



# Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

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MADISON, WISCONSIN 53703

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Commissioners

Telephone (608) 266-7442

November 12, 2018

Danica J. Zawieja  
Starlyn R. Tourtillott  
P.O. Box 910  
Keshena, WI 54135

Re: Rule Petition 18-04; In the Matter to Amend SCR 10.03(4), Regarding Pro Hac Vice Admission for Nonresident Counsel Appearing in Matters Involving the ICWA.

Dear Attorneys Zawieja & Tourtillott:

I am assisting the Wisconsin Supreme Court with its consideration of rule petition 18-04. At a closed administrative rules conference on September 6, 2018, the court engaged in a preliminary discussion of this matter and voted to schedule a public hearing. The court also voted to grant your request to add relevant comments submitted in 17-09 to this petition. They have been posted on the court's administrative rules website. In addition, the court has received and will consider your responses to the comments offered by the Legislative Reference Bureau.

The public hearing will be conducted on January 17, 2019.

In advance of the public hearing, the court asks that you provide a written response to the following questions by December 12, 2018:

- 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 proceeding 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.

- 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.<sup>1</sup> Please explain why nonresident counsel in ICWA/WICWA cases should be excused from the requirement of submitting the requisite form.

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

Please be advised that any additional written comments filed in the clerks' office or court communications with respect to this petition will be posted on the court's website at <https://www.wicourts.gov/scrules/1804.htm>.

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<sup>1</sup> The form requires the applicant lawyer provide the following information: the matter in which he or she seeks to appear; where the applicant is admitted to practice law; that the applicant has no pending disciplinary complaints (or provide an explanation); that the lawyer is not suspended or disbarred in any jurisdiction (or provide an explanation); the name of the Wisconsin attorney with whom the applicant is associated (if required); that the applicant does not practice or hold out to practice law in the State of Wisconsin; an acknowledgement that Wisconsin has jurisdiction over the applicant's professional conduct in Wisconsin and that the applicant will 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; certifying the applicant's compliance with SCR Rule 10.03(4); the reason the applicant seeks admission pro hac vice; the number of times the applicant has sought admission pro hac vice in Wisconsin; certifying that the applicant has paid the requisite fee (or explaining why the applicant is exempt from it). See SCR 10.03(4), Appendix A.

Thank you very much for your interest and attention in this matter. If you have specific questions or other comments, please contact me by telephone at 608-261-6642, or by email at *julie.rich@wicourts.gov*.

Very truly yours,

/s/

Julie Anne Rich

Supreme Court Commissioner

cc: Chief Justice Patience Drake Roggensack  
Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Rebecca Grassl Bradley  
Justice Daniel Kelly  
Justice Rebecca Frank Dallet