

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 18-04

**In the Matter of the Petition to Amend
Supreme Court Rule (SCR) 10.03(4), Regarding
Pro Hac Vice Admission for Nonresident
Counsel Appearing in Matters Involving the
Indian Child Welfare Act.**

FILED

FEB 12, 2019

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On July 17, 2018, Attorneys Starlyn R. Tourtillott and Danica J. Zawieja, counsel for the Menominee Indian Tribe of Wisconsin, filed a rule petition asking the court to amend Supreme Court Rule (SCR) 10.03(4) to exempt nonresident counsel who appear in matters involving the Indian Child Welfare Act, 25 U.S.C. § 1911 et seq. (ICWA), codified in Wisconsin as the Wisconsin Indian Child Welfare Act (WICWA), from the requirements of the pro hac vice admission rule.

At a closed administrative rules conference on September 6, 2018, the court voted to solicit written comments, request additional information from the petitioners, and schedule a public hearing.¹

¹On January 8, 2018, the petitioners made a similar request in the form of a comment from an interested person in rule petition 17-09. A number of responses were submitted, in support of the suggestion. The court denied rule petition 17-09. S. Ct. Order 17-09, 08-17 (issued Mar. 28, 2018). The court recommended the petitioners file a separate rule petition. When this petition was (continued)

On November 1, 2018, the court solicited public comment. On November 12, 2018, the court sent a letter to the petitioners posing several questions. The petitioners responded to this court's questions by letter dated December 10, 2018. In addition, the court received a number of comments, all supporting the petition.

The court conducted a public hearing on January 17, 2019. Attorneys Starlyn R. Tourtillott and Danica J. Zawieja, counsel for the Menominee Indian Tribe of Wisconsin, presented the petition to the court. Attorney Nicole M. Homer, Ho-Chunk Nation Department of Justice, also appeared in support of the petition. The court discussed the matter at length in closed conference and voted to grant the petition, with certain modifications.

Wisconsin's pro hac vice admission rule is set forth in SCR 10.03(4). The petitioners assert that the pro hac vice process is burdensome and costly for nonresident tribal counsel seeking to effectively advocate on behalf of an out-of-state tribe in an ICWA case.

This proposal would excuse nonresident attorneys representing tribal entities in ICWA cases from several of the existing requirements for admission pro hac vice in Wisconsin. The proposed amendment would also require courts to admit nonresident counsel pro hac vice in ICWA cases.

The court voted to excuse nonresident attorneys representing tribal entities in ICWA cases from a required association with local

filed, the court agreed to include in the rule file the relevant comments that were filed in rule petition 17-09.

counsel and to waive the \$250 fee typically required to appear pro hac vice in Wisconsin. The court reaffirmed that all applicants, including attorneys representing tribal entities in ICWA cases, must submit the information listed in the applicable appendix to SCR 10.03.

The court declines to mandate admission of nonresident counsel in ICWA cases. We acknowledge that ICWA affords tribes a right to intervene in ICWA cases. That is separate from the question whether a particular nonresident attorney may represent the client in a Wisconsin court. As the petitioners acknowledge, "traditionally, the decision whether to admit nonresident counsel pro hac vice has been entrusted to the discretion of the court in which the nonresident lawyer seeks to appear." See, e.g., Filppula-McArthur v. Halloin, 2001 WI 8, 241 Wis. 2d 110, 622 N.W.2d 436. Indeed, this decision has always been entrusted to the sound discretion of the admitting court, for good reason. State v. Lehman, 137 Wis. 2d 65, 82, 403 N.W.2d 438 (1987). The nature of pro hac vice admission has not changed since we described it in 1926:

As a matter of comity the courts of this state have practically always . . . cheerfully conceded the privilege to attorneys of sister states to engage in the conduct of trials in this state. But such has always been recognized as a privilege extended to such outside counsel and not as a right to be claimed on their part.

