

ALASKA RULES OF COURT 2016-2017 Edition

CHILD IN NEED OF AID RULES OF PROCEDURE

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CINA

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PART I. GENERAL PROVISIONS

Rule 1. Title—Scope—Construction—Situations Not Covered by the Rules.

(a) **Title.** These rules will be known and cited as the Child in Need of Aid Rules or the CINA Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of child in need of aid proceedings brought under AS 47.10.010(a).

(c) **Construction.** These rules will be construed and applied to promote fairness, accurate fact-finding, the expeditious determination of children’s matters, and the best interests of the child.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska Supreme Court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not enacted for the specific purpose of

changing a rule, these rules supersede the statute to the extent of the inconsistency.

(e) **Civil Rules Applicable.** Civil Rules 3(b)—(g), 4, 5, 5.1, 6, 10, 11, 15, 42, 45(a)—(f), 46, 53, 59, 60, 61, 63, 76, 77, 81, 90, 98, and 100 apply to child in need of aid proceedings except to the extent that any provisions of these civil rules conflict with the Child in Need of Aid Rules.

(f) **Application of the Indian Child Welfare Act and Regulations.** In all cases involving an Indian child, the statutory provisions of 25 U.S.C. 1901 et seq., and the ICWA regulations at [25 C.F.R. Part 23](#), published at [81 Fed. Reg. 38778](#) (June 14, 2016) and effective December 12, 2016, shall apply.

(g) **Situations Not Covered by These Rules.** Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of the Civil Rules, applicable statutes, the Alaska and United States Constitutions or the common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or

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otherwise interfere with the unique character and purpose of child in need of aid proceedings.

(SCO 845 effective August 15, 1987; amended by SCO 1265 effective July 15, 1997; by SCO 1355 effective July 15, 1999; and by SCO 1897 effective December 12, 2016)

Cross References

CROSS REFERENCE: AS 22.15.100(8); AS 47.05.060; AS 47.05.065; AS 47.10.005; AS 47.10.082; Alaska Constitution, Art. IV § 15.

Rule 2. Definitions.

(a) “Child” means a person under 18 years of age when the petition for adjudication is filed who remains subject to the jurisdiction of the court.

(b) “Custodian” means a natural person 18 years of age or older to whom a parent has transferred temporary physical care, custody, and control of the child for the period of time immediately preceding the conduct alleged in the petition.

(c) “Department” means the Department of Health and Social Services of the State of Alaska.

(d) “Guardian” means a natural person who is legally appointed guardian of the person of a child.

(e) “Guardian ad litem” means a person appointed by the court to represent the best interests of the child in the CINA proceeding as distinguished from a guardian of the person defined in paragraph (d).

(f) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. § 1606.

(g) “Indian child” means any unmarried person who is under the age of 18 and who is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(h) “Indian child’s tribe” means (1) the Indian tribe in which an Indian child is a member or eligible for membership or (2), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(i) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.

(j) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Department of the Interior because of their status as Indians, including an Alaska Native village as defined in 43 U.S.C. § 1602(c).

(k) “Parent” means a biological or adoptive parent whose parental rights have not been terminated.

(l) “Party” means the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child’s tribe which has intervened, and any other person who has been allowed to intervene by the court.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Cross References

CROSS REFERENCE: AS 25.20.010; AS 47.10.990; 25 U.S.C. § 1903.

(f) **CROSS REFERENCE:** 25 U.S.C. § 1903(3).

(g) **CROSS REFERENCE:** 25 U.S.C. § 1903(4).

(h) **CROSS REFERENCE:** 25 U.S.C. § 1903(5).

(i) **CROSS REFERENCE:** 25 U.S.C. § 1903(6).

(j) **CROSS REFERENCE:** 25 U.S.C. § 1903(7).

Rule 3. Hearings.

(a) **Notice.** Notice of each hearing must be given to all parties and any foster parent or other out-of-home care provider within a reasonable time before the hearing. Service on the child may be accomplished by serving the child’s guardian ad litem, attorney or social worker. Notice to a foster parent or out-of-home care provider must be provided by the Department.

(b) **Presence of the Child.** A child who is not of suitable age to understand or participate in the proceedings need not be present at hearings unless the court so orders. The court may excuse the presence of a child who is of suitable age if attendance would be detrimental to the child. The child or the child’s guardian ad litem may waive the child’s right to be present at a particular hearing.

(c) **Presence of Grandparent or Out-of-Home Care Provider.** A grandparent of a child and the out-of-home care provider are entitled to be heard at any hearing at which the person is present. However, the court may limit the presence of these persons in a hearing that has been closed to the public under (f)(2) of this rule to the time during which the person’s testimony is being given the court determines that such a limitation is necessary under the circumstances listed in (f)(2)(C) of this rule.

(d) **Parties Excluded.** The court may exclude the child during particular testimony if the effect of that testimony would psychologically harm the child. The court also may exclude a parent, guardian or Indian custodian during the child’s testimony in order to protect the child from material psychological harm, provided that the parent, guardian or Indian custodian may listen to a recording of the testimony to prepare for further examination and rebuttal.

(e) **Exclusion of Witnesses.** Witnesses may be excluded from a hearing pursuant to Evidence Rule 615.

(f) **General Public Access to Hearings.**

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(1) Except as provided in (2) of this paragraph, and unless prohibited by federal or state statute or regulation, court order, or other court rule, hearings are open to the public.

(2) The following hearings are closed to the public:

(A) the initial court hearing after the filing of a petition that begins the child-in-need-of-aid case;

(B) a hearing following the initial hearing in which a parent, child, or other party to the case is present but has not had an opportunity to obtain legal representation;

(C) a hearing, or a part of a hearing, for which the court issues a written order finding that allowing the hearing, or part of the hearing, to be open to the public would reasonably be expected to stigmatize or be emotionally damaging to a child; inhibit a child's testimony in the hearing; disclose matters otherwise required to be kept confidential by state or federal statute or regulation, court order, or court rule; or interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial in a criminal proceeding.

(3) Before ruling on a request under (2)(C) of this paragraph concerning potential interference with a criminal investigation or proceeding, the court shall give notice and an opportunity to be heard to the state or a municipal agency that is assigned to the criminal investigation or to the prosecuting attorney.

(4) If the court closes a hearing to the public under (2)(C) of this paragraph, the court shall close only the portions of the hearing necessary to prevent the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing, is open to the public, the court shall hear in camera any information offered regarding the location, or readily leading to the location, of a parent, child, or other party to the case who is a victim of domestic violence or whose safety or welfare may be endangered by the public release of information. Access to testimony heard in camera under this subparagraph is limited to the court and authorized court personnel.

(5) Notwithstanding any other provision of this rule, the court shall issue an order to prohibit all persons in a hearing open to the public from disclosing to any person a name, picture, or other information that would readily lead to the identification of a child who is the subject of the proceeding. If a person violates the order, the court may impose any appropriate sanction, including contempt and closure of any further hearings to the person.

(6) A party to the proceeding may move the court to close to the public a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this paragraph. A member of the public may request in writing to be served with a motion filed under this subparagraph. If such a request has been filed in advance of the filing of the motion, the party filing the motion must also serve the member of the public who requested notice under this subparagraph. The court may waive the service required under this subparagraph to a member of the public if a motion to close the hearing, or part of the

hearing, is made under this subparagraph immediately before or during the hearing and the court finds that

(A) the need for closure was not reasonably foreseeable sufficiently in advance of the hearing to allow for notice;

(B) there is good cause not to delay the hearing in order to achieve notice, taking into consideration the age of the child and the potential adverse effect that a delay could have on the child; and

(C) whatever notice is practicable under the circumstances has occurred.

(g) Telephonic Participation.

(1) The court may conduct any hearing with telephonic participation by one or more parties, counsel, witnesses, foster parents or out-of-home care providers, or the judge.

(2) In any proceeding in which the court is authorized to proceed ex parte, the court may contact the non-appearing party or counsel by telephone, and in the interests of justice receive evidence or argument without stipulation of the parties.

(3) Procedures for telephonic hearings are governed by Civil Rule 99(b). Payment of telephone costs is governed by Administrative Rule 48.

(h) **Testimony Under Oath.** All testimony must be given under oath or affirmation as required by Evidence Rule 603.

(i) **Representation by Non-Attorney.** Unless the court for good cause requires representation by an attorney, an Indian tribe that has intervened may be represented by a non-attorney designated by the Indian tribe. The tribe must file a written authorization for representation by the designated non-attorney before the non-attorney may represent the tribe. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal. A guardian ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

(SCO 845 effective August 15, 1987; amended by SCO 998 effective January 15, 1990; by SCO 1355 effective July 15, 1999; by SCO 1580 effective nunc pro tunc to July 1, 2005; and by SCO 1688 effective April 15, 2009)

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Note: Chapter 64, sections 51 and 52, SLA 2005 (HB 53) amended Child in Need of Aid Rule 3(c) and (f) to make child in need of aid hearings generally open to the public, with certain exceptions, as reflected in section 1 of this Order. The

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changes to CINA Rule 3(c) and (f) are adopted for the sole reason that the legislature has mandated the amendments. In addition, according to section 61(a) of the Act, sections 9 and 10 of the Act, and AS 47.10.080(u), enacted in section 14, have the effect of changing CINA Rule 3 by allowing members of the public to attend court hearings except in certain circumstances.

Cross References

CROSS REFERENCE: AS 47.10.030(b); AS 47.10.070.

PART II. MASTERS, MAGISTRATE JUDGES, DISTRICT COURT JUDGES

Rule 4. Appointment and Authority of Masters.

(a) **Appointment.** The presiding judge may appoint a standing master to conduct any or all of the CINA proceedings listed in subparagraph (b)(2). Appointments of standing masters must be reviewed annually. The presiding judge may appoint a special master to conduct a proceeding which is specified in the order of reference and is listed in subparagraph (b)(2).

(b) Authority, Order of Reference.

(1) An order of reference specifying the extent of the master's authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

(2) The following proceedings may be referred to a master:

(A) emergency or temporary custody hearings;

(B) interim hearings, including temporary custody review hearings and pre-trial conferences;

(C) adjudication and disposition hearings;

(D) permanency hearings, post-disposition review hearings, and extension-of-custody hearings.

(3) Termination trials may not be referred to a master.

(4) A master's report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except:

(A) a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and by paragraph (d) of this rule; and

(B) a master's order of removal from the home is effective pending superior court review.

(c) **Objection to Reference to a Master.** In addition to the preemptory challenge of a master provided for in Civil Rule 42(c), a party may file an objection to a referral to a master in the following manner:

(1) *Timeliness.* A party may file an objection no later than five days after receiving notice of the order of reference.

(2) *Grounds for Objection.* An objection to the assignment of a master to hear an adjudication hearing, a disposition hearing following a contested adjudication or an extension of custody hearing will be granted as a matter of right. Any other objection must set forth sufficient grounds from which the court may determine whether good cause exists to remove the matter from the master's jurisdiction. Good cause may include involvement of (i) complex questions of law which require a decision by a superior court judge or (ii) questions requiring prompt resolution which would be seriously impaired by a reference to a master.

(d) **Standing Master's Authority to Enter Orders.** A standing master is authorized to take the following actions without further approval by a superior court judge:

(1) order emergency custody under CINA Rule 6(b);

(2) appoint counsel and guardians ad litem;

(3) order home studies, predisposition reports, and psychological or psychiatric evaluations;

(4) set hearings and order continuances of the master's hearings;

(5) issue orders on motions requesting expedited review pursuant to Civil Rule 77(i);

(6) accept and approve stipulations, except that stipulated adjudications or dispositions must be reviewed by a superior court judge;

(7) review and approve uncontested orders on annual review;

(8) accept voluntary relinquishments of parental rights, and in the case of an Indian child, make the requisite judicial certification of voluntary consent required by federal law.

(9) order mediation and other forms of alternative dispute resolution under Civil Rule 100, but only if the affected parties have agreed to participate.

(e) **Master's Report, Recommendations.** A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge. The master shall advise the parties on the record of their right to file objections to any such decision pursuant to paragraph (f) of this rule.

(f) **Objections to Master's Report, Recommendations.**

(1) *Objections, Reply, Oral Argument.* Objections to a master's report or recommendation must be filed within 10 days of service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests an electronic recording of the recommendation, the time period for objection

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runs from receipt of the recording. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

(2) *Request for Stay, Immediate Review.* A party may request that a superior court judge stay the master's order issued under paragraph (d) pending review of the order.

(3) *Review of Order Removing the Child from the Home.* A master's order removing a child from the home which is not stayed must be reviewed by the superior court by the end of the next working day if a party so requests.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999; by SCO 1555 effective October 15, 2004; and by SCO 1749 effective April 15, 2011)

Rule 5. Authority of District Court Judges and Magistrate Judges.

(a) **Emergency Situations.** When a child is in a condition or surrounding dangerous to the welfare of the child which requires immediate action, and no superior court judge or authorized master is available, a district court judge or magistrate judge may take the least restrictive action necessary to protect the minor which a superior court judge is authorized by law to take. The district court judge or magistrate judge must immediately notify the superior court of the facts concerning the child and expeditiously transfer the case file to the superior court.

(b) **Review.** A party may request a hearing before the superior court or master to review any action taken by a district court judge or magistrate judge under this rule.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999; and by SCO 1829 effective October 15, 2014)

Cross References

CROSS REFERENCE: AS 22.15.100.

PART III. COMMENCEMENT OF PROCEEDINGS

Rule 6. Emergency Custody.

(a) **Emergency Custody Without Court Order.** The Department may take emergency custody of a child pursuant to AS 47.10.142 without a court order. If the Department determines that continued custody is necessary to protect the child, the Department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, a petition alleging that the child is a child in need of aid. If the Department releases the child within 24 hours after taking the child into custody and does not file a petition, the Department shall, within 24 hours after releasing the child, file with the court a report explaining why the child was taken into custody, why the child was released, and to whom the child was released.

(b) **Emergency Custody With Court Order.**

(1) *Who May Request.* The Department or any other

person or agency may petition the court for an order granting emergency custody of the child to the Department.

(2) *Form, Contents of Motion.* The petition must be supported by a statement of facts sufficient to show that the child is a child in need of aid and is in a condition which requires the immediate assumption of custody pursuant to AS 47.10.142. If a child is believed to be an Indian child, the statement of facts must show the tribal affiliation of the child, if known, and must be sufficient to show that removal of the child from the home is necessary to prevent imminent physical damage or harm to the child. The statement of facts must be made under oath, either in a petition, by affidavit, or orally on the record.

(3) *Order.* If the court determines that there is probable cause to believe that the child is a child in need of aid and is in such condition or surroundings that the child's welfare requires the immediate assumption of custody, the court may immediately issue an emergency custody order. In a case involving an Indian child, the court may not order emergency removal unless it finds that removal is necessary to prevent imminent physical damage or harm to the child. The order must be directed to a peace officer or other person specifically designated by the court, and shall require that the child be taken into custody immediately.

(4) *Notification to Department.* If the emergency custody order was not requested by the Department, the court shall, if possible, notify the Department of the motion immediately, and in any event no later than 12 hours after the motion is filed.

(5) *Service.* At the time of executing the order, or as soon thereafter as practicable, the peace officer or other person specifically designated by the court shall serve the child, parents, Indian custodian, guardian, and Department with a copy of the emergency custody order, a summons to the temporary custody hearing if one has been issued, and any available pleadings filed in support of the order. The person charged with service shall prepare and retain a return of service.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Cross References

CROSS REFERENCE: AS 22.15.100(8); AS 47.10.141; AS 47.10.142.

Rule 7. Petition for Adjudication—Summons.

(a) **Petition.** Formal proceedings may be commenced by the filing of a petition for adjudication of a child as a child in need of aid. The petition must be verified and must contain a statement of facts that would support a finding that the child is a child in need of aid under AS 47.10.011. If the child is believed to be an Indian child, the petition must so state and must state, if known, the Indian child's tribe. The petition may include a request for temporary custody under CINA Rule 10.

(b) **Notice of Hearing.** The Department shall provide a copy of the petition, as well as actual notice of the time and

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place of the initial hearing and of the parties' right to counsel, to the parents, guardian, and Indian custodian if these parties can be found after diligent efforts. In addition, actual notice of the proceedings must be given to any foster parent or other out-of-home care provider within a reasonable time before the hearing. If an Indian child is taken into emergency custody, the Department shall make reasonable efforts to ascertain and provide actual notice to the child's tribe before the temporary custody hearing.

(c) **Summons.** The court shall issue a summons to be served with the petition on the child, parents, guardian, and guardian ad litem. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

(d) **Service of Petition and Summons.** The petition and summons must be served pursuant to Civil Rule 4 or as directed by the court. The child's summons must be served on the child's guardian ad litem, attorney or social worker. This person must deliver the summons to the child if the child is of an appropriate age. The court may appoint employees of the Department or any other competent person to serve the summons and petition. Inability to obtain service on any party does not deprive the court of jurisdiction.

(e) **Unknown Parent.** If the identity of the parent is unknown and the court is satisfied that no form of notice, even under Civil Rule 4(e), is reasonably likely to give actual notice to the parent, the court may waive notice.

(f) **Notice in Cases Involving an Indian Child.**

(1) If there is reason to believe that the child is an Indian child, the Department shall give notice to the child's parents, Indian custodian, and to any tribe that may be the child's tribe, of their rights under the Indian Child Welfare Act. This notice must be personally served or sent by certified mail with return receipt requested. If the identity or location of the parents or Indian custodian or tribe cannot be determined, notice that would otherwise have been sent to the missing persons or tribe must be given to the appropriate area office of the Bureau of Indian Affairs.

(2) The notice of rights under the Indian Child Welfare Act must contain the following information:

(A) The name of the Indian child.

(B) The child's tribal affiliation, if known. If notice is being sent to more than one tribe, a statement of all tribes being notified must be included.

(C) A copy of the petition.

(D) The location, mailing address, and telephone number of the court, and the time and place of the next hearing, if known.

(E) A statement of the right of the Indian custodian and the tribe to intervene in the proceeding.

