



BOULDER, CO-The Native American Rights Fund recently won a lower court case in the State of Colorado to enforce the absolute and unconditional right of an Indian tribe to intervene in a child custody proceeding under the Indian Child Welfare Act.

In the state of Colorado, an Indian child eligible for membership in the Osage Nation of Oklahoma was involved in a child custody proceeding as defined under the ICWA § 1903(1). The Osage Nation's attorney filed a motion to intervene under the ICWA. The motion was conditionally granted; the attorney for the Osage Nation was required to comply with the local counsel pro hac vice rule. Under this rule, an out-of-state counsel may participate in a Colorado court proceeding, but is required to associate with local counsel. As a result, the Osage Nation's attorney was required to associate with an attorney admitted to the Bar in Colorado.

Mark Tilden of the Native American Rights Fund, was retained as local counsel and filed a motion to reconsider the order challenging the judge's order. The motion for reconsideration argued that the Osage Nation has an absolute and unconditional federal right to intervene in the proceeding and that the local pro hac vice requirements are preempted by the ICWA. Additionally, pro hac vice requirements constitute a burden that would effectively foreclose many tribes from intervening in out-of-state ICWA cases because of, among other things, the cost of hiring local counsel. He also argued that a tribe has the right to appear by any representative of its choosing, including a representative that is not an attorney.

The court granted the motion to allow the Osage Nation to appear by any representative of its choosing and did not require the Nation's attorney to associate with local counsel under the pro hac vice rules. It was a success for the Nation to appear on its on behalf unencumbered by state law.

Following the win, NARF offered legal assistance to the Mashpee Wampanoag Tribe of Massachusetts who were faced with a similar situation. The same arguments were made and success followed, which allowed the Mashpee to represent itself in state court.

In sum, the issue of state courts encumbering the right of tribes to represent themselves in an ICWA case is a continuing problem. In the end, tribes need to know that they have a

federal right under the ICWA to represent themselves in ICWA cases by any representative of their own choosing, including a representative that is not an attorney.