

**NOTICE SEEKING PUBLIC COMMENT ON
OUT-OF-CYCLE AMENDMENT OF UTCR 3.170(9)**
(Comment Period Closes at 5:00 p.m. on August 31, 2021)

I. INTRODUCTION

We are seeking comment on out-of-cycle amendment of Uniform Trial Court Rule (UTCR) 3.170(9). Amendment of UTCR 3.170(9) was adopted out-of-cycle by [Supreme Court Order 21-008](#), effective March 11, 2021.

II. HOW TO SUBMIT COMMENTS

You may submit your comments by:

- Clicking on the button below, next to each rule;
- Email (utcr@ojd.state.or.us); or
- Traditional mail (UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, Oregon, 97301-2563).

Please submit your comments so that we receive them by 5:00 p.m. on August 31, 2021. Comments will be reviewed by the UTCR Committee at its next meeting on October 15, 2021.

III. OUT-OF-CYCLE CHANGE

For the convenience of the reader, deleted wording is shown in [*brackets and italics*] and new wording is show in {**braces, underline, and bold**}.

1. 3.170(9)

EXPLANATION

House Bill (HB) 4214 (2020 1st Special Session) created the Oregon Indian Child Welfare Act (ORICWA). HB 4214 allows changes the status of an Indian tribe in a child welfare proceeding. Prior to HB 4214, an Indian tribe was required to intervene in a child welfare proceeding in order to become a party to the case. Under HB 4214, the Indian tribe becomes a party to the case when there is reason to know that the child involved in the proceeding is an Indian child.

The amendments to UTCR 3.170(9):

- Add citations to ORICWA to the rule where appropriate;
- Remove the affidavit requirement; and
- Remove references to the tribe as an intervenor.

AMENDMENT

3.170 ASSOCIATION OF OUT-OF-STATE COUNSEL (*PRO HAC VICE*)

(1) * * *

* * * * *

(9) An applicant is not required to associate with local counsel pursuant to subsection (1)(c) of this section or pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that:

- (a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 USC §1903, pursuant to the Indian Child Welfare Act of 1978, 25 USC §1901 et seq. { **and the Oregon Indian Child Welfare Act, Oregon Laws 2020, chapter 14 (2020 1st Special Session House Bill 4214)**};
- (b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 USC §1903 { **and Oregon Laws 2020, chapter 14, section 2 (2020 1st Special Session House Bill 4214)**}; and
- (c) { **An Indian tribe as defined in 25 USC §1903 or Oregon Laws 2020, chapter 14, section 2 (2020 1st Special Session House Bill 4214) has affirmed the child's eligibility for membership or citizenship in the tribe.** } [*One of the following:*
 - (i) *If the applicant represents an Indian tribe, the Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; or*
 - (ii) *If the applicant represents a parent or Indian custodian, the tribe has affirmed the child's membership or eligibility of membership under tribal law.*]

NOTE: UTCR 3.170 is adopted by the Oregon Supreme Court under ORS 9.241 and may be modified only by order of that Court.

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