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WASHINGTON STATE  
SUPREME COURT

Bob Ferguson

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April 30, 2018

Supreme Court of Washington State  
Office of Legal Services and Appellate Court Support  
Administrative Office of the Courts  
P.O. Box 41174  
Olympia, WA 98504-1170

**RE: Admission and Practice Rule 8 – Proposed Change**

Dear Honorable Supreme Court Justices:

I write on behalf of the Attorney General's Office supporting the proposed change to Admission and Practice Rule (APR) 8, consistent with our office's prior letters of support. This proposed rule change will assist federally recognized Tribes in prompt and meaningful participation in child custody proceedings involving Indian children, helping courts to make well-informed, child-centered decisions.

The Attorney General's Office represents the Department of Social and Health Services Children's Administration in dependency, termination, and Title 13 guardianship cases statewide. In fiscal year 2017, our office initiated dependency cases for over 4,500 children and filed petitions to achieve permanency for over 2,200 children.

In child custody proceedings such as dependency and termination of parental rights cases, the Indian child's Tribe has the right to intervene and participate in the proceeding when it involves an Indian child as defined under the state and federal Indian Child Welfare Acts (ICWA). 25 U.S.C. § 1911(c); RCW 13.38.090. However, Indian children do not always reside in the state where their Tribe is located. For those children whose Tribes are located out-of-state, some courts may require the Tribe to participate through a non-attorney representative unless or until an attorney representing the Tribe completes the current pro hac vice process under APR 8.

Going through the normal pro hac vice process can be problematic in dependency cases because they involve quick judicial decision-making; the first hearing on placement of the child occurs within 72 hours of the child's removal from home. Given the emergent nature of dependency cases, the current pro hac vice process under APR 8 may exclude out-of-state Tribes from appearing through an attorney in hearings at the beginning of dependency cases. While this first out-of-home placement decision is important in all dependency cases, it is especially important



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to have input from a child's Tribe on this decision for Indian children because ICWA specifies an order of placement preferences but allows courts to depart from it if the Tribe has adopted a different order of preference. In these cases, meaningful Tribal participation, especially in emergent hearings such as shelter care hearings, can aid the court in making placement decisions that comport with ICWA.

Moreover, the expense imposed by following the current pro hac vice process under APR 8 can be a barrier to some Tribes' participation through an attorney. It is in Indian children's best interests to remove these barriers so their Tribe(s) can participate in their child custody proceedings. As a party to the child custody proceeding, like other parties, out-of-state Tribes should be able to file motions and present issues for resolution by the juvenile court. Early resolution of potentially disputed issues, such as placement, visitation, or services is in the best interests of children involved in Title 13 child custody proceedings.

In short, on behalf of the Washington Attorney General's Office, I want to express our continued support for the proposed change to APR 8.

Thank you for your consideration.



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cc: Kristen Mitchell, Deputy Attorney General  
Carrie Hoon Wayno, Senior Counsel  
Frona Woods, Senior Counsel