(F) A statement that if the parents or Indian custodian are unable to afford counsel, counsel will be appointed to represent them.*

(G) A statement of the rights of the parents, Indian custodian or the tribe to have, on request, up to 30 days to prepare for the adjudication hearing.

(H) A statement of the potential legal consequences of an adjudication on the rights of the parents or Indian custodian.

(I) A statement that child custody proceedings are conducted on a confidential basis and that tribal officials are required to keep confidential the information contained in the notice and not reveal it to anyone who does not need the information in order to exercise the tribe's rights.

(g) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the child and the family.

(h) **Amendment.** A petition may be amended by leave of the court and with reasonable notice on all parties at any time before the adjudication order. Amendment with appropriate continuances will be permitted to promote the interests of justice and the welfare of the child and the family.

*An indigent Indian custodian has a right to court-appointed counsel under 25 U.S.C. § 1912(b). Counsel appointed under § 1912 may seek compensation pursuant to 25 CFR 23.13.

(SCO 845 effective August 15, 1987; amended by SCO 913 effective January 15, 1989; by SCO 1265 effective July 15, 1997; by SCO 1355 effective July 15, 1999; by SCO 1560 effective October 15, 1999; by SCO 1560 effective October 15, 2005; and by SCO 1879 effective October 15, 2016)

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Cross References

CROSS REFERENCE: AS 47.10.020(b); AS 47.10.030; AS 47.10.070; AS 47.10.142(a); 25 U.S.C. § 1912.

PART IV. DISCOVERY, EVIDENCE, PROOF

Rule 8. Disclosures, Depositions, and Discovery.

(a) **General.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) **Applicability of the Civil Rules Regarding Discovery.** Discovery and disclosure in CINA actions are

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governed by Civil Rules 26-37, with the following exceptions and modifications: Civil Rule 26(a), (e), (f), and (g), and Civil Rule 26.1 do not apply in CINA cases.

(c) **Initial Disclosures.** Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties the following information, excluding any privileged material:

(1) the Department shall make available all information pertaining to the child prepared by or in the possession of the Department;

(2) a parent shall provide the name, address, or other information pertaining to the identity and location of the other parent of the child, if the parent has not already been identified and located;

(3) if the child has been removed, a parent shall provide the names, addresses, or other contact information pertaining to the location of grandparents and other adult relatives so placement options may be explored;

(4) a parent shall provide the names and addresses of any schools attended by the child and the names and addresses of any medical, mental health, and other treatment providers of the child;

(5) a parent shall provide the name and location of any Indian tribe as defined in CINA Rule 2(j) in which the parent has reason to believe the child is a member or may be eligible for membership;

(6) a guardian ad litem shall disclose a list of the types of information the guardian ad litem has gathered regarding the case, including records from specified sources and the names and contact information for persons interviewed or surveyed who are not parties, yet have provided information about the case; and

(7) a tribe that has intervened in the proceedings shall disclose names and contact information for extended family of the child, a list of potential placements under 25 U.S.C. § 1915, and a summary of any tribal services or tribal court actions involving the family.

Unless otherwise directed by the court, these disclosures shall be made within 45 days of the date of service of the petition for adjudication, or for tribes, the date of the order granting intervention. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(d) **Disclosures of Witnesses with Special Expertise.**

(1) *Retained Experts.* Except as otherwise stipulated or directed by the court, a party shall disclose the identity of an expert witness whom the party intends to call at trial and who has been retained, with or without compensation, to provide expert testimony or whose duties as an employee of the party

regularly involve giving expert testimony. For such witnesses, the party shall provide:

(A) the expert's curriculum vitae; and

(B) a written summary of the substance of the anticipated testimony of the expert, the expert's opinion, and the underlying basis of the opinion.

(2) *Other Experts.* For all other experts, if a party intends to call an expert witness who has had involvement with the family, but has not been retained solely for the purpose of providing an expert opinion, the party shall disclose to other parties the identity of that witness and shall provide any existing reports or written statements of these experts. For experts identified in this paragraph, parties are not required to provide the information in paragraph (1) except upon request.

(3) Expert disclosures shall be made at the times and in the sequence directed by the court.

(e) **Pretrial Disclosures.**

(1) In addition to the disclosures otherwise required by this rule, a party shall provide to other parties the following information regarding the evidence that it may present at trial:

(A) the name, address, and telephone number of each witness; and

(B) an exhibit list accompanied by the exhibits the party expects to submit at trial.

(2) Disclosure of witness lists and exhibits shall be made at the times and in the sequence directed by the court.

(f) **Discovery from Guardian Ad Litem.**

(1) *Discovery of Documents in Guardian Ad Litem's Possession.* A party may obtain discovery of documents in the possession, custody, or control of the guardian ad litem, subject to the following limitations:

(A) the documents must be discoverable under Civil Rule 26(b)(1); and

(B) trial preparation materials as defined in Civil Rule 26(b)(3) are discoverable only as permitted by that rule.

(2) *Discovery Regarding Guardian Ad Litem's Testimony.* If the guardian ad litem has served notice that the guardian ad litem intends to testify, a party may obtain discovery from the guardian ad litem about the substance of this testimony.

(3) *Other Inquiry.* A party may obtain other discovery from a guardian ad litem only as permitted by the court upon a showing of good cause. The court may permit a party to question a guardian ad litem about the guardian ad litem's professional qualifications and experience or the guardian ad litem's performance in the case. But this inquiry must be conducted in the presence of the court.

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(g) **Depositions.** Depositions may be taken in accordance with the Civil Rules and CINA Rule 8(f), except that no child under 16 years of age may be deposed except upon court order.

(h) **Scope and Timing.** In order to comply with statutory timeframes of AS 47.10 or for other good cause, the court may shorten time periods for discovery. The court may order further discovery and grant a continuance to accomplish the discovery at any phase of the proceeding if it believes that the parties have not had adequate opportunity to develop the existing evidence.

(i) **Supplementation.** A party who has made disclosures or responses to discovery under this rule is under a duty to supplement or correct the disclosures or responses to include information thereafter acquired if ordered by the court or if the party learns that the information disclosed or the response given is incomplete or incorrect in some material respect, and that the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. This duty to supplement or correct disclosures and responses extends to information provided in expert disclosures under subsection (d) of this rule.

(j) **Limitations on disclosure of certain recordings, images, and records that are also evidence for an investigation under AS 11.41.410 – 11.41.450.** Materials collected during an investigation under AS 47.10.011 or AS 47.14.300 that are also evidence for an investigation under AS 11.41.410 – 11.41.450 furnished to an attorney under these rules shall be used only for the purpose of conducting the case. A video or audio recording or medical record of a child, including photographs taken during a medical examination of a child, must remain in the custody of a parent's attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the parent's case, and shall be subject to the other terms and conditions that the court may provide. A video or audio recording or medical record of a child, including a photograph taken during a medical examination of a child, shall not be provided to the parent, but the information in the materials may be shared with the parent to the extent necessary to prepare the defense of the case.

(k) If a parent is proceeding without counsel, the materials described in (j) of this section may be provided to the parent. If materials are provided to an unrepresented parent under this subsection, the court shall order that the materials remain in the parent's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. Upon showing of good cause, the court may impose specific terms, conditions, or restrictions concerning inspection of the materials by other persons involved in preparation of the case, such as staff, investigators, experts, witnesses, or others. The court shall also inform the parent and other persons involved in the preparation of the case that violation of an order issued under this subsection is punishable as a contempt of court and may also constitute a criminal offense.

(l) **Confidential filing.** A party that files with the court or offers as an exhibit materials listed in (j) of this rule shall file the materials in a confidential envelope. In this subsection,

"confidential" has the meaning given in Rule 37.5, Alaska Rules of Administration.

(m) Notwithstanding another provision of this section, the legal custodian of a child may provide records of a medical examination of a child to the child's treating health care provider if the records are required for the treatment of the child. In this subsection, "health care provider" includes a physician, dentist, physician's assistant, nurse, nurse practitioner, psychologist, counselor, marital and family therapist, village or community health aide, community health worker, or another person that provides health care treatment in the course and scope of the person's employment.

(SCO 845 effective August 15, 1987; rescinded and readopted by SCO 1561 effective April 15, 2006; amended by SCO 1841 effective nunc pro tunc to July 8, 2014)

Note: Chapter 60, section 5, SLA 2014 (SB 187), *effective nunc pro tunc* to July 8, 2014, amended CINA Rule 8 by adding new subsections (j) through (m) limiting disclosure of certain recordings, images, and records that are evidence for an investigation under AS 11.41.410-440 or AS 11.41.450. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 9. Evidence.

(a) **Applicability of Evidence Rules.** The Alaska Rules of Evidence apply to child in need of aid proceedings to the same extent as they govern civil proceedings, except as otherwise provided by these rules.

(b) Privileges Inapplicable.

(1) *Husband-Wife Privilege.* The husband-wife privilege, Evidence Rule 505, does not apply to the parent, child or custodian in Child in Need of Aid proceedings.

(2) *Physician-Patient Privilege.* The physician-patient privilege, Evidence Rule 504, does not apply to the parent, child or custodian in Child in Need of Aid proceedings.

(3) Psychotherapist-Patient Privilege.

(A) The psychotherapist-patient privilege, Evidence Rule 504, applies to the parent, child or custodian in Child in Need of Aid proceedings only to the extent described in this rule.

(B) The privilege applies to the child unless the child or the child's guardian ad litem waives the privilege, or the party seeking disclosure shows that the need for the requested disclosure outweighs the child's interest in confidentiality.

(C) The privilege does not apply to the parent unless the parent shows that the parent's interest in confidentiality outweighs the need for the requested disclosure. No disclosure may be made until the parent has an opportunity to make this showing.

(D) When considering a request to disclose or protect a communication, the court shall consider the following:

- (i) the content and nature of the communication;

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(ii) the purposes of AS 47.10, as expressed by AS 47.05.060, and of Evidence Rule 504;

(iii) whether there is any other effective way to obtain the information; and

(iv) whether the public interest and need for disclosure outweighs the potential injury to the patient and the patient's psychotherapist relationship.

Before ruling on such a request, the court may inspect records in camera. The court may allow, limit, or prohibit disclosure and use of the communication.

(E) If the court grants the request for disclosure of the child's privileged information, the court order must:

(i) limit disclosure to those parts of the child's records which are essential to fulfill the purpose of the disclosure;

(ii) limit disclosure to those persons whose need for the information is the basis for the order; and

(iii) include such other measures as are necessary to limit disclosure for the protection of the child and the psychotherapist-patient relationship.

(F) Evidence Rule 504(c) does not apply in child in need of aid proceedings. Unless otherwise ordered, the child's psychotherapist-patient privilege may only be claimed or waived as follows:

(i) If the child is twelve or older, the privilege may be claimed or waived by the child after consulting with an attorney, if an attorney has been appointed, or with the guardian ad litem.

(ii) If the child is younger than twelve, the privilege may be claimed or waived by the guardian ad litem.

(iii) The person who was the psychotherapist at the time of the communication is presumed to have authority to claim the privilege on behalf of the child.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999; and by SCO 1442 effective October 15, 2001)

Cross References

CROSS REFERENCE: AS 47.17.060.

PART V. PRELIMINARY PROCEEDINGS

Rule 10. Temporary Custody Hearing.

(a) Time of Hearing.

(1) At the request of the petitioner, the court shall schedule a temporary custody hearing:

(A) within 48 hours, including weekends and holidays, of when the court is notified by the filing of a petition that emergency custody was taken pursuant to CINA Rule 6(a) or (b); or

(B) within a reasonable time following the filing of a petition when emergency custody has not been taken.

(2) The court may continue a temporary custody hearing at the request of a parent or guardian upon a showing of good cause for why the parent or guardian is not prepared to respond to the petition. A continuance must be requested before or at the outset of the hearing.

(b) Conduct of Hearing.

