December 10, 2018

Julie Anne Rich
Wisconsin Supreme Court Commissioner
Office of Court Commissioners
110 E. Main Street, Suite 440
Madison, WI 53703

Delivered by U.S. mail and electronic mail at julie.rich@wicourts.gov

Dear Ms. Rich,

Please accept this correspondence in response to the questions the Wisconsin Supreme Court requested be answered in its consideration of rule petition 18-04.

- "SCR 10.03 (4)(b)2 currently provides that the pro hac vice fee "shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be appearing on behalf of an indigent client in the proceedings and will be charging no fee for the appearance." Please explain why this provision is not sufficient to accomplish the requested result, namely exempting nonresident tribal counsel in ICWA cases from the nonrefundable $250 fee."

➢ **RESPONSE:** It is not clear that federally recognized sovereign nations would qualify for the indigence exemption. It is important to understand that the client unto which nonresident ICWA/WICWA counsel is representing is the Tribal Nation, not individual members of the tribe. The proposed rule thus only affects Tribal Nations as the client. While we recognize that not every Tribe will find the pro hac vice fee's exceedingly burdensome, the majority of tribes will, especially if they have to repeatedly file for each case. For such tribes, those fees represent lost dollars for family services, a decreased ability to have meaningful intervention elsewhere throughout the nation. These choices represent a significant barrier to participation in ICWA matters for most tribes, especially as the federal grants for child and family services received by the Tribes cannot be used for legal representation or for legal fees for litigation. See, e.g., 25 U.S.C. §1931(a)(8); 25 CFR §§89.40-41, other federal monies received by tribes are similarly restricted. 25 U.S.C. §§ 450 *et seq*.

Even construing that a federally recognized sovereign nation could apply for an indigence exemption, the tribe would still have to find local counsel to associate with, with is can result in a financial cost as well as a cost in time. though fees are a burden on tribes attempting to partake in ICWA cases in other states as is their inherent right, our exemption also relieves nonresident ICWA counsel from having to find and associate with local counsel to support the pro hac vice filing. Most concerning, apart from the cost, is the time it could take nonresident ICWA counsel on behalf of their tribal nation clients to meet the conditions of the current pro hac vice rule before being able to participate in cases where time is already running against them in the best interests of the Indian children involved.

These cases typically involve temporary physical custody hearings that many Tribes seek to be a part of early in the case. Early intervention ensures the best interests of the Indian child and the efficiency of the court are immediately addressed. Our proposed rule would significantly ease the burden of time and cost to these important practitioners.

- "At present, SCR 10.03(4)(c) provides that nonresident military counsel are permitted to appear and participate in an action involving military personnel without being in association with an active member of the state bar and without being subject to any application fee. They are however, required to submit the form contained in Appendix A. The form contains information that the court considers highly relevant to whether an attorney should be admitted pro hac vice. Please explain why nonresident counsel in ICWA/WICWA cases should be excused from the requirement of submitting the requisite form."

➢ **RESPONSE:** We believe that our proposed rule did not exempt nonresident ICWA/WICWA counsel from having to submit the Appendix A form. We also do not have an issue with nonresident ICWA/WICWA counsel submitting the Appendix A form for the convenience and record of the Court. It is likely that that the current Appendix A form will need to be updated to reflect our proposed category of exemption.

- "Please provide, to the extent you are reasonably able, an estimate of the number of nonresident attorneys each year who would be excused from the requirements of the pro hac vice rule under this proposal, if adopted."

➢ **RESPONSE:** While we must state for the record that there is no official national database that tracks the number of ICWA cases across the states, nor is there a specific database in Wisconsin to find this information, we believe from conversations with the Director of the Indian Law Clinic at Michigan State University College of Law who manages the ICWA Appellate project, that the number of cases in Wisconsin where nonresident ICWA/WICWA counsel appear could be anywhere from 10-20 cases annually.

Additionally, we have been working with Tania Cornelius, CSW, MSW, Tribal Affairs Specialist, Wisconsin Department of Children and Families on obtaining case data on tribes located outside of Wisconsin and corresponding ICWA/WICWA case appearances in Wisconsin. At this time, the information we were able to obtain is a snapshot of how many children were in out of home care placement in Wisconsin that were from Tribes not located in Wisconsin and subject to ICWA/WICWA from 2018. That number was 97 Indian children for the month of November 2018. However, this number does not account for sibling groups, is not relegated only to new cases filed in that year and could represent a wide range of years for which cases have been filed. Again, we are working to find better data which better represents the number of nonresident ICWA/WICWA attorneys who may appear annually in Wisconsin.

Therefore, our best estimate based on the information we received is 20 cases annually.

- "Please provide an update of other jurisdictions, since the Spring of 2017, that have amended their pro hac vice rules to permits waivers for attorneys in ICWA cases."

➢ **RESPONSE:** Both Washington and California accepted rule proposals eliminating the barriers for pro hac vice representation for ICWA cases this fall.

On September 1, 2018, Washington amended is admission and practice rules.[1]

On September 14, 2018, the Governor of California signed Assembly Bill No. 3047 waiving a $500 pro hac vice filing fee.[2] On October 1, 2018 the Supreme Court of California granted the request from the Judicial Council Tribal Court-State Court Forum waive the local counsel association pro hac vice rule for representation in cases governed by the Indian Child Welfare Act (25 U.S.C. § 1902 et seq.).[3] Their amendment is effective January 1, 2019.

Additionally, Minnesota adopted rule proposals excepting the pro hac vice rules, Rule 5 of the General Rules of Practice for the District Courts, from applying to attorneys who represent Indian tribes in juvenile protection matters.[4]

The petition filed in Arizona to remove the financial burdens on attorney's licenses in other states who represent tribes in Arizona ICWA cases and provide for ongoing special admission without fees of these attorneys for ICWA cases, Rules 38 and 39, was denied. No reason was given for the order.[5]

(See Appendix A for the rule documents referenced in these footnotes)

- Please advise whether the petitioners would support or have any concerns about a modified version of this proposal, as proposed by Attorney Nicole M. Homer, Tribal Counsel, Ho-Chunk Nation Department of Justice, in her letter, dated August 20, 2018:

> 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.

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[1] https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=apr&ruleid=gaapr08
[2] https://turtletalk.files.wordpress.com/2018/10/ca_law20170ab3047_96.pdf
[3] https://turtletalk.files.wordpress.com/2018/10/ca_courtrule_phv.pdf
[4] https://www.revisor.mn.gov/court_rules/ju/subtype/rjpp/id/3/
[5] https://www.azcourts.gov/Rules-Forum/aft/829

- **RESPONSE:** We are supportive of the proposed modified version of our proposal. The main thing we want to see is that this rule gets changed for nonresident ICWA counsel practicing in Wisconsin. We experienced firsthand the injustice of how the application of a pro hac vice rule was used to interrupt and delay an ongoing ICWA case. Paired with the difficulty of being unable to be physically present at every hearing, this circumstance created both procedural inefficiencies as well as protracted arguments that dealt with very serious safety concerns.

  We believe that our valued colleague Attorney Nicole Homer's version is similar to the 1st proposed model we offered last year in our comments to the 17-09 petition which was rejected by the Wisconsin Supreme Court on March 28, 2018. The proposed version is, as she mentions in her letter, a simpler version, more akin to what was passed in Minnesota and the language used for Wisconsin's military exception. The version we have offered includes more descriptive references to the intervention right in ICWA/WICWA cases and closer resembles the rule change in Washington. In any case, we are supportive of the proposed modified version and thank our colleague for her thoughts. We simply want to see this rule changed for nonresident ICWA/WICWA counsel representing Tribes and we believe that both rules will accomplish this goal.

Thank you for your dedication consideration of our rule petition.

Respectfully submitted,

This 10th day of December, 2018.

Attorney Starlyn R. Tourtillott
Counsel, Menominee Indian Tribe of Wisconsin

Attorney Danica J. Zawieja
Counsel, Menominee Indian Tribe of Wisconsin

APPENDIX A

APR 8
NONMEMBER LAWYER LICENSES TO PRACTICE LAW

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet the qualifications stated in APR 3, may engage in the limited practice of law in this state as provided in this rule. Lawyers permitted or licensed to practice law under this rule are not members of the Bar.

