



April 10, 2018

Clerk of the Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
Sent via email [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

**Re: Proposed APR 8 Amendment: Limited Admissions**

Dear Honorable Justices of the Washington Supreme Court,

I am the Director of the Indian Law Clinic at Michigan State University College of Law, and in that role, I run the ICWA (Indian Child Welfare Act) Appellate Project. The ICWA Appellate Project provides high quality research and technical assistance to tribes faced with an ICWA appeal in state court. The Project provides this service for free to tribes and is partly funded to do so by Casey Family Programs. Because this service is free, and because we at times draft briefs for tribes, a large cost of our work is state pro hac vice fees. In addition, finding local counsel to associate with at the appellate level can be particularly difficult and also costly. As such, I am writing this letter in support of the amendment to APR 8 to allow attorneys to waive pro hac fees and association of counsel.

In addition to our appellate work, we are contacted frequently by lawyers for tribes in one state trying to find local counsel in another state. Finding local attorneys for these cases can hours of time and research and finding local attorneys with familiarity with ICWA can be nearly impossible. While we maintain a database of attorneys willing to help in pro hac situations, it is far from complete. In 2017 we supported eleven different tribal attorneys in finding pro hac local counsel in another state. In 2018 alone, we have already assisted two out of state tribal attorneys with pro hac issues in Washington. One specifically is concerned about the pro hac vice fee. A rule change such as this one is needed to ensure the high quality representation of tribes by their own in-house attorneys in ICWA cases. It also ensures that parents and Indian children receive the protections ICWA provides—protections that are often not provided if the tribe is not able to participate.

In addition to our legal work, we also collect data on cases that are appealed across the country. These are a tiny fraction of the total trial level ICWA cases in state courts, but the easiest ones to collect data on. While many of the cases involve tribes in the states where the tribe is located, excluding California, 27 cases involved tribes that were not located in the state where the case was appeal. In California, 27 different tribes located outside of California were involved in cases that went up on appeal. So far in 2018, eight different tribes were involved in appeals in different states, excluding California.

Finally, we would like to note that this proposed change to the Washington rules is not unprecedented. While some states have already adopted this particular change for ICWA attorneys, including Michigan, MCR 8.126(B), Oregon, UTCR 3.170, and Nebraska, Neb. Rev. Stat. 43-1504(3), and other states have current proposals up for comment, including California and



Arizona, *see* State Pro Hac Rules for ICWA Cases, <https://turtletalk.wordpress.com/icwa/state-pro-hac-vice-rules-for-icwa-cases/>, many states *also* provide waivers of *pro hac vice* licensing requirements for military lawyer spouses. Since military servicemen and women constantly relocate, waivers of *pro hac vice* licensing requirements allow military lawyer spouses to relocate with their families and still practice law in new states. In June of 2017, Ohio became the twenty-fifth state to waive *pro hac vice* licensing requirements for military lawyer spouses. *See* Military Spouse J.D. Network, <https://www.msjudn.org/2017/06/ohio-adopts-milspouse-licensing/>. Thank you for your time and consideration of this rule change. I am more than happy to answer any questions or submit additional testimony regarding the issue of representation in ICWA cases across the country.

Sincerely,

/s/ Kathryn E. Fort  
Michigan Bar Number P69451  
Director  
Indian Law Clinic  
Michigan State University College of Law  
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## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Tuesday, April 10, 2018 11:57 AM  
**To:** Tracy, Mary  
**Subject:** FW: Comment in Support APR 8  
**Attachments:** WA\_ProHacVice\_Letter\_040918.pdf

Forwarding. I responded received.

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**From:** Fort, Kathryn [mailto:fort@law.msu.edu]  
**Sent:** Tuesday, April 10, 2018 11:56 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment in Support APR 8

Good afternoon,

Please find attached my comment in support of the proposed APR 8 Amendment.

Thank you,

Kate

Kathryn (Kate) E. Fort  
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Indian Law Clinic  
ICWA Appellate Project  
Indigenous Law and Policy Center  
Michigan State University College of Law  
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