

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

"Putting Our People First"

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

April 24, 2018

Via Electronic Mail: supreme@courts.wa.gov

Washington Clerk of the Supreme Court
Attn: Ms. Carlson
P.O. Box 40929
Olympia, WA 98504-0929

Re: Written Comments prepared by the Gila River Indian Community on the Proposed Rules Regarding Washington's Non-member Lawyer Licenses to Practice Law Exception in Indian Child Welfare Act cases

Dear Ms. Carlson,

The Gila River Indian Community (the "Community") hereby respectfully submits the following comments regarding the Nonmember Lawyer Licenses to Practice Law exception in Indian Child Welfare Act ("ICWA") cases, specifically the proposed amendments to Admission and Practice Rule 8 ("APR8").

I. Gila River Indian Community

The Community is a federally recognized Indian tribe composed of the Akimel O'Otham (Pima) and Pee-Posh (Maricopa) tribes. The total enrollment of the Community is approximately 22,000 members. The Gila River Indian Reservation (the "Reservation") is located in southern Arizona and encompasses nearly 600 square miles in Pinal and Maricopa counties. The Community is both an urban and rural Community and shares a border with the cities of Phoenix, Coolidge, Casa Grande, Gilbert, Maricopa and Queen Creek.

The Community's close proximity to many State courts allows our attorneys and Tribal Social Services case managers to be actively involved in child dependency cases where Indian children are enrolled or eligible for enrollment with our Community. Currently, the Community is involved in approximately 31 ICWA cases within the State of Arizona; and approximately 14 out-of-state ICWA cases. It is the Community's priority to intervene in every ICWA case in which our children and families are involved.

As a Community, we take great pride in becoming involved in State dependency cases as early as possible so that we may identify ICWA-compliant placements, establish contacts with all parties involved, and work with State agencies to ensure that the best interests of our children are being addressed.

525 West Gu u Ki • P.O. Box 97 • Sacaton, Arizona 85147

Telephone: 520-562-9841 • Fax: 520-562-9849 • Email: executivemail@gric.nsn.us

II. Proposed Rules

The Community very much supports the implementation of the proposed practice rule which seeks to establish the legacy and spirit of ICWA and to ensure consistency in implementation of ICWA across all Washington state child custody proceedings.

Originally, Congress enacted ICWA in 1978 (Public Law 95-608) after hearings which found that an alarmingly high percentage of Indian families had been broken up when public and private agencies subjected Indian children to unwarranted removal, many of whom were eventually placed in non-Indian foster and adoptive homes and institutions.

ICWA's purpose is to protect the best interests of Indian children and to promote stability and security for tribal communities and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in homes or institutions which will reflect the unique values of Indian culture. Federal policy recognizes that, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

Providing an exception for tribal representatives in Indian Child Welfare Act cases eases financial and practical burdens on tribal practitioners. The high costs and requirements of retaining or associating with local counsel can make meaningful participation and appearing in a timely manner for child welfare cases very difficult. In all child welfare matters, time is of the essence. To protect Indian children's tribal interests, tribes and their attorneys must be able to intervene quickly, as a matter of right, and be protected from unauthorized practice of law allegations. The Community supports APR8 in general and offers several comments:

The proposed rule makes sense in light of the law. Washington has implemented the Washington State Indian Child Welfare Act, RCW §13.38.010 *et seq.* Stating its intent in implementing its Indian Child Welfare Act, the Washington legislature found:

“that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe.” RCW § 13.38.030.

Washington's Indian Child Welfare Act affords the right of tribes, as parties, to examine reports and other documents. RCW § 13.38.120. This, combined with the right to intervene in RCW § 13.38.090, indicates Washington's commitment to ensuring full participation by tribes and makes the currently proposed amendment the next logical step toward the legislature's goals by increasing tribal access to Washington's dependency court process. Although, the requirement of notifying the Washington's State Bar does appear to be an added step not required in many jurisdictions, the other revisions are supported by the Community.

The proposed rule is necessary because reducing costs and procedural requirements for out-of-state tribes appearing in Washington facilitates early participation by tribes, which increases the likelihood of compliance with ICWA and better outcomes for Indian children. Early tribal


participation in ICWA cases increases compliance with ICWA because tribal ICWA representatives are often more knowledgeable about ICWA than State attorneys, particularly in areas with fewer Indian families.

In Washington, 1.5% of the state's children are American Indian or Alaska Native but 6.3% of the children in Washington's foster care system are American Indian or Alaska Native (AI/AN).¹ Conversely, ICWA cases make up 100% of the cases assigned to the Community's ICWA attorney. Assuming most tribal ICWA attorneys have a similar ratio of ICWA cases, having a tribal ICWA attorney participate early in State child welfare cases gives the court the guidance of an experienced and knowledgeable ICWA practitioner that is often lacking in State attorneys who do not utilize ICWA every day. Thus, ICWA compliance is more likely to occur when the attorneys presenting the ICWA to the courts are the ones with the most knowledge of the law and can participate without hindrances to early participation.

Additionally, only a fraction of the 1.5% AI/AN children in Washington belong to tribes outside of the state. Thus, the amount of attorneys that would potentially practice in Washington under the proposed rule amendment would be very few. And, the amount of potential financial loss to the State Bar would be similarly fractional, in contrast to the financial burden on tribes who have children in states where there are no fee waivers, which can be extremely costly.

On behalf of the Gila River Indian Community, thank you for the opportunity to comment on this proposed rule. We very much support the issuance of this proposed rule and appreciate you hearing our concerns and urge you to adopt rules that support ICWA's purpose of protecting the rights of Indian children, families and tribes. Thank you.

Very truly yours,


for
Stephen R. Lewis, Governor
Gila River Indian Community

¹ Woods, S. & Summers, A. (2016). Technical assistance bulletin: Disproportionality rates for children of color in foster care (Fiscal Year 2014). National Council of Juvenile and Family Court Judges: Reno, NV.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 25, 2018 3:06 PM
To: Tracy, Mary
Subject: FW: Gila River Indian Community's Comments Proposed Amendments to APR8
Attachments: GRIC's Comments on APR8 ICWA Exception.pdf

Forwarding.

From: Mandy Cisneros [mailto:Mandy.Cisneros@gric.nsn.us]
Sent: Wednesday, April 25, 2018 2:40 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Gila River Indian Community's Comments Proposed Amendments to APR8

To the Honorable Washington Supreme Court,

The Gila River Indian Community respectfully submits its comments in support of the proposed amendments to the Admission for Practice Rule 8. Please see the attached letter from Governor Stephen R. Lewis, signed by Lt. Governor Robert Stone. Thank you for presenting this amendment and reviewing comments.

Best,

Mandy Cisneros, Assistant General Counsel
Office of General Counsel
Gila River Indian Community
Phone: (520) 562-9760
Cell: (520) 610-9474
Email: mandy.cisneros@gric.nsn.us

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by e-mail and destroy all copies of the original message.

This message contains confidential information and is intended only for the individual(s) named. If you are not the named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by e-mail if you have received the e-mail by mistake and permanently delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.