(1) *Opening Address.* The court shall first determine whether the persons specified in CINA Rule 7(b) have received notice of the hearing. The court shall then determine whether all parties have received copies of the petition and understand its contents and shall advise the parties of the nature of the proceedings and possible disposition. In addition, the court shall advise the parties of the possibility of a temporary custody or supervision order pending adjudication and final disposition, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

(2) *Advice of Rights.* The court shall advise the parties of their right to counsel, including the right to court-appointed counsel if applicable; the child's right to a guardian ad litem; their right to a hearing at which the state is required to present evidence to prove the allegations in its petition; their right to confront and cross-examine witnesses at such a hearing, to present witnesses on their own behalf, and to compulsory process to compel these witnesses to attend; and their privilege against self-incrimination. In cases involving an Indian child, the court shall also advise the parties of an Indian custodian's or tribe's right to intervene. If the hearing is being held because emergency custody was taken pursuant to CINA Rule 6(a) or (b), the court shall also advise the child's parents or guardian, if they are present at the hearing, that they each have the right to request a continuance of the hearing if they are not prepared to respond to the allegation that the child is a child in need of aid.

(3) The court may admit hearsay evidence which would be otherwise inadmissible under the Evidence Rules if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(c) Findings of Fact and Order.

(1) The court shall order the child returned to the home and dismiss the petition if the court does not find probable cause to believe that the child is a child in need of aid under AS 47.10.011.

(2) The court shall order the child placed in the temporary custody of the Department or order the child returned to the home with supervision by the Department if the court finds probable cause to believe that the child is a child in need of aid under AS 47.10.011.

(3) The court may approve the removal of the child from the child's home only if the court finds that continued placement in the home is contrary to the welfare of the child;

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and, in cases involving an Indian child, either: (A) that removal from the child's parent or Indian custodian is necessary to prevent imminent physical damage or harm to the child; or (B) that there is clear and convincing evidence, including testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if left in the custody of the parent or Indian custodian.

(4) In any case in which the court has approved the removal of the child pursuant to the preceding subparagraph, the court shall make the inquiry and findings required by CINA Rule 10.1.

(d) **Subsequent Proceedings.** If the court orders the child placed in the temporary custody of the Department or orders the child returned to the home with supervision by the Department, the court must set the time for the adjudication hearing and for the pretrial conference and meeting of parties required by CINA Rule 13. The court may also set the time to file motions, complete discovery, exchange witness and exhibit lists, and file pretrial briefs. The court may schedule a disposition hearing in conjunction with the adjudication hearing. In such cases, the order setting the time for adjudication and disposition must also set the time to submit reports in aid of disposition.

(e) **Review.**

(1) If circumstances relating to the child's placement change pending adjudication or disposition, any party may request that the court review the temporary custody or supervision order.

(2) When a party seeks the return of a child to the child's home pending adjudication or disposition, if the party makes a prima facie showing that removal is no longer necessary, the burden of proof shifts to the Department as described below:

(A) in cases involving a non-Indian child, the court shall return the child to the home unless the Department proves by a preponderance of the evidence that return to the home is contrary to the welfare of the child;

(B) in cases involving an Indian child, the court shall restore the child to the child's parent or Indian custodian unless the Department proves (i) by a preponderance of the evidence that removal from the parent or Indian custodian is still necessary to prevent imminent physical damage or harm to the child; or (ii) by clear and convincing evidence, including the testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if returned to the custody of the parent or Indian custodian.

(3) A party may seek review of other issues related to temporary custody or supervision under CINA Rule 19.1(d).

(SCO 845 effective August 15, 1987; amended by SCO 898 effective July 15, 1988; by SCO 914 effective January 15, 1989; by SCO 915 effective January 15, 1989; by SCO 1010 effective January 15, 1990; by SCO 1105 effective January 15, 1993; by SCO 1265 effective July 15, 1997; by SCO 1355 effective July 15, 1999; and by SCO 1398 effective October 15, 2000)

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Cross References

CROSS REFERENCE: AS 47.10.142(d) and (e); 25 U.S.C. § 1912(a); 25 U.S.C. § 1913(a); 25 U.S.C. § 1922; 42 U.S.C. § 672(a)(1).

Rule 10.1. Out-of-Home Placement—Required Findings.

(a) Findings in Cases Involving Non-Indian Child.

(1) Findings.

(A) If the Department has taken emergency custody of a non-Indian child under AS 47.10.142, the court shall inquire into and determine at the temporary custody hearing whether the Department has made reasonable efforts as required by AS 47.10.086(a) to prevent out-of-home placement, or whether it was not possible under the circumstances to make efforts that would have prevented removal of the child.

(B) At any other hearing at which the court is ordering a non-Indian child's removal from the home, the court shall inquire into and determine whether the Department has made reasonable efforts as required by AS 47.10.086(a) to prevent out-of-home placement, unless the court has previously determined under Rule 17.1 that reasonable efforts are not required.

(C) At each hearing at which the court is continuing a previous order authorizing removal of a non-Indian child, the court shall inquire into and determine whether the Department has made reasonable efforts since the last hearing as required by AS 47.10.086(a) to permit the child's return to the home, unless the court has previously determined under Rule 17.1 that reasonable efforts are not required.

(2) *Effect of a Finding that Department Failed to Make Reasonable Efforts.* A finding that the Department has failed to make reasonable efforts is not in itself a ground for returning the child to the home or dismissing a petition and does not affect the court's ability to proceed to adjudication. However, the court cannot enter a disposition order if the court finds that the Department has failed to make reasonable efforts, unless the court has determined under Rule 17.1 that reasonable efforts are not required. If the Department has failed to make required reasonable efforts, the court must postpone disposition until the court finds that reasonable efforts have been made. On motion of a party or on its own motion, the court may order the Department to comply with AS 47.10.086(a) within a reasonable time. If the Department fails to comply with the order, the court may impose appropriate sanctions.

(b) Findings in Cases Involving Indian Child.