Filppula-McArthur, 2001 WI 8, ¶33 (quoting In re Pierce, 189 Wis. 441, 450, 207 N.W. 966 (1926) (citations omitted)). As we stated in Filppula-McArthur:

[W]hen an admitting court grants this privilege, both client and counsel benefit. The client will be represented by counsel of its choice. The

attorney is excused from the normal prerequisites to Wisconsin practice, such as the requisite knowledge of Wisconsin law and procedure (as ensured by a bar examination or the diploma privilege), character and fitness evaluations, and continuing legal education.

Id., ¶¶34-35. In pro hac vice admissions, we entrust to the admitting court the discretionary power to decide whether to grant this privilege, and if necessary, terminate pro hac vice representation. Id. The purpose of SCR 10.03(4) is to control the unauthorized practice of law and assure that the public "is not put upon or damaged by inadequate or unethical counsel." Lehman, 137 Wis. 2d 65, 81. We accord the same standards to a nonresident attorney seeking admission pro hac vice to represent a tribe as we apply to all nonresident counsel seeking admission pro hac vice, so that we are assured the tribe receives fully competent representation of its interests.

We conclude that this petition, as modified, will facilitate tribal participation in ICWA proceedings, consistent with our traditional application of the principles governing admission pro hac vice. Therefore, we grant the petition, as modified.

IT IS ORDERED that, effective the date of this order:

SECTION 1. Supreme Court Rule 10.03(4) (cm) is created to read as follows:

SCR 10.03(4) (cm) A court in this state may allow a nonresident attorney who seeks to appear for the limited purpose of participating in a child custody proceeding pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. s. 1901, et seq., 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.

IT IS FURTHER ORDERED that the court has attached to this order a version of the form that appears in Appendix A to SCR Chapter 10, modified for use by nonresident counsel seeking admission pro hac vice under SCR 10.03(4) (c) or (cm). The Forms Subcommittee of the Wisconsin Court Records Management Committee is directed to take such steps as are necessary to implement and distribute this version of the form as an alternative to the standard form that requires association with local counsel and payment of a fee.

IT IS FURTHER ORDERED that notice of the above amendment be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 12th day of February, 2019.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

APPENDIX A-2

STATE OF WISCONSIN, CIRCUIT COURT _____ COUNTY

CASE CAPTION: APPLICATION FOR ADMISSION
PRO HAC VICE
Under SCR 10.03(4) (c) or (cm)

Case Number:

I declare under penalty of perjury:

- (1) That I seek to appear pro hac vice in order to represent _____ in the above-captioned matter;
- (2) That I am nonresident military counsel seeking admission under SCR 10.03(4)(c) or nonresident counsel seeking to appear for the limited purpose of participating in a child custody proceeding pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. s. 1901, et seq., under SCR 10.03(4)(cm).
- (3) That I am admitted to practice law in the highest court(s) of the state(s) or country(ies) of _____;
- (4) That I am admitted to practice law before the court(s) of the following federally recognized Indian tribes: _____;
- (5) That there are no disciplinary complaints filed against me for violation of the rules of those courts (if so, please explain) _____;
- (6) That I am not suspended or disbarred from practice for disciplinary reasons or reason of medical incapacity in any jurisdiction (if yes, please explain) _____;
- (7) That I do not practice or hold out to practice law in the State of Wisconsin;
- (8) That I acknowledge the jurisdiction of the courts of the State of Wisconsin over my professional conduct, and I agree to abide by the rules of the relevant division of the Circuit Court of the State of Wisconsin, the

Wisconsin Court of Appeals, the Wisconsin Supreme Court, and the Rules of Professional Conduct for Attorneys, if I am admitted pro hac vice;

- (9) That I have complied fully with the requirements of SCR Rule 10.03(4) applicable to me;
- (10) That I am applying for admission pro hac vice for the following reasons: _____.

I have applied for admission pro hac vice in the courts of the State of Wisconsin _____ times previously in this calendar year.

I certify I am not required to pay a pro hac vice fee to the Office of Lawyer Regulation because I qualify for an exemption from the fee under SCR 10.03(4)(c) or (cm).

Signature: _____

Print Name:

Date:

Address:

Telephone Number: