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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULES 38**
11 **AND 39 OF THE ARIZONA**
12 **RULES OF SUPREME COURT**

Supreme Court No. R-18-0013

COMMENT OF THE
STATE BAR OF ARIZONA

13
14 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby submits the following as its Comment to the
16 above-captioned Petition.

17 The Petition requests several changes to Rules 38 and 39 that would:

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- 19 1. Provide admission to licensed attorneys in other jurisdictions to practice in
20 Arizona for the limited purpose of representing a federally recognized Indian
21 Tribe in Indian Child Welfare Act proceedings;
 - 22 2. Provide a longer admission period for attorneys in other jurisdictions to
23 practice in Arizona for the limited purpose of representing a federally
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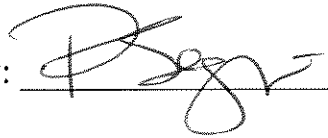
1 recognized Indian Tribe in Indian Child Welfare Act proceedings;

- 2 3. Remove the requirement for association with local counsel for attorneys
3 admitted *pro hac vice* when they are representing a federally recognized
4 Indian Tribe in Indian Child Welfare Act proceedings; and
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6 4. Remove the fee requirement for attorneys admitted *pro hac vice* when they
7 are representing a federally recognized Indian Tribe in Indian Child Welfare
8 Act proceedings.
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10 DISCUSSION

11 Tribal interests articulated in the Indian Child Welfare Act (“ICWA”) are of
12 the highest priority. “The protection of the tribal interest in its children is at the core
13 of the ICWA.” *Matter of Adoption of Halloway*, 732 P.2d 962, 969 (Utah 1986).
14 “The importance of tribal primacy in matters of child custody and adoption cannot
15 be minimized, for the ICWA is grounded on the premise that tribal self-government
16 is to be fostered and that few matters are of more central interest to a tribe seeking
17 to preserve its identity and traditions than the determination of who will have the
18 care and custody of its children.” *Id.* at 965. “Tribal participation in state custody
19 proceedings involving tribal children is essential to effectuating the purposes of the
20 ICWA.” *In re Shuey*, 850 P.2d 378 (Or. Ct. App. 1993). Economic and procedural
21 barriers can essentially deny the right to tribal participation in ICWA matters. *See*
22 *Id.* at 379-80.
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1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 21st day of May, 2018.

4 by: 

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