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(1) *Findings.* At each hearing at which the court is authorizing an Indian child's removal from the child's parent or Indian custodian or continuing a previous order authorizing removal, the court shall inquire into and determine:

(A) whether the Department has complied with the placement requirements of 25 U.S.C. § 1915(b) and

(B) whether active efforts have been made to provide remedial services and rehabilitative programs as required by 25 U.S.C. § 1912(d).*

(2) *Effect of a Finding that Requirements Have Not Been Met.* A finding that the requirements of 25 U.S.C. §§ 1912(d) or 1915(b) have not been met is not in itself a ground for restoring the child to the parent or Indian custodian or dismissing a petition and does not affect the court's ability to proceed to adjudication. However, the court cannot enter a disposition order if the court finds that the requirements of 25 U.S.C. § 1912(d) (active efforts) have not been met.* In those circumstances, the court must postpone disposition until the court finds that active efforts have been made. On motion of a party or on its own motion, the court may order the Department to comply with 25 U.S.C. §§ 1912(d) or 1915(b) within a reasonable time. If the Department fails to comply with this order, the court may impose appropriate sanctions.

(SCO 1355 effective July 15, 1999)

* **Note:** As of June 1999, it is an open issue whether federal law permits a trial court to determine that active efforts are not required in a case or that such efforts may be discontinued.

Rule 11. Guardians Ad Litem.

(a) **Appointment.**

(1) The court shall appoint a guardian ad litem (GAL) in all Child in Need of Aid (CINA) proceedings as soon as possible after the CINA petition is filed. The appointment shall continue through all phases of the CINA proceeding unless the court orders otherwise.

(2) If the Office of Public Advocacy (OPA) is appointed, OPA shall, in accordance with the qualifications set forth in subsection (c) of this rule, designate a specific person to serve as the guardian ad litem for the child. If OPA designates an OPA employee to be the GAL, the GAL for the child is deemed to be OPA. If OPA designates an independent contractor, or another person who is not employed by OPA, to be the GAL, the GAL for the child is deemed to be that designated person.

(3) Within seven days of the court's appointment, the designated GAL must file an entry of appearance indicating whether or not the GAL is an attorney and certifying that the GAL has completed guardian ad litem training through OPA.

(4) Throughout the period of appointment, the GAL is a party to the proceeding, and must be served with copies of all pleadings and papers relating to the child and must be given notice of all court proceedings. The GAL, whether an attorney or a non-attorney, has the right to appear and participate at

hearings on behalf of the child. Because the GAL stands in the place of the child in court, a GAL may also engage in motion practice, conduct discovery, introduce evidence, examine and cross examine witnesses, make objections, make opening statements and closing arguments, and take or participate in an appeal.

Commentary.—*In all cases in which the GAL is to be appointed at public expense, the court must appoint the Office of Public Advocacy, which must designate a specific person to serve as the GAL.*

The court may appoint an attorney to advise or represent a non-attorney GAL. If the court takes this action, and if the GAL was appointed at public expense, the court must appoint OPA as the attorney for the GAL. If the court appoints an attorney, it should take care to specify the scope and duration of the appointment. Under AS 47.10.050 and CINA Rule 12(b)(3), the court may also appoint an attorney for the child.

(b) **Role of Guardian ad Litem.** The GAL must represent and advocate for the best interests of the child in light of federal and state law.

Commentary.—*The GAL must decide, based on thorough and ongoing investigation, what course of action is in the child's best interests. The GAL must then advocate for this course of action, regardless of whether the child agrees with the GAL's position.*

(c) **Qualifications.**

(1) A GAL should possess knowledge, skill, experience, training, or education that allows the GAL to conduct an independent, thorough, and impartial investigation, and to advocate effectively for the best interests of the child.

(2) The GAL should have an understanding of the following as appropriate to the case:

(A) child development from infancy through adolescence;

(B) the impact of child abuse and neglect on the child;

(C) the impact of CINA proceedings, including out-of-home placement and the restriction or termination of parental rights, on the child;

(D) unique issues related to families involved in CINA proceedings, including such issues as substance abuse, domestic violence, and disabilities;

(E) community and other resources available for placement, treatment, and other necessary services for abused or neglected children;

(F) the ethnic, cultural, and socio-economic backgrounds of the population to be served;

(G) the Indian Child Welfare Act and the prevailing social and cultural standards of the Indian community in which the child, parent, Indian custodian, or extended family resides

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or with which the child, parent, Indian custodian, or extended family members maintain social and cultural ties;

(H) Alaska and applicable federal statutes, rules, and supreme court decisions relating to CINA proceedings; and

(I) the ability to research and develop special areas of knowledge as appropriate or necessary in a given case.

(d) **Order Authorizing Access.** An order appointing a GAL should authorize the GAL to have access, without further court order, to all records of the child, including confidential and privileged records such as mental health records; medical records; law enforcement records; juvenile justice records; vital statistics records; financial records; and educational records, including special education records.

Commentary.—*Although the appointment order authorizes the GAL to review confidential and privileged records pertaining to the child, the GAL must file a motion requesting access to records pertaining to a parent unless the parent signs a release.*

(e) **Disclosure of Conflicts.** The GAL shall promptly disclose any relationships or associations between the GAL and any party which might reasonably cause the GAL's impartiality to be questioned.

(f) **Duties of Guardian ad Litem.**

(1) *Purpose.* The GAL represents the best interests of the child in a CINA proceeding. The GAL determines and advocates for the best interests of the child given the child's situation, taking into account the child's age, maturity, culture and ethnicity, and public laws and policies regarding family preservation and timely permanency planning.

(2) *Duty to the child.* The GAL shall

(A) conduct ongoing independent investigations, including, as reasonable and appropriate: in-person visits with the child; review of records; interviews with parents, social workers, teachers, and other persons as necessary to assess the child's situation; and observations of the child's interactions with parents or other potential caregivers;

(B) identify relatives, family friends, or other persons who are potential placement options, and take such steps as may be necessary to offer such persons to the Department and/or to the court for placement determinations;

(C) advocate for early tribal identification and paternity determinations;

(D) consult professionals as necessary to determine the child's best interests;

(E) participate in the case planning process;

(F) monitor the provision and utilization of family support services;

(G) determine whether to seek appointment of a GAL or attorney in related legal proceedings;

(H) monitor services to the child provided by educational, medical, mental health, and other community systems and ensure these services are promoting the best interests of the child;

(I) when appropriate, seek cooperative solutions to disputes concerning the child's situation that serve the child's best interests;

(J) explain the court proceedings, the role of the GAL, and the child's rights to the child, when appropriate, in language and terms the child can understand; encourage older children to attend and participate in court hearings as appropriate; and determine whether and under what conditions younger children should attend court hearings; and

(K) determine whether to call the child as a witness or determine appropriate action if others seek the child's testimony, and familiarize the child with the process of testifying.