(b) Exception for Particular Action or Proceeding. A lawyer member in good standing of, and permitted to practice law in, the bar of any other state or territory of the United States or of the District of Columbia, or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f), may appear as a lawyer in any action or proceeding only

(i) with the permission of the court or tribunal in which the action or proceeding is pending, and

(ii) in association with an active lawyer member of the Bar, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal. The requirement in (ii) is waived for a lawyer who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, or a Naval Legal Service Office or a Trial Service Office, located in the State of Washington.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Bar, which shall include certification by the lawyer seeking permission under this rule and the associated Washington lawyer that the requirements of this rule have been complied with, and shall state the date on which the fee and any mandatory assessment required in part (2) were paid, or state that the fee and assessment were waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Bar and payment of fees and assessments as required in part (2) below, unless waived pursuant to part (2), and to adverse parties as the court or tribunal shall direct. Payment of the required fee and assessment shall be necessary only upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Bar accompanied by,

(A) a nonrefundable fee in each case in an amount equal to the license fee required of active lawyer members of the Bar, and

(B) the Client Protection Fund assessment as required of active lawyer members of the Bar.

(3) Payment of the fee and assessment shall be necessary only upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington lawyer shall be jointly responsible for payment of the fee and assessment. The fee and assessment shall be waived for:

(A) a lawyer providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f).

(B) a lawyer rendering service for no fee in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, or

(C) a lawyer who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, or a Naval Legal Service Office or a Trial Service Office, located in the State of Washington, and who is not receiving any compensation from clients in addition to the military pay to which they are already entitled.

(4) The Bar shall maintain a public record of all motions for permission to practice pursuant to this rule.

(5) No member of the Bar shall lend his or her name for the purpose of, or in any way assist in, avoiding the effect of this rule.

(6) Exception for Indian Child Welfare Cases. A member in good standing of, and permitted to practice law in, the bar of any other state or territory of the United States or of the District of Columbia may appear as a lawyer in an action or proceeding, and shall not be required to comply with the association of counsel and fee and assessment requirements of subsection (b) of this rule if the applicant establishes to the satisfaction of the Court that:

(A) The applicant seeks to appear in a Washington court for the limited purpose of participating in a "child custody proceeding" as defined by RCW 13.38.040(3), pursuant to the Washington State Indian Child Welfare Act, ch.13.38 RCW, or by 25 U.S.C. § 1903(1), pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1963;

(B) The applicant represents an "Indian tribe" as defined by RCW 13.38.040, or 25 U.S.C. § 1903;

(C) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming that under tribal law (i) the child is a member or (ii) the child is eligible for membership and the biological parent of the child is a member; and

(D) The applicant has provided, or will provide within seven days of appearing on the case, written notice to the Washington State Bar of their appearance in the case. Such written notice shall be by providing in writing the following information: the cause number and name of the case; the attorney's name, employer, and contact information; and the bar number and jurisdiction of the applicant's license to practice law.

(c) Exception for Indigent Representation. A member in good standing of the bar of another state or territory of the United States or of the District of Columbia, who is eligible to apply for admission as a lawyer under APR 3 in

this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Bar, and the applicant shall be subject to the Rules for Enforcement of Lawyer Conduct and to the Rules of Professional Conduct.

(2) In any such matter, litigation, or administrative proceeding, the applicant shall be associated with an active lawyer member of the Bar, who shall be the lawyer of record and responsible for the conduct of the matter, litigation, or administrative proceeding.

(3) The applicant shall either apply for and take the first available lawyer bar examination after the date the applicant was granted authorization to practice under this rule, or already have filed an application for admission by motion or Uniform Bar Exam (UBE) score transfer.

(4) The applicant's authorization to practice under this rule (i) may be terminated by the Supreme Court at any time with or without cause, or (ii) shall be terminated automatically for failure to take or pass the required lawyer bar examination, or (iii) shall be terminated for failure to become an active lawyer member of the Bar within 60 days of the date the lawyer bar examination results are made public, or (iv) shall be terminated automatically upon denial of the application for admission, or (v) in any event, shall be terminated within 1 year from the original date the applicant was authorized to practice law in this state under this rule.

(d) [Reserved.]

(e) [Reserved.]

(f) Exception for House Counsel. A lawyer admitted to the practice of law in any jurisdiction may app ly to the Bar for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by:

(i) filing an application in the form and manner that may be prescribed by the Bar;

(ii) presenting satisfactory proof of (I) admission to the practice of law and current good standing in any jurisdiction and (II) good moral character and fitness to practice;

(iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in this state attesting to the fact the applicant is employed as a lawyer for the employer, including its subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this rule;

(iv) paying the application fees required of lawyer applicants for admission under APR 3; and

(v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) Upon approval of the application by the Bar, the lawyer shall take the Oath of Attorney, pay the current year's annual license fee and any mandatory assessments required of active lawyer members. The Bar shall transmit its recommendation to the Supreme Court which may enter an order granting the lawyer a license to engage in the limited practice of law under this section.

(2) The practice of a lawyer licensed under this section shall be limited to practice exclusively for the employer, including its subsidiaries and affiliates, furnishing the affidavit required by the rule and shall not include (i) appearing before a court or tribunal as a person admitted to practice law in this state, and (ii) offering legal services or advice to the public, or (iii) holding oneself out to be so engaged or authorized.

(3) All business cards and employer letterhead used by a lawyer licensed under this section shall state clearly that the lawyer is licensed to practice in Washington as in-house counsel.

(4) A lawyer licensed under this section shall pay to the Bar an annual license fee in the maximum amount required of active lawyer members and any mandatory assessments required of active lawyer members of the Bar.

(5) The practice of a lawyer licensed under this section shall be subject to the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) The lawyer shall promptly report to the Bar a change in employment, a change in admission or license status in any jurisdiction where the applicant has been admitted to the practice of law, or the commencement of any formal disciplinary proceeding in any jurisdiction where the applicant has been admitted to the practice of law.

(7) The limited license granted under this section shall be automatically terminated when employment by the employer furnishing the affidavit required by this rule is terminated, the lawyer has been admitted to the practice of law pursuant to any other provision of the APR, the lawyer fails to comply with the terms of this rule, the lawyer fails to maintain current good standing in at least one other jurisdiction where the lawyer has been admitted to the practice of law, or on suspension or disbarment for discipline in any jurisdiction where the lawyer has been admitted to the practice of law. If a lawyer's employment is terminated but the lawyer, within three months from the last day of employment, is employed by an employer filing the affidavit required by (iii), the license shall be reinstated.

(8) A lawyer admitted in another United States jurisdiction and authorized to provide legal services under this Rule may provide legal services in this jurisdiction for no fee through a Bar qualified legal services provider, as that term is defined in APR 1. If such services involve representation before a court or tribunal, the lawyer shall seek permission under APR 8(b) and any fees for such permission shall be waived. The prohibition against compensation in this paragraph shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to practice under this rule for actual expenses incurred while rendering legal services under this pro bono exception. In addition, a qualified legal services provider shall be entitled to receive all court awarded attorney's fees for pro bono representation rendered by the lawyer.

(g) [Reserved.]

[Adopted effective May 20, 1966; amended effective March 10, 1971; July 9, 1982; September 1, 1984; October 11, 1985; September 1, 1998; March 9, 1999; March 5, 2002; October 1, 2002; December 24, 2002; June 24, 2003; November 25, 2003; September 1, 2004; September 1, 2006; January 1, 2007, May 6, 2008; September 1, 2009; January 1, 2014; September 1, 2015; September 1, 2017; December 5, 2017; September 1, 2018.]

ADMINISTRATIVE ORDER 2018-09-26-02

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

ORDER RE REQUEST FOR APPROVAL OF PROPOSED AMENDMENT TO RULE 9.40 OF THE CALIFORNIA RULES OF COURT

On September 12, 2018, the Judicial Council Tribal Court-State Court Forum presented a request that the court approve a proposed amendment to rule 9.40 of the California Rules of Court. The request is granted. The text of the amendment is set forth in the attachment to this order. The approved amendment is effective January 1, 2019.

It is so ordered.

