



# **Board of Governors Meeting**

## **Public Session Late Materials**

**November 15-16, 2017  
WSBA Conference Center  
Seattle, Washington**

**WASHINGTON STATE  
BAR ASSOCIATION**

Regulatory Services Department

November 15, 2017

Justice Charles W. Johnson  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

RE: Request for Preliminary Feedback Regarding Suggested APR 8 Amendment

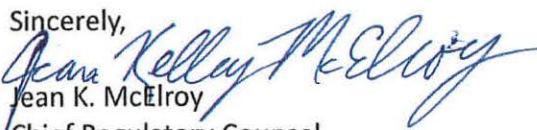
Dear Justice Johnson:

Thank you for referring for our review the suggested amendment to Admission and Practice Rule (APR) 8, to add a new subsection (h), which was proposed by Kristy Healing. To the best of my knowledge, the WSBA had not been previously consulted on this suggested amendment.

We have reviewed the suggested amendment and the supportive letters that we received from the Washington State Office of Civil Legal Aid, the office of the Attorney General of Washington, the Kootenai Tribe of Idaho, the Northwest Indian Bar Association, the Stillaguamish Tribe of Indians, and the Center for Children & Youth Justice. We have not received any letters or other feedback opposing the suggested amendments. We have not performed any independent outreach to seek feedback. I also communicated with Kristy Healing by email to discuss potential revisions to her suggested amendment and to advise her of the most recent version of APR 8, and also reviewed a revised version of her suggested amendment.

We have reviewed the suggested amendments primarily from the standpoint of whether the proposal as written would be workable within the WSBA's system for processing *pro hac vice* motions. Because the process proposed by the amendments essentially would be consistent with the approach that is available for full-time military lawyers, the process itself would be workable from our standpoint if the Court finds it to be the best approach. For that reason, we do not oppose the suggested amendment.

Sincerely,

  
Jean K. McElroy  
Chief Regulatory CounselCc: Bradford E. Furlong, WSBA President  
Paula C. Littlewood, WSBA Executive Director  
Douglas J. Ende, WSBA Chief Disciplinary Counsel  
Kristy Healing, Legal Department, Stillaguamish Tribe of Indians

The Supreme Court  
State of Washington

OCT 20 2017

CHARLES W. JOHNSON  
JUSTICE  
TEMPLE OF JUSTICE  
POST OFFICE BOX 40929  
OLYMPIA, WASHINGTON  
98504-0929



(360) 357-2020  
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E-MAIL J\_C.JOHNSON@COURTS.WA.GOV

October 18, 2017

Ms. Paula Littlewood  
Executive Director  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2539

Dear Ms. Littlewood:

Enclosed are the materials that were submitted by Ms. Kristy Healing with the support of the Commission on Children in Foster Care, suggesting an amendment to Admission and Practice Rule 8. We are unaware of whether the WSBA had any role or awareness of the APR 8 proposal, and if the WSBA has any reaction to the proposed rule. Since the suggested amendment affects the APRs, the Supreme Court Rules Committee would like the WSBA to review the request and give any preliminary feedback it may have.

The next Supreme Court Rules Committee Meeting is scheduled for November 20, 2017. I would appreciate the WSBA's prompt response on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles W. Johnson".

Charles W. Johnson, Chair  
Supreme Court Rules Committee

Enclosures

cc: Mr. Douglas J. Ende, WSBA Chief Disciplinary Counsel  
Ms. Jean McElroy, WSBA General Counsel

## APR 8 COVER SHEET

### Suggested Amendment to WASHINGTON STATE COURT RULES: ADMISSION FOR PRACTICE RULES

Amend APR 8: Limited Admissions

Submitted by Kristy Healing

A. Name of Proponent: Kristy Healing, Commissioner, Washington State Supreme Court Commission on Children in Foster Care

B. Spokesperson: Kristy Healing

C. Purpose: APR 8 governs when lawyers admitted to practice law in other states or US territories may engage in the limited practice of law in Washington State. While the current law addresses various exceptions for indigent representation, military lawyers, and others, it fails to address the unique circumstance of a tribal attorney appearing as a matter of right under the Indian Child Welfare Act under federal law.

The Indian Child Welfare Act ("ICWA") 25 USC § 1901 *et seq.* sets minimum standards for the treatment of Indian children in state child custody proceedings and gives an Indian tribe the right to intervene and participate in any state child custody proceeding involving an Indian child from that tribe. Washington State adopted the Washington Indian Child Welfare Act ("WICWA") in 2011 to ensure state law provides the same rights of participation and intervention as the federal law. Chapter 13.38 RCW. Because tribes intervene in cases wherever the tribal children are, tribal attorneys are forced to appear in states where they are not licensed. While APR 8 is offered as solution, it has significant limitations, including the right of the state to deny the application. In addition, the high cost and requirements of local co-counsel can make appearing in a timely manner for a child welfare case nearly impossible. In child welfare matters, time is of the essence. To protect Indian children's tribal interests, tribes and their attorneys must be able to intervene as a matter of right and be protected from unauthorized practice of law charges.

Although many tribes receive federal grants for child and family services, those funds cannot be used for legal representation or for legal fees for litigation. See, e.g., 25 U.S.C. § 1931(a)(8); 25 CFR §§ 89.40-41. Other federal moneys for social services are similarly restricted and cannot be used to pay for legal services for litigation. 25 U.S.C. §§ 450 *et seq.* This court rule amendment provides a solution to these funding restrictions. The Washington Court Rules ensure that those who appear in court, including Indian children, receive due process and equal treatment under the law. Accordingly, this amendment improves the welfare of Indian children in ICWA custody proceedings by ensuring that tribes can meaningfully participate in Washington child custody proceedings related to their children.

In addition, it is important to note that this amendment to the Washington Court Rules is not unprecedented. Both Oregon and Michigan recently adopted waivers for *pro hac vice* requirements for attorneys participating in ICWA cases. Michigan's amended rule MCR 8.126 goes into effect September 1, 2017. Oregon's amended rule UTCR 3.170 goes into effect January 1, 2018. The state of Nebraska has codified this in their state ICWA law at Neb. Rev. St. 43-1504(3) ("The Indian child's tribe or tribes and their counsel are not required to associate with local counsel or pay a fee to appear *pro hac vice* in a child custody proceeding under the Nebraska Indian Child Welfare Act.")

Furthermore, many courts addressing the issue have held that a requirement that an Indian Tribe be represented by an attorney licensed in the state court is pre-empted by ICWA. See e.g., *J.P.H. v. Fla. Dep't of Children & Families*, 39 So.3d 560 (Fla. Dist. Ct. App. 2010) (*per curiam*); *State v. Jennifer M.* (In re Elias L.), 767 N.W.2d 98, 104 (Neb. 2009); *In re N.N.E.*, 752 N.W.2d 1, 12 (Iowa 2008); *State ex rel.*

Juvenile Dep't of Lane Cty. v. Shuey, 850 P.2d 378 (Or. Ct. App. 1993). The Nebraska Supreme Court noted that the Tribe's representative, while not a licensed attorney in Nebraska, was familiar with ICWA's procedural and substantive requirements, which mitigated the State's concern in having parties represented by counsel, and that the Tribe had authorized her to speak for it. The holding says:

"We conclude that tribal participation in state custody proceedings involving Indian children is essential to achieving the goals of ICWA. The tribal interests represented by ICWA and the Tribes right to intervene under § 1911(c) and § 43-1504(3) outweigh the State interest represented by § 7-101. Thus we determine that federal law preempts the requirement of § 7-101 that the Tribe be represented by a Nebraska licensed attorney in these proceedings."

State v. Jennifer M. (In re Elias L.), 767 N.W.2d 98, 104 (Neb. 2009) at 104. The state of Nebraska has since codified this provision. Neb. Rev. St. 43-1504(3). In order to prevent Washington Courts and parties in ICWA cases from having to expend time and resources litigating on a case by case basis whether an out of state Indian Tribe may send its tribal attorney as a representative, the proposed amendment would resolve the issue and preserve the due process rights of the parties in the ICWA case.

This proposed amendment is necessary because under ICWA Indian Tribes have a right to participate in proceedings, and the rule as written presents significant barriers to out of state Tribes seeking to timely intervene in an ICWA case. The Washington State Supreme Court Commission on Children in Foster Care is in support of the proposed amendment.

The Proponent requests that this proposed amendment be considered expeditiously.

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PROPOSED AMENDMENT

APR 8  
LIMITED ADMISSIONS

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet the requirements of rule 1(b) or 3(c), may engage in the limited practice of law in this state as provided in this rule.

(b) Exception for Particular Action or Proceeding. A member in good standing of, and permitted to practice law in, the Bar of any other state or territory of the United States or of the District of Columbia, or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f), may appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Board of Governors, which shall include certification by the lawyer seeking admission under this rule and the associated Washington lawyer that the requirements of this rule have been complied with, and shall include an indication on which date the fee and assessment required in part (2) were paid, or indicating that the fee and assessment were waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Washington State Bar Association as is required in part (2) below, together with the required fee and assessment, unless waived pursuant to part (2), and to adverse parties as the court or tribunal shall direct. Payment of the required fee and assessment shall only be necessary upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Washington State Bar Association accompanied by, (i) a nonrefundable fee in each case in an amount equal to the license fee required of active lawyers, and (ii), the Lawyers' Fund for Client Protection assessment as required of active members under these rules. Payment of the fee and assessment shall only be necessary upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington counsel shall be jointly responsible for payment of the fee and assessment. The fee and assessment shall be waived for a lawyer providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f). The Washington State Bar Association shall maintain a public record of all motions for admission pursuant to this rule.

(3) No member of the Bar Association shall lend his or her name for the purpose of, or in any way assist in, avoiding the effect of this rule.

(c) Exception for Indigent Representation. A member in good standing of the Bar of another state or territory of the United States or of the District of Columbia, who is eligible to apply for

1 admission under rule 3 in this state, while rendering service in either a bar association or  
2 governmentally sponsored legal services organization or in a public defender's office or similar  
3 program providing legal services to indigents and only in that capacity, may, upon application and  
4 approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation,  
5 or administrative proceeding, subject to the following conditions and limitations:  
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7  
8 (1) Application to practice under this rule shall be made to the Board of Governors, and the  
9 applicant shall be subject to the Rules for Enforcement of Lawyer Conduct and to the Rules of  
10 Professional Conduct.

11  
12 (2) In any such matter, litigation, or administrative proceeding, the applicant shall be associated  
13 with an active member of the Bar Association, who shall be the lawyer of record and responsible  
14 for the conduct of the matter, litigation, or administrative proceeding.  
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16 (3) The applicant shall either apply for and take the first available bar examination after the  
17 date of the applicants admission to practice under this rule, or, already have filed an application for  
18 admission by motion or Uniform Bar Exam transfer.  
19

20 (4) The applicants right to practice under this rule (i) may be terminated by the Supreme Court  
21 at any time with or without cause, or (ii) shall be terminated automatically for failure to take or pass  
22 the required bar examination, or (iii) shall be terminated for failure to become an active member of  
23 the Bar Association within 60 days of the date the bar examination results are made public, or (iv)  
24 shall be terminated automatically upon denial of the application for admission, or (v) in any event,  
25 shall be terminated within 1 year from the original date of the applicants admission to practice law  
26 in this state under this rule.  
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29 (d) Exception for Educational Purposes. A lawyer who is enrolled and in good standing as a  
30 postgraduate student or as a faculty member in a program of an approved law school in this state,  
31 involving clinical work in the courts or in the practice of law, may apply to the Board of Governors  
32 for admission to the limited practice of law by paying an investigation fee and by presenting  
33 satisfactory proof of (i) admission to the practice of law and current good standing in any state or  
34 territory of the United States or the District of Columbia, and (ii) good moral character.  
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37 (1) Upon approval of the application by the Board of Governors, the applicant shall take the  
38 Oath of Attorney, and the Board of Governors shall transmit its recommendation to the Supreme  
39 Court which shall enter an order admitting the applicant to the limited practice of law under this  
40 section.  
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42 (2) The practice of an applicant admitted under this section shall be (i) limited to the period of  
43 time the applicant actively participates in the program, (ii) limited to the clinical work of the  
44 particular course of study in which the applicant is enrolled or teaching, (iii) free of charge for the  
45 services so rendered, and (iv) subject to the Rules of Professional Conduct and the Rules for  
46 Enforcement of Lawyer Conduct.  
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1 (3) An applicant admitted under this section shall be deemed an active member of the Bar  
2 Association only for the purpose of serving as a supervising lawyer under rule 9, and for no other  
3 purpose.  
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5 (4) When the applicant ceases actively to participate in the program, the law school dean shall  
6 immediately notify the Bar Association and the Clerk of the Supreme Court so that the applicants  
7 right to practice may be terminated of record.  
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9 (5) The right to practice under this rule shall terminate three years from the date of admission  
10 under this rule.  
11

