

Hon. Ann A. Scott Timmer, Chair
Attorney Regulation Advisory Committee
Arizona Supreme Court
1501 W. Washington St.
Phoenix, AZ 85007

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
) Supreme Court No. R-20-0003
)
PETITION TO AMEND RULES OF) Comment of the Attorney Regulation
THE SUPREME COURT OF) Advisory Committee
ARIZONA: RULE 39)

The Attorney Regulation Committee (ARC) is tasked with reviewing rules governing attorney admissions and to “make recommendations to the Supreme Court on how these rules of the attorney regulation system can be revised...” [Supreme Court Administration Order 2011-44.] ARC supports Rule Petition R-20-0003 because it follows the Access to Justice strategic agenda of the Arizona Supreme Court.

The Federal Indian Child Welfare Act (ICWA), creates a right for tribal governments to participate in Arizona child custody proceedings but provides no funding to exercise that right. The presence of an attorney for an Indian nation from another state in an applicable ICWA case aids the Juvenile Court. The proposed amendment to Arizona Supreme Court Rule 39 is narrowly limited within the proposed rule change.

The rule modification proposed states that a non-member attorney seeking to appear in an Arizona Court could only appear “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.”


Rule 8, Ariz. R. P. Juv. Ct., states that all provisions of ICWA govern juvenile proceedings subject to ICWA. Multiple court proceedings are covered by ICWA. These include: incorrigible child custody [A.R.S. §§ 8-201(19), 8-341(A)(2); Ariz. R. P. Juv. Ct., Rule 8]; terminations of parental rights [A.R.S. §§ 8-531 to -544; Ariz. R. P. Juv. Ct. 66]; Adoptions and pre-adoptive placements [A.R.S. §§ 8-101 to -135; Ariz. R. P. Juv. Ct. 84]; foster care placements [A.R.S. §§ 8-501 to -530]; and guardianships [A.R.S. §§ 8-801 to -892; Ariz. R. P. Juv. Ct. 63].

Judges in Juvenile Court undergo required training to understand the proceedings to which ICWA applies, the proper parties to an ICWA case, those parties’ respective burdens of proof, and the benefits of collaborating with the Department of Child Safety and the child’s tribe in ICWA cases. Under the proposed rule modifications, the Indian child’s tribe would be required to submit a pleading to the court seeking to intervene. The modification mandates that the non-member attorney seeking to appear for the tribe must file a motion to appear with the court in which the proceeding is pending. That attorney’s duties are well defined and limited to the ICWA case.

The presence of such a non-member attorney for that Indian nation would assist the court proceeding, not hinder it. Access to justice would be improved by eliminating the financially burdensome admission fee per case and associate counsel requirements of the current rule and would permit appearances only in ICWA cases.

The Attorney Regulation Committee supports Petition R-20-0003.

RESPECTFULLY SUBMITTED this **21st** day of April, 2020.



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