CANTIL-SAKAUYE
Chief Justice

CHIN, J.
Associate Justice

CORRIGAN, J.
Associate Justice

LIU, J.
Associate Justice

CUÉLLAR, J.
Associate Justice

KRUGER, J.
Associate Justice

Associate Justice

ATTACHMENT

Rule 9.40. Counsel *pro hac vice*

(a)–(f) * * *

(g) Representation in cases governed by the Indian Child Welfare Act (25 U.S.C. § 1903 et seq.)

(1) The requirement in (a) that the applicant associate with an active licensee of the State Bar of California does not apply to an applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act; and

(2) An applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act constitutes a special circumstance for the purposes of the restriction in (b) that an application may be denied because of repeated appearances.

~~(g)~~ **(h)** * * *

Assembly Bill No. 3047

CHAPTER 399

An act to amend Section 70617 of the Government Code, relating to court fees.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3047, Daly. Court fees: waiver: Indian Child Welfare Act.

Existing law establishes fees for various court filings, including a $500 fee for filing in superior court an application to appear as counsel pro hac vice and a fee for the annual renewal of that application.

This bill would waive the fee and renewal fee for filing pro hac vice when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act.

The people of the State of California do enact as follows:

SECTION 1. Section 70617 of the Government Code, as amended by Section 12 of Chapter 45 of the Statutes of 2018, is amended to read:

70617. (a) Except as provided in subdivisions (d) and (e), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is sixty dollars ($60). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

(3) An application for examination of a third person controlling defendant's property under Section 491.110 or 491.150 of the Code of Civil Procedure.

(4) Discovery motions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(5) A motion for a new trial of a civil action or special proceeding.

(6) An application for an order for a judgment debtor examination under Section 708.110 or 708.160 of the Code of Civil Procedure.

(7) An application for an order of sale of a dwelling under Section 704.750 of the Code of Civil Procedure.

(8) An ex parte application that requires a party to give notice of the ex parte appearance to other parties.

(b) There shall be no fee under subdivision (a) or (c) for filing any of the following:

(1) A motion, application, demurrer, request, notice, or stipulation and order that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion.

(3) A civil case management statement.

(4) A request for trial de novo after judicial arbitration.

(5) A stipulation that does not require an order.

(6) A request for an order to prevent civil harassment.

(7) A request for an order to prevent domestic violence.

(8) A request for entry of default or default judgment.

(9) A paper requiring a hearing on a petition for emancipation of a minor.

(10) A paper requiring a hearing on a petition for an order to prevent abuse of an elder or dependent adult.

(11) A paper requiring a hearing on a petition for a writ of review, mandate, or prohibition.

(12) A paper requiring a hearing on a petition for a decree of change of name or gender.

(13) A paper requiring a hearing on a petition to approve the compromise of a claim of a minor.

(c) The fee for filing the following papers not requiring a hearing is twenty dollars ($20):

(1) A request, application, or motion for, or a notice of, the continuance of a hearing or case management conference. The fee shall be charged no more than once for each continuance. The fee shall not be charged if the continuance is required by the court.

(2) A stipulation and order.

(3) A request for an order authorizing service of summons by posting or by publication under Section 415.45 or 415.50 of the Code of Civil Procedure.

(d) The fee for filing a motion for summary judgment or summary adjudication of issues is five hundred dollars ($500).

(e) (1) The fee for filing in the superior court an application to appear as counsel pro hac vice is five hundred dollars ($500). This fee is in addition to any other fee required of the applicant. Two hundred fifty dollars ($250) of the fee collected under this paragraph shall be transmitted to the state for deposit into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5. The remaining two hundred fifty dollars ($250) of the fee shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(2) An attorney whose application to appear as counsel pro hac vice has been granted shall pay to the superior court, on or before the anniversary of the date the application was granted, an annual renewal fee of five hundred dollars ($500) for each year that the attorney maintains pro hac vice status in the case in which the application was granted. The entire fee collected under this paragraph shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(3) Fees imposed by this subdivision shall be waived when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (c), (d), and (e) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

(g) This section shall become inoperative on July 1, 2023, and, as of January 1, 2024, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2024, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 70617 of the Government Code, as amended by Section 13 of Chapter 45 of the Statutes of 2018, is amended to read:

70617. (a) Except as provided in subdivisions (d) and (e), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is forty dollars ($40). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

(3) An application for examination of a third person controlling defendant's property under Section 491.110 or 491.150 of the Code of Civil Procedure.