12 (e) Exception for Emeritus Pro Bono Membership. A lawyer admitted to the practice of law in  
13 a state or territory of the United States or the District of Columbia, including Washington State,  
14 may apply to the Board of Governors for a limited license to practice law as an emeritus pro bono  
15 member in this state when the lawyer is otherwise fully retired from the practice of law. An  
16 emeritus pro bono member shall provide legal services in Washington State for a qualified legal  
17 services provider as defined in part (2) below. The lawyer shall apply by (i) filing an application in  
18 the form and manner that may be prescribed by the Board of Governors; (ii) presenting satisfactory  
19 proof of admission by examination to the practice of law and current good standing in any state or  
20 territory of the United States or the District of Columbia, provided that if a disciplinary sanction has  
21 been imposed upon the lawyer within 15 years immediately preceding the filing of the application  
22 for emeritus status, the Board of Governors shall have the discretion to accept or reject the  
23 application; (iii) presenting satisfactory proof of active legal experience as defined in APR 3(b) for  
24 at least 5 of the 10 years immediately preceding the filing of the application for lawyers admitted in  
25 Washington and for at least 10 of the 15 years immediately preceding the filing of the application  
26 for lawyers only admitted to practice in jurisdictions other than Washington; (iv) filing certification  
27 from a qualified legal services provider as defined in part (2) below that the applicant's practice of  
28 law will comply with the terms of this rule; (v) paying such fee as may be set by the Board of  
29 Governors with approval of the Supreme Court; (vi) complying with training requirements as may  
30 be prescribed by the Board of Governors; and (vii) furnishing whatever additional information or  
31 proof that may be required in the course of investigating the applicant.  
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36 (1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath  
37 of Attorney, pay the current year's annual membership fee in the amount required of inactive  
38 members, and the Board of Governors shall transmit its recommendation to the Supreme Court  
39 which may enter an order admitting the lawyer to the limited practice of law under this section.  
40 Emeritus pro bono membership shall be for one year subject to annual renewal as provided by the  
41 Board of Governors.  
42

43 (2) The practice of a lawyer admitted under this section shall be limited to providing legal  
44 service for no fee through a qualified legal services provider; or serving as an unpaid governing or  
45 advisory board member or trustee of or providing legal counsel or service for no fee to a qualified  
46 legal services provider. A qualified legal services provider is a not-for-profit legal services  
47 organization in Washington State whose primary purpose is to provide legal services to low income  
48 clients. The prohibition against compensation for emeritus pro bono members shall not prevent a  
49 qualified legal services provider from reimbursing an emeritus pro bono member for actual  
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1 expenses incurred while rendering legal services under this rule. A qualified legal services provider  
2 shall be entitled to receive all court awarded attorney's fees for any representation rendered by the  
3 emeritus pro bono member.  
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5 (3) A lawyer admitted under this section shall pay to the Washington State Bar Association an  
6 annual license fee in the amount required of inactive members.  
7

8 (4) The practice of a lawyer admitted under this section shall be subject to the Rules of  
9 Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and  
10 rules governing lawyers admitted to the bar of this state. Jurisdiction shall continue whether or not  
11 the lawyer retains the limited license and irrespective of the residence of the lawyer.  
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14 (5) Emeritus pro bono members shall be exempt from compliance with rule 11 concerning  
15 Continuing Legal Education. However, prior to engaging in practice as an emeritus pro bono  
16 member, the lawyer must complete a training course or courses as approved by the Board of  
17 Governors.  
18

19 (6) An emeritus pro bono member shall promptly report to the Washington State Bar  
20 Association a change in membership status in a state or territory of the United States or District of  
21 Columbia where the applicant has been admitted to the practice of law or the commencement of any  
22 formal disciplinary proceeding in any jurisdiction where the lawyer has been admitted to the  
23 practice of law.  
24

25 (7) The limited license granted under this section shall be automatically terminated when the  
26 lawyer's practice fails to comply with part (2) above, the lawyer fails to comply with the terms of  
27 this rule, or on suspension or disbarment in a state or territory of the United States or District of  
28 Columbia where the applicant has been admitted to the practice of law. If the lawyer whose limited  
29 license is terminated was previously admitted to practice in Washington, the lawyer shall be  
30 transferred to inactive membership status upon termination.  
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33 (f) Exception for House Counsel. A lawyer admitted to the practice of law in any jurisdiction  
34 may apply to the Board of Governors for a limited license to practice law as in-house counsel in this  
35 state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for  
36 profit corporation, including its subsidiaries and affiliates, association, or other business entity, that  
37 is not a government entity, and whose lawful business consists of activities other than the practice  
38 of law or the provision of legal services. The lawyer shall apply by:  
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41 (i) filing an application in the form and manner that may be prescribed by the Board of  
42 Governors;  
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44 (ii) presenting satisfactory proof of (I) admission to the practice of law and current good  
45 standing in any jurisdiction; and (II) good moral character and fitness to practice;  
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47 (iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in  
48 this state attesting to the fact the applicant is employed as a lawyer for the employer, including its  
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1 subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this  
2 rule;

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4 (iv) paying the application fees required of lawyer applicants for admission under APR 3; and

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6 (v) furnishing whatever additional information or proof that may be required in the course of  
7 investigating the applicant.  
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10 (1) Upon approval of the application by the Board of Governors, the lawyer shall take the Oath  
11 of Attorney, pay the current year's annual membership fee and the Board of Governors shall  
12 transmit its recommendation to the Supreme  
13 Court which may enter an order admitting the lawyer to the limited practice of law under this  
14 section.  
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16 (2) The practice of a lawyer admitted under this section shall be limited to practice exclusively  
17 for the employer, including its subsidiaries and affiliates, furnishing the affidavit required by this  
18 rule and shall not include (i) appearing before a court or tribunal as a person admitted to practice  
19 law in this state, (ii) offering legal services or advice to the public or (iii) holding oneself out to be  
20 so engaged or authorized.  
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22  
23 (3) All business cards and employer letterhead used by a lawyer admitted under this section  
24 shall state clearly that the lawyer is admitted to practice in Washington as in-house counsel.  
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26 (4) A lawyer admitted under this section shall pay to the Washington State Bar Association an  
27 annual license fee in the maximum amount required of active members and the Lawyers' Fund for  
28 Client Protection assessment.  
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30 (5) The practice of a lawyer admitted under this section shall be subject to the Rules of  
31 Professional Conduct, the Rules for Enforcement of Lawyer Conduct, and to all other laws and  
32 rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall  
33 continue whether or not the lawyer retains the limited license and irrespective of the residence of  
34 the lawyer.  
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37 (6) The lawyer shall promptly report to the Washington State Bar Association a change in  
38 employment, a change in membership status in any jurisdiction where the applicant has been  
39 admitted to the practice of law or the commencement of any formal disciplinary proceeding in any  
40 jurisdiction where the applicant has been admitted to the practice of law.  
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42 (7) The limited license granted under this section shall be automatically terminated when  
43 employment by the employer furnishing the affidavit required by this rule is terminated, the lawyer  
44 has been admitted to the practice of law pursuant to any other provision of the APR, the lawyer fails  
45 to comply with the terms of this rule, the lawyer fails to maintain current good standing in at least  
46 one other jurisdiction where the lawyer has been admitted to the practice of law, or on suspension  
47 or disbarment for discipline in any jurisdiction where the lawyer has been admitted to the practice  
48 of law. If a lawyer's employment is terminated but the lawyer, within three months from the last  
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1 day of employment, is employed by an employer filing the affidavit required by (iii), the license  
2 shall be reinstated.  
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4 (8) A lawyer admitted in another United States jurisdiction and authorized to provide legal  
5 services under this Rule may provide legal services in this jurisdiction for no fee through a qualified  
6 legal services provider, as that term is defined in APR 8(e)(2). If such services involve  
7 representation before a court or tribunal, the lawyer shall seek admission under APR 8(b) and any  
8 fees for such admission shall be waived. The prohibition against compensation in this paragraph  
9 shall not prevent a qualified legal services provider from reimbursing a lawyer authorized to  
10 practice under this rule for actual expenses incurred while rendering legal services under this pro  
11 bono exception. In addition, a qualified legal services provider shall be entitled to receive all court  
12 awarded attorney's fees for pro bono representation rendered by the lawyer.  
13

