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January 10, 2018

Clerk of Supreme Court of Wisconsin
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
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JAN 11 2018
CLERK OF SUPREME COURT
OF WISCONSIN

RE: Rule 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:

Shekóli, Nicole Homer ní: yukyáts. Onayota'a:ká: níwakuhutsyo:tá (ukwehuwé:ne). Otháyu:ni nuki'talo:tá. Greetings, Nicole M. Homer is my name. I am from the Oneida Nation of the Thames, Ontario, Canada. Wolf is my clan.

I am a Wisconsin state licensed attorney (Bar No. 1062025), who does a substantial amount of Indian child welfare work in-house for a tribe. Having run into difficulties in other states, and having heard of the difficulties that others have likewise had, I am writing to address the consequences Rule Petition 17-09, as written, could have on tribes outside of Wisconsin. I additionally write to offer my suggestion to address the negative effect I anticipate.

This rule petition filed on behalf of the Wisconsin Access to Justice Commission (WATJC), seeks an increased fee for admission *pro hac vice* under SCR § 10.03(4)(b)2, of which the \$50 increase would be allotted to the WATJC. While I respect and appreciate that funds used by the proposed increase will be earmarked for the WATJC, I fear that this additional cost could in effect limit the access to justice for tribes in Indian child custody proceedings.

The federal Indian Child Welfare Act, 25 U.S.C. § 1911 *et seq.* (ICWA), was codified into Wisconsin state statute, known commonly as the Wisconsin Indian Child Welfare Act (WICWA). It seeks to protect the best interests of Indian children and families by establishing minimum standards for removal and requiring placements to reflect the unique values of the Indian child's culture. However, part of the best interests of an Indian child are the interests of their tribe. It is in the Indian child's best interests that their tribe remain stable and secure, and that the child is assisted in establishing, developing, and maintaining a political, cultural, and social relationship with the tribe and tribal community. Ultimately, these children are the future of our tribes. They will be our future tribal leaders. If tribes are to continue to be resilient and persevere from our tragic past into the seventh generation, each tribe must have strong and connected children willing to take the reins when they become adults.

There are currently 567 federally recognized tribes in the United States, of which only 11 are located within Wisconsin's borders. The ICWA and the WICWA apply to Indian children of all 567 tribes, not just the Wisconsin tribes. As one can imagine, comparing 567 separate sovereigns, you are bound to find a wide array of differences. Among these differences includes the wealth of the tribe, the access to resources for out-of-state legal representation, and the number of in-house counsel, if any.

Tribes are often limited in the funds necessary to hire attorneys in every state in which an ICWA

proceeding occurs. As with citizens of the United States, citizens of tribes are transient. Further, the effects of forced assimilation, termination of reservations, boarding school era removals, and removals of Indians to urban areas still plague tribes today. Tribal people live all across the country. As such, it becomes a financial strain on tribes to be able to afford to hire attorneys in every single state to handle a case either alone, or in concert as associated counsel pursuant to practice rules. By forcing tribes to pay for such legal services, it can constructively close the door on federally permitted tribal participation in ICWA hearings. Yet, the very purpose and spirit of the ICWA was to have tribal participation, whereby the tribes could ensure tribal connections for their children. See generally *People v. ex rel. A.T.* (Colorado case and description found at <http://www.narf.org/cases/people-ex-rel-at/>); *In re the Interest of Elias L.*, 277 Neb. 1023 (Neb. 2009); *State ex rel. Juv. Dept. v. Shuey*, 850 P.2d 378 (Or. App. 1993).

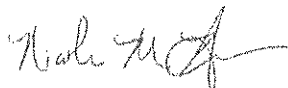
I believe the *pro hac vice* process overall is exceedingly burdensome for nonresident tribal counsel looking to effectively advocate on behalf of an out-of-state tribe in an ICWA case. For this reason, I support SCR, 10.03 to be further amended to include an exemption for nonresident tribal counsel in Wisconsin state ICWA cases akin to the exemption created for nonresident military counsel. See SCR, 10.03(4)(c). I believe the following language is appropriate to ensure tribes are effectively represented within the state of Wisconsin.

A court in this state shall allow a nonresident attorney to appear and participate in any Indian child custody proceeding pursuant to the Indian Child Welfare Act (state and federal), while representing a tribe, 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.

If Wisconsin were to amend their Supreme Court Rules, they would not be alone, but would certainly be on the forefront of necessary change to ensure appropriate access to justice for tribes. Oregon and Michigan both have *pro hac vice* waivers for attorneys in ICWA cases. See OR. UNIFORM TR. CT. R. 3.170; MI. CT. R. 8.126. Nebraska likewise addresses this issue, but instead their tribal protections are found within state statute. Neb. Rev. Stat. § 43-1504(3)(declaring that “[t]he Indian child’s tribe or tribes and their counsel are not required to associate with local counsel or pay a fee to appear *pro hac vice* in a child custody proceeding under the Nebraska Indian Child Welfare Act”). Currently, Washington has their rule amendment published for comment through April of 2018. I respectfully ask that Wisconsin add its name to the growing list of states promoting equal access to justice for tribes in Indian child custody proceedings within its borders.

If you have any questions, please feel free to contact me at 715-284-3170 or nicole.homer@hochunk.com. Thank you for taking the time to consider my support of this much needed amendment.

Yaw^Akó,



Nicole M. Homer
Wis. Bar No.: 1062025

cc: Petitioner, Wisconsin Access to Justice Commission (WATJC)