(4) Discovery motions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(5) A motion for a new trial of a civil action or special proceeding.

(6) An application for an order for a judgment debtor examination under Section 708.110 or 708.160 of the Code of Civil Procedure.

(7) An application for an order of sale of a dwelling under Section 704.750 of the Code of Civil Procedure.

(8) An ex parte application that requires a party to give notice of the ex parte appearance to other parties.

(b) There shall be no fee under subdivision (a) or (c) for filing any of the following:

(1) A motion, application, demurrer, request, notice, or stipulation and order that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion.

(3) A civil case management statement.

(4) A request for trial de novo after judicial arbitration.

(5) A stipulation that does not require an order.

(6) A request for an order to prevent civil harassment.

(7) A request for an order to prevent domestic violence.

(8) A request for entry of default or default judgment.

(9) A paper requiring a hearing on a petition for emancipation of a minor.

(10) A paper requiring a hearing on a petition for an order to prevent abuse of an elder or dependent adult.

(11) A paper requiring a hearing on a petition for a writ of review, mandate, or prohibition.

(12) A paper requiring a hearing on a petition for a decree of change of name or gender.

(13) A paper requiring a hearing on a petition to approve the compromise of a claim of a minor.

(c) The fee for filing the following papers not requiring a hearing is twenty dollars ($20):

(1) A request, application, or motion for, or a notice of, the continuance of a hearing or case management conference. The fee shall be charged no more than once for each continuance. The fee shall not be charged if the continuance is required by the court.

(2) A stipulation and order.

(3) A request for an order authorizing service of summons by posting or by publication under Section 415.45 or 415.50 of the Code of Civil Procedure.

(d) The fee for filing a motion for summary judgment or summary adjudication of issues is five hundred dollars ($500).

(e) (1) The fee for filing in the superior court an application to appear as counsel pro hac vice is five hundred dollars ($500). This fee is in addition to any other fee required of the applicant. Two hundred fifty dollars ($250) of the fee collected under this paragraph shall be transmitted to the state for deposit into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5. The remaining two hundred fifty dollars ($250) of the fee shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(2) An attorney whose application to appear as counsel pro hac vice has been granted shall pay to the superior court, on or before the anniversary of the date the application was granted, an annual renewal fee of five hundred dollars ($500) for each year that the attorney maintains pro hac vice status in the case in which the application was granted. The entire fee collected under this paragraph shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(3) Fees imposed by this subdivision shall be waived when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (c), (d), and (e) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

(g) This section shall become operative on July 1, 2023.

O

Rule 3. Applicability of Other Rules and Statutes

3.01 Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

3.02 Rules of Evidence

Subdivision 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes, section 609.341, subdivision 6;

(b) the statement alleges, explains, denies, or describes:

(1) any act of sexual penetration or contact performed with or on the child;

(2) any act of sexual penetration or contact with or on another child observed by the child making the statement;

(3) any act of physical abuse or neglect of the child by another; or

(4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

(Amended effective January 1, 2004.)

3.03 Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. sections 1901 to 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 to 260.835; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

3.04 Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

3.05 Court Interpreter Statutes, Rules, and Court Policies

The statutes, court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to such statutes, court rules and court policies.

(Amended effective January 1, 2004.)

3.06 General Rules of Practice for the District Courts

Except as otherwise provided by statute or these rules, Rules 1-2, 4-16, and 901-907 of the General Rules of Practice for the District Courts apply to juvenile protection matters. Rules 3 and 101-814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

(Added effective August 1, 2009; amended effective July 1, 2015; amended effective October 1, 2016.)

3.07 Rules of Public Access to Records of the Judicial Branch

The Rules of Public Access to Records of the Judicial Branch apply to juvenile protection case records.

(Added effective July 1, 2015.)

2008 Advisory Committee Comment

Consistent with the Indian Child Welfare Act, 25 U.S.C. section 1911(d), Rule 10 of the General Rules of Practice for the District Courts addresses recognition of tribal court orders, judgments, and other judicial acts.