14  
15 (g) Exception for Military Lawyers. A lawyer admitted to the practice of law in a state or  
16 territory of the United States or of the District of Columbia, who is a full-time active duty military  
17 officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy,  
18 Marines, or Coast Guard, a Naval Legal Service Office or a Trial Service Office, located in the  
19 State of Washington, may, upon application and approval, appear as a lawyer and practice law  
20 before the courts of this state in any matter, litigation, or administrative proceeding, subject to the  
21 following conditions and limitations set forth in this rule. The applicant must be of good moral  
22 character and shall apply by (i) filing an application in the form and manner that may be prescribed  
23 by the Board of Governors; (ii) presenting satisfactory proof of admission by examination to the  
24 practice of law and current good standing as a member of the bar in any state or territory of  
25 the United States or the District of Columbia; (iii) complying with training requirements as set forth  
26 below; and (iv) furnishing whatever additional information or proof that may be required in the  
27 course of processing the application.  
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29  
30 (1) To qualify for admission to practice under this rule, an applicant must, prior to admission,  
31 complete at least 15 credit hours of approved continuing legal education on Washington practice,  
32 procedure, and professional responsibility.  
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34 (2) Military lawyers admitted to practice pursuant to this rule are not, and shall not represent  
35 themselves to be members of the Washington State Bar Association.  
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38 (3) The applicant's right to practice under this rule: (i) may be terminated by the Supreme Court  
39 at any time with or without cause, or (ii) shall be terminated when the military lawyer ends active  
40 duty military service in this state. The lawyer admitted under this rule and his or her supervisory  
41 Staff Judge Advocate or his or her Commanding Officer are responsible to advise the Washington  
42 State Bar Association of any change in status of the lawyer that may affect his or her right to  
43 practice law under this rule.  
44

45 (4) Military lawyers admitted pursuant to the rule may represent active duty military personnel  
46 in enlisted grades E-I through E-4 and their dependents in noncriminal matters to the extent such  
47 representation is permitted by the supervisory Staff Judge Advocate or Commanding Officer, Naval  
48 Legal Service Office or Commanding Officer, Trial Service Office. Other active duty military  
49 personnel and their dependents may be represented if approved by the Service Judge  
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1 Advocate General or his or her designee.

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3 (5) Military lawyers admitted pursuant to this section may not demand or receive any  
4 compensation from clients in addition to the military pay to which they are already entitled.

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6 (6) The practice of a lawyer admitted under this section shall be subject to the Rules of  
7 Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice  
8 Rules, and to all other laws and rules governing lawyers admitted to the bar of this state.  
9 Jurisdiction shall continue whether or not the lawyer retains the right to practice in Washington and  
10 irrespective of the residence of the lawyer.  
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12  
13 (h) Exception for Indian Child Welfare Cases. A member in good standing of, and permitted to  
14 practice law in, the Bar of any other state or territory of the United States or of the District of  
15 Columbia, may appear as a lawyer in an action or proceeding, and shall not be required to comply  
16 with the association of counsel and fee requirements of subsection (b) of this rule, if the applicant  
17 establishes to the satisfaction of the Court that:  
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19  
20 (1) The applicant seeks to appear in a Washington Court for the limited purpose of participating  
21 in a child custody proceeding as defined by RCW 13.38.040, pursuant to the Washington State  
22 Indian Child Welfare Act, Ch.13.38 RCW or by 25 U.S.C. § 1903, pursuant to the Indian Child  
23 Welfare Act of 1978, 25 U.S.C. § 1901 et seq.:  
24

25 (2) The applicant represents an Indian tribe as defined by RCW 13.38.040 or 25 U.S.C. § 1903;  
26 and,  
27

28 (3) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and  
29 participate in the state court proceeding and affirming that under tribal law (i) the child is a member  
30 or (ii) the child is eligible for membership and the biological parent of the child is a member.  
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## Margaret Shane

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**From:** Kristy Healing <khealing@stillaguamish.com>  
**Sent:** Tuesday, November 14, 2017 11:31 AM  
**To:** Hinchcliffe, Shannon  
**Cc:** Jennings, Cindy; Jean McElroy  
**Subject:** AMENDED Submission Proposed Rule Change APR 8  
**Attachments:** APR 8 Proposed Amendment WSBA Edits.docx

**Importance:** High

Ms. Hinchcliffe,

The Supreme Court had asked the WSBA to provide input on the proposed change to APR 8 which I submitted in July. After working with Jean McElroy from the WSBA, it was apparent that the submission needed to be edited for two reasons: (1) APR 8 had been amended *since* the submission of the proposed change and the proposal needed to be re-organized to conform to the current rule; and (b) to include a section at the request of the WSBA about notice being provided to the WSBA about any out of state attorney appearing on an ICWA case in Washington State.

I am hereby providing you with a copy of an amended proposal to amend APR 8. Please let me know if there is another process I should use to submit the edited proposal.

Thank you so much.

Sincerely,

Kristy Healing, WSBA # 42373  
Tribal Attorney & *tiłdxw bədbəda?* (ICW) Presenting Officer  
Legal Department  
Stillaguamish Tribe of Indians  
3322 - 236th St NE  
Arlington, WA 98223  
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**From:** Hinchcliffe, Shannon [<mailto:Shannon.Hinchcliffe@courts.wa.gov>]  
**Sent:** Thursday, July 27, 2017 2:42 PM  
**To:** Kristy Healing  
**Cc:** Jennings, Cindy  
**Subject:** Submission of proposed rule change to APR 8.

Ms. Healing,

I am the staff attorney assigned to support the Supreme Court Rules Committee. The clerk's office forwarded your submission which included a GR 9 cover sheet and proposed rule amendments to APR 8. Could I get an MS Word version of both of the attached for processing purposes? I find that when we try to convert .pdf's to WORD versions that inadvertent errors can occur. Thank you.

The Supreme Court Rules Committee meets again in October and I will update you on the status of your proposed rule when the committee has reviewed or taken action on it.

**Shannon Hinchcliffe** | Office of Legal Services and Appellate Court Support  
Administrative Office of the Courts | P.O. Box 41174 | Olympia, WA 98504-1170  
☎ (360) 357-2124 | ✉ [shannon.hinchcliffe@courts.wa.gov](mailto:shannon.hinchcliffe@courts.wa.gov) | 🌐 [www.courts.wa.gov](http://www.courts.wa.gov)

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PROPOSED AMENDMENT

APR 8  
LIMITED ADMISSIONS

(a) In General. Lawyers admitted to the practice of law in any state or territory of the United States or the District of Columbia or in any foreign jurisdiction, who do not meet the requirements of rule 1(b) or 3(c), may engage in the limited practice of law in this state as provided in this rule.

(b) Exception for Particular Action or Proceeding. A lawyer member in good standing of, and permitted to practice law in, the bar of any other state or territory of the United States or of the District of Columbia, or a lawyer who is providing legal services for no fee through a qualified legal services provider pursuant to rule 8(f), may appear as a lawyer in any action or proceeding only

(i) with the permission of the court or tribunal in which the action or proceeding is pending, and  
(ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal. The requirement in (ii) is waived for a lawyer who is a full-time active duty military officer serving in the office of a Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, or a Naval Legal Service Office or a Trial Service Office, located in the State of Washington.

(1) An application to appear as such a lawyer shall be made by written motion to the court or tribunal before whom the action or proceeding is pending, in a form approved by the Board of Governors, which shall include certification by the lawyer seeking admission under this rule and the associated Washington lawyer that the requirements of this rule have been complied with, and shall include an indication on which date the fee and assessment required in part (2) were paid, or indicating that the fee and assessment were waived pursuant to part (2). The motion shall be heard by the court or tribunal after such notice to the Washington State Bar Association as is required in part (2) below, together with the required fee and assessment, unless waived pursuant to part (2), and to adverse parties as the court or tribunal shall direct. Payment of the required fee and assessment shall only be necessary upon a lawyer's first application to any court or tribunal in the same case. The court or tribunal shall enter an order granting or refusing the motion, and, if the motion is refused, the court or tribunal shall state its reasons.

(2) The lawyer making the motion shall submit a copy of the motion to the Washington State Bar Association accompanied by,  
(A) a nonrefundable fee in each case in an amount equal to the license fee required of active lawyer members of the Bar, and  
(B), the Client Protection assessment as required of active lawyer members of the Bar.

