



# Ho-Chunk Nation Department of Justice

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Clerk of Supreme Court of Wisconsin  
Attention: Deputy Clerk-Rules  
P.O. Box 1688  
Madison, WI 53701-1688  
[clerk@wicourts.gov](mailto:clerk@wicourts.gov)

**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:

Rule petition 17-09, filed on behalf of the Wisconsin Access to Justice Commission (hereinafter 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 the Ho-Chunk Nation (hereinafter HCN) respects and appreciates that funds used by the proposed increase will be earmarked for the WATJC, we fear that this additional cost could in effect limit the access to justice for out-of-state tribes in Indian child custody proceedings.

The federal Indian Child Welfare Act, 25 U.S.C. § 1911 *et seq.* (hereinafter 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 the 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.

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 are not confined within their reservations or tribal lands. According to 2016 HCN legislative district data for example, 23.54% of HCN children did not even live in the state of Wisconsin, let alone on one of the many parcels of HCN lands.

Looking broader, there are 567 federally recognized tribes in the United States to date, 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.

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 local practice rules. By forcing tribes to pay for such legal services, it can constructively close the door on federally permitted

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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).

The HCN Department of Justice provides legal representation for the Tribe in Indian child custody proceedings governed by the ICWA. Through the years, we have had instances where other states' courts have made it difficult for the HCN to participate in state court proceedings, despite federal law stating we have the legal right to intervene. While the HCN legislatively appropriates funds to maintain a well-staffed in-house legal office, we find at times we must instead hire out of state counsel for these matters. This adds a financial strain to an already limited budget. Moreover, it forces the HCN to find counsel at times in states where the ICWA is not prevalent, and thus with an attorney licensed in the state, but with no practical knowledge of the ICWA.

For the reasons aforementioned, the HCN believes the *pro hac vice* process is exceedingly burdensome for nonresident tribal counsel looking to effectively advocate on behalf of an out-of-state tribe in an ICWA case. Similar to the Menominee Indian Tribe of Wisconsin, the HCN supports further amending SCR, 10.03 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)*. The HCN believes 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. The HCN respectively asks 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.

Thank you for taking the time to consider my support of this much needed amendment.

Respectively submitted,



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