.03 (4)(b)(2)(c) also be amended to read as follows:

“A court in this state:

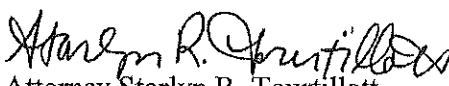
1. may allow a nonresident military counsel to appear and participate in a particular action or proceeding representing military personnel;
2. shall allow nonresident Indian Child Welfare Act (ICWA) counsel to appear and participate in any particular action or proceeding involving out-of-home placements in CHIPS, status offenses in JIPS, guardianship cases, TPR proceedings, and pre-adoptive and adoptive placements or delegation of powers of Indian children pursuant to Wisconsin Indian Child Welfare Act (WICWA) and the federal Indian Child Welfare Act, 25 USC 1901 to 1963


without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.”

This amendment to the proposed petition 17-09 relating to Pro Hac Vice Applications addresses the undue burden pro hac vice in Wisconsin poses to nonresident counsel appearing on behalf of Wisconsin Indian Child Welfare Act cases. It also supports the best interests of Indian children in Wisconsin, and further aligns and strengthens WATJC’s efforts to improve the administration of justice for all.

Waewaenen (thank you) for your time and consideration of our comments.

Sincerely,


Attorney Starlyn R. Tourtillott
Wisconsin State Bar #1064872


Attorney Danica J. Zawieja
Wisconsin State Bar #1081864