(3) Payment of the fee and assessment shall only be necessary upon a lawyer's first motion to any court or tribunal in the same case. The associated Washington counsel shall be jointly responsible for payment of the fee and assessment. The fee and assessment shall be waived for:

1 (A) a lawyer providing legal services for no fee through a qualified legal services provider  
2 pursuant to rule 8(f).

3 (B) a lawyer rendering service for no fee in either a bar association or governmentally  
4 sponsored legal services organization or in a public defender's office or similar program providing  
5 legal services to indigents and only in that capacity, or

6 (C) a lawyer who is a full-time active duty military officer serving in the office of a  
7 Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard, a  
8 Naval Legal Service Office or a Trial Service Office, located in the State of Washington, and who is  
9 not receiving any compensation from clients in addition to the military pay to which they are  
10 already entitled.

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13 (4) The Bar shall maintain a public record of all motions for permission  
14 to practice pursuant to this rule.

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16 (5) No member of the Bar Association shall lend his or her name for the purpose of, or in any  
17 way assist in, avoiding the effect of this rule.

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20 (6) Exception for Indian Child Welfare Cases. A member in good standing of, and permitted to  
21 practice law in, the bar of any other state or territory of the United States or of the District of  
22 Columbia, may appear as a lawyer in an action or proceeding, and shall not be required to comply  
23 with the association of counsel and fee and assessment requirements of subsection (b) of this rule, if  
24 the applicant establishes to the satisfaction of the Court that:

25 (A) The applicant seeks to appear in a Washington Court for the limited purpose of  
26 participating in a child custody proceeding as defined by RCW 13.38.040, pursuant to the  
27 Washington State Indian Child Welfare Act, Ch.13.38 RCW or by 25 U.S.C. § 1903, pursuant to  
28 the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.;

29 (B) The applicant represents an Indian tribe as defined by RCW 13.38.040 or 25 U.S.C. §  
30 1903;

31 (C) The Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene  
32 and participate in the state court proceeding and affirming that under tribal law (i) the child is a  
33 member or (ii) the child is eligible for membership and the biological parent of the child is a  
34 member; and,

35 (D) The applicant has, or will within seven (7) days of appearing on the case, provided  
36 written notice to the Washington State Bar of their appearance in the case. Such written notice shall  
37 be by providing in writing the following information: the cause number and name of the case, the  
38 attorney's name, employer, and contact information, and the bar number and jurisdiction of the  
39 applicant's license to practice law.

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42 (c) **UNCHANGED**

43 (d) **UNCHANGED**

44 (e) **UNCHANGED**

45 (f) **UNCHANGED**

46 (g) **UNCHANGED**



# WASHINGTON STATE BAR ASSOCIATION

Board of Governors

## ACTIVITY REPORT

Rajeev Majumdar, Governor Second District  
September 2017 to October 2017

### SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

9/8/17	Travel to San Juan County for Skagit County Bar Association meeting of membership
9/14/17	Travel to Skagit for Skagit County Bar Association Mentor Mixer
9/21/17	Whatcom Women Lawyer's Event
9/22/17	South Asian Bar Association of Washington Annual Banquet
10/9/17	Travel to Skagit for Skagit State of the Judiciary Dinner
10/16-17 /17	Travel to Franklin-Benton County for local bar meeting
10/20/17	Whatcom County Bar/LAW Advocates Dinner
11/2/17	Skagit County VLP Beer & Justice

### LIAISON DUTIES:

9/13/17	Travel to Tacoma to address DSHS/DCS attorneys at annual CLE
9/22/17	Health Law Section Executive Committee Meeting
9/22/17	Travel to Seattle for South Asian Bar Association of Washington Banquet
10/5/17	Reach out meeting to Indian Law Section Executive
10/9/17	Follow up reach out to Indian Law Section Officer
10/14/17	Host Family Law Practitioner Meeting in Whatcom County
10/22/17	Host Small Cities Prosecutor Meeting in Whatcom County
10/24/17	Telecon w/ Indian Law Section



**WSBA and BOG COMMITTEE MEETINGS:**

Week of 7/10/17	Coordinating w/ SU and Diversity Committee for encore Islamaphobia CLE
7/19/17	WSBA Diversity Committee meeting
9/27-29/17	WSBA BOG meeting/ APEX
10/18/17	WSBA Referendum Taskforce
10/21/17	WSBA Diversity Comm. meeting
10/23/17	Telecon w/ President Furlong re: Bridges removal from committee