

Hon. Ryan Andrews, Chair
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Hon. Randall Howe, Vice-Chair
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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES)	
OF THE SUPREME COURT OF)	Supreme Court No. R-17-0031
ARIZONA: RULES 31, 38, AND 39)	
AND REQUEST FOR LATE FILING)	Notice of Withdrawal of Petition
_____)	

Having filed new petition R-18-0013 on the same subject which this court also opened for comment, petitioners, Hon. Ryan Andrews, Chief Judge, Salt River Pima Maricopa Indian Community and Hon. Randall Howe, Arizona Court of Appeals, Division 1 as, respectively, Chair and Vice-Chair of the Arizona State, Tribal, and Federal Court Forum respectfully provide this notice of withdrawal of this petition.

RESPECTFULLY SUBMITTED this 27th day of February, 2018.

By /S/_____

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APPENDIX A
Rules of the Supreme Court of Arizona
Proposed Rule Changes

Rule 31. Regulation of the Practice of Law

a – c [no changes]

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1 – 31 [no changes]

32. An officer or employee of a federally recognized Indian tribe who is not an active member of the state bar may represent the Indian tribe before the superior courts in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq, provided that: the Indian tribe has specifically authorized such officer or employee to represent it in the proceeding; such representation is secondary or incidental to other duties related to the office or employment; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants.

Rule 38. Special Exceptions to Standard Examinations and Admission Process

a. – i. [no changes]

j. Authorization to Practice Law for Attorneys Representing Indian Tribes for the Purpose of Indian Child Welfare Cases. An attorney who has been admitted to practice law in any other jurisdiction for at least two years may be admitted to practice before the superior and appellate courts of this state for the limited purpose of representing a federally recognized Indian tribe in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq. as provided in this paragraph.

1. Definitions.

A. "ICWA" stands for the Indian Child Welfare Act, which is a federal law passed in 1978. ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets minimum federal standards that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

B. A federally recognized tribe is an American Indian or Alaska Native tribal entity that is

recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation.

2. *Application and Authorization.* An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar membership for at least the two years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory or district for the past five years, or during the time of the applicant's licensure, whichever is greater;

B. an affidavit asserting an Indian tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; and

C. a sworn statement signed by the applicant that he or she:

i. has read and is familiar with the Rules of the Supreme Court and any applicable statutes of the State of Arizona relative to the conduct of lawyers, and will abide by the provisions thereof;

ii. submits to the jurisdiction of the Court for disciplinary purposes, as defined by the Rules of the Supreme Court;

iii. has not been disciplined by the bar or courts of any jurisdiction within the past five years, or during the time of the applicant's licensure, whichever is greater; and

iv. has successfully completed the course on Arizona law described in Rule 34(j).

The applicant shall send a copy of the application to the State Bar of Arizona, which shall file any objection to such application with the clerk of the Supreme Court within ten (10) days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court of Arizona. The clerk of the Supreme Court shall send a copy of the order authorizing the practice of law to the State Bar of Arizona.

3. *Mandatory Continuing Legal Education.* An attorney authorized to practice under this paragraph (g) must comply with the Mandatory Continuing Legal Education (MCLE) requirements of the state identified in subsection (2) (A) of this rule.

4. *Expiration of Authorization.* Authorization to practice law under this section shall remain in effect from the date of the order authorizing the applicant to practice law in the State of Arizona until (A) the applicant no longer represents an Indian tribe, as defined by 25 U.S.C. § 1903; participating in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the

Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.; (B) the applicant is admitted to the practice of law in Arizona pursuant to Rules of the Supreme Court 33 through 37; or (C) two years from the date of the order authorizing the applicant to practice law under this rule, whichever comes first.

5. Discipline. In addition to any appropriate proceedings and discipline that may be imposed by the Court under these rules, the Rule 38(j) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(j) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Supreme Court, or the funded indigent defense office.

6. Limitation of Activities. An attorney authorized to practice under this rule shall not perform any legal services within the State of Arizona except for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq. The applicant represents an Indian tribe as defined by 25 U.S.C. § 1903.

7. Waiver of Fees. The Attorney who represents an Indian tribe as defined by 25 U.S.C. § 1903, for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq. shall be exempt from the fees prescribe in A.R.S. Sup.Ct.Rules, Rule 39, Rule 39. Admission Pro Hac Vice.

Rule 39. Admission Pro Hac Vice

a. – l. [no changes]

m. Exception. An applicant is not required to associate with local counsel pursuant to subsection (b) and (c) of this rule or pay the fees established by subsection (c)(1)(B) and (h) of this rule if the applicant upon submitting the application required by subsection (c) establishes to the satisfaction of the Bar that:

(1) The applicant seeks to appear in an Arizona court for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. § 1903, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.;

(2) The applicant represents a federally recognized Indian tribe as defined by Rule 37 of the Rules of Procedure for Juvenile Court; and

(3) The Indian child's tribe has submitted a pleading to the court seeking to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law.

The applicant shall perform any duty required to be performed by associate counsel and receive any notice required to be provided to associate counsel pursuant to this rule.