(3) *Duty to the court.* The GAL will:

(A) appear at all hearings, present appropriate witnesses to testify at hearings, and present relevant information about the child's status and needs to the court;

(B) provide timely written reports as required by court order or rule;

(C) request specific court orders for evaluation, services, visitation, treatment for the child and the child's family, and placement of the child;

(D) take appropriate and timely action when services are not being made available to the child, the family or both; when the child or family fails to take advantage of such services; or when services are not achieving their purpose;

(E) take appropriate action when informed of any violations of orders, new developments, or material changes in the child's circumstances; and

(F) advise the court promptly if appointment of counsel for the child should be considered.

(g) **Contact with Child, Other Parties, and the Court.**

(1) *Contact with Child.* The GAL may meet with the child as often as necessary to ascertain and represent the child's best interests. Reasonable access by the GAL cannot be denied, absent court order, by any party or service provider, or by the child's attorney, if one has been appointed. An attorney or representative for a party other than the child shall not communicate with the child concerning the substance of the case without reasonable notice to the GAL and the social worker and the consent of the GAL and the social worker, or a court order authorizing the communication.

(2) *Contact with Other Parties.* A GAL shall not communicate about the substance of the case with a party or person the GAL knows to be represented by a lawyer in the matter unless the GAL has the consent of the lawyer. The lack

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of consent shall not prevent the GAL from having incidental contact with a party, or contact for the purpose of scheduling a visit with a child or making an unannounced home visit to the child.

(3) *Contact with Court.* Unless all parties consent, a GAL shall not engage in ex parte communications with the court concerning a pending case except for scheduling and other administrative purposes when circumstances require.

(h) Testimony.

(1) The GAL shall not testify at a trial or hearing unless the court determines that:

(A) the testimony relates to an uncontested issue;

(B) the testimony is necessary to present factual evidence on a material issue that is not available from another source; or

(C) there is a compelling need for the testimony.

(2) A GAL who intends to testify, or the party who intends to call the GAL as a witness, shall file and serve a motion identifying the subject of the testimony and stating the reasons why the testimony would be permissible under subsection (h)(1) of this rule.

(3) If the court grants the motion for testimony from the GAL, the court should consider whether the GAL can still effectively represent the best interests of the child. If not, the court may require OPA to discharge the GAL, appoint another GAL, or appoint an attorney for the GAL or the child.

(4) A GAL who testifies may be cross-examined like any other witness.

Commentary.—A GAL, as an advocate, rarely testifies. See Alaska Rule of Professional Conduct 3.7. In extraordinary circumstances under which a court order authorizing GAL testimony cannot be timely obtained prior to trial, the court may waive the requirement of a written motion contemplated in subsection (h)(2) above.

(i) Confidentiality.

(1) The child's statements to the GAL are not confidential.

(2) The GAL may disclose information if the GAL determines that disclosure is in the child's best interests.

(3) The GAL shall advise the child in advance of any interview that the child's statements may be disclosed.

Commentary.—If the GAL is an attorney, he or she acts in a capacity as a GAL rather than as an attorney, and information received from the child is not subject to the attorney-client privilege. Cf. Ethics Opinion 85-4, Alaska Bar Association. Notwithstanding these provisions, the GAL may seek a protective order to keep certain communications confidential in accordance with discovery rules.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999; and by SCO 1562 effective April 15, 2006)

Cross References

CROSS REFERENCE: AS 25.24.310; AS 47.10.050; AS 47.17.170(1), (2) and (5).

CROSS REFERENCE: 25 U.S.C. § 1913(a).

Rule 12. Right to Counsel.

(a) **Notice of Right to Counsel.** The court shall inform the parties at the first hearing at which they are present of their respective rights to be represented by counsel at all stages of the proceedings.

(b) **Appointed Counsel.** The court shall appoint counsel pursuant to Administrative Rule 12:

(1) for a parent or guardian who is financially unable to employ counsel;*

(2) for a parent on active military duty who has not appeared prior to entry of an adjudication;

(3) for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child's expressed interests; and

(4) for a non-attorney guardian ad litem when legal representation of the guardian ad litem is necessary.

(c) **Waiver of Right to Counsel.** The court shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and knowingly waives those benefits.

(d) **Appointment of Counsel for Absent or Unknown Parent.** The court shall appoint counsel to represent an absent parent at any hearing in which the termination of parental rights is or may be in issue if the parent has failed to appear after service of notice, including service by publication, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent. The court is not required to appoint counsel for a parent if the court is satisfied that the identity of the parent is unknown.

(SCO 845 effective August 15, 1987; amended by SCO 1560 effective October 15, 2005)

* An indigent Indian custodian has a right to court-appointed counsel under 25 U.S.C. § 1912(b). Counsel appointed under § 1912 may seek compensation pursuant to 25 CFR § 23.13.

Cross References

CROSS REFERENCE: AS 25.24.310; AS 47.10.050.

Rule 13. Pretrial Conference and Meeting of Parties.

(a) **Pretrial Conference and Meeting of Parties.** The court shall conduct a pretrial conference to discuss the topics

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specified in paragraph (b). Before the pretrial conference, the parties shall meet, either telephonically or in person, to ensure that an appropriate case plan is in place for the child and the family and to address the topics that will be discussed at the conference. The meeting will be held at the time specified by the court or, if no time is specified, at least 30 days before the pretrial conference. The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for arranging and being present at the meeting and for submitting to the court within 10 days after the meeting a written summary of the meeting.

(b) **Purpose of Pretrial Conference.** At the pretrial conference, the court and parties may:

- (1) consider efforts to locate and serve all parties;
- (2) simplify the issues;
- (3) consider amendments to the pleadings;
- (4) conclude any unresolved discovery matters;
- (5) resolve pending motions;
- (6) discuss settlement and the use of special procedures to assist in resolving the case;
- (7) consider the possibility of obtaining admissions and stipulations of fact and documents which will avