

Nebraska Supreme Court Affirms Tribal Rights

In a unanimous decision, the Nebraska Supreme Court reversed and remanded a decision by a Nebraska county court which had refused to allow the Ponca Tribe of Nebraska to intervene in a child custody case involving two children that are members of the Tribe. The Nebraska Supreme Court affirmed the absolute and unconditional right of an Indian tribe to intervene in a child custody proceeding under the Indian Child Welfare Act (ICWA).

The Ponca Tribe's ICWA Specialist filed a motion to intervene pursuant to the ICWA. The Nebraska county court entered an order denying the filing of the Tribe's motion to intervene on the grounds that its ICWA Specialist, the Tribe's designated representative, was not an attorney admitted to practice law pursuant to Nebraska Revised Statutes. As a result, the Ponca Tribe was required to hire an attorney licensed to practice law in the courts of the State of Nebraska. The Ponca Tribe, represented by the Denver law firm of Smith, Jolly, Shelton and Ragona, filed an appeal to this decision with the Supreme Court of Nebraska.

Mark Tilden of the Native American Rights Fund was retained as legal counsel to represent amici curiae in the filing of a joint amicus brief in the Supreme Court of Nebraska. Mark represented the following organizations and tribes: the National Indian Child Welfare Association in Portland, Oregon; the Indian Center, Inc. in Lincoln, Nebraska; the Santee Sioux Tribe of Nebraska; the Oglala Sioux Tribe of South Dakota; the Osage Nation of Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Spirit Lake Tribe of North Dakota; and the Rosebud Sioux Tribe of South Dakota.

On March 26, 2009, the amicus brief was filed with the Supreme Court of Nebraska. The amicus brief maintained that the Ponca Tribe has an absolute and unconditional federal right to intervene in the proceeding according to the clear language of the ICWA and that the requirement that the Tribe be represented by a licensed attorney is preempted by the ICWA. Additionally, requiring a tribe to be represented by an attorney to intervene and participate in a state ICWA case would have a significant, detrimental effect on all tribes, including the infringement on tribal sovereignty. The amicus brief respectfully requested that the Court reverse the county court's decision and order the county court to grant the Tribe's *Motion to Intervene* and allow the Tribe's ICWA Specialist to fully participate as the designated representative of the Ponca Tribe of Nebraska. The Nebraska Supreme Court agreed with the Ponca Tribe and allowed the Tribe the right to intervene through its ICWA specialist, the Tribe's designated representative.

The Native American Rights Fund has published "A Practical Guide to the Indian Child Welfare Act." The Guide is intended to answer questions about the ICWA by people of all levels of familiarity with this important law, and to provide a comprehensive resource of information on the ICWA. The guide can be found on NARF's website – www.narf.org.