2015 Advisory Committee Comment

Rule 3.06 is amended to specify the applicability of the General Rules of Practice for the District Courts to juvenile protection matters.

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in juvenile protection matters. For that reason, Rule 3.06 is amended to provide that the requirements of Rule 5 dealing with pro hac vice and electronic filing are not applicable to attorneys who represent Indian tribes.

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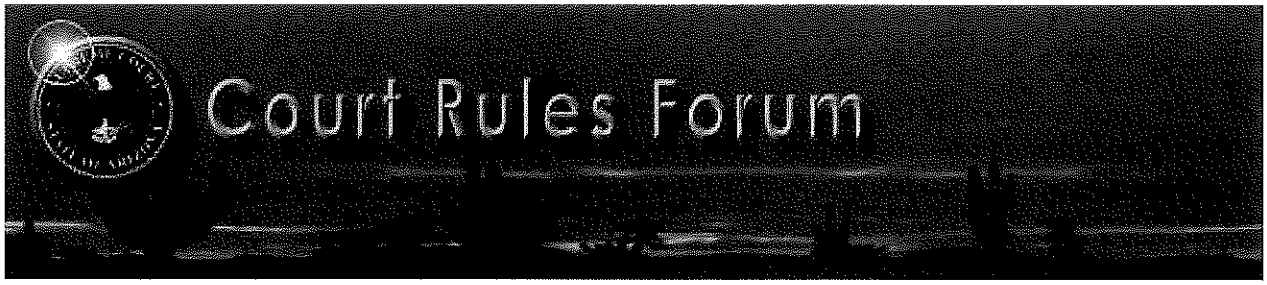

FAQ

YOUR HELP NEEDED: If you find a cross-reference that does not match the rule or subsection it refers to or any appa sending a precise description to SACrtDocs@courts.az.gov.

News: We have corrected an error that prevented users from accessing some current criminal rules via Westlaw.

Message from the Chief Justice

Current Arizona Rules on Westlaw

Amendments from Recent Rule Agendas

Rule Amendments (2006 to present)

Advisory Committee on Rules of Evidence

Proposed Local Rules

Welcome!

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Unanswered Active Topics

PREV

Last Post 21 May 2018 03:35 PM by **State Bar of Arizona**

R-18-0013 Supreme Court Rules 38 and 39

4 Replies

Topic is locked

Author	Messages
FAIRWorkgroups New Member Posts:12	10 Jan 2018 02:11 PM

Filed on behalf of:
Hon. Ryan Andrews, Chair
Arizona State, Tribal, and Federal Court Forum
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Would remove financial burdens on attorneys licensed in other states who repre
and provide for ongoing special admission without fees of these attorneys for IC

Filed January 10, 2018

Comments must be submitted on or before May 21, 2018.

ORDERED: Petition to Amend Rules 38 and 39, Rules of the Supreme Court = D

Attachments

Final Az Sup Ct Rules 38 and 39 Jan 2018.pdf

Final Az Sup Ct Rules 38 and 39 Jan 2

Order Opening Rule Petitions for Public Comment Filed 1-18-2018_28.pdf

Brandelle Whitworth
New Member
Posts:1

14 Feb 2018 10:45 AM

Brandelle Whitworth, Bar No. 6017
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To the Honorable Arizona Supreme Court,

I fully support and encourage the implementation of the proposed changes to Ru are intended to waive certain requirements for out of state attorneys who seek to law in Arizona to represent an Indian tribe in an Indian Child Welfare Act proce

I have been employed as an in-house attorney with my tribe, the Shoshone-Bann Reservation of Idaho, for nearly 18 years and during that time have appeared in approximately 17 different states, including Arizona.

I can attest that bar licensure, pro hac vice fees, and/or the hiring of local counse often act as a bar to full participation of the very Indian tribes who's rights were the affected Indian children, to be protected by the Indian Child Welfare Act. To approval and implementation of the proposed amendments of Rules 38 and 39 t participation in these types of cases in the great State of Arizona.

Sincerely,
Brandelle Whitworth
General Counsel
Shoshone-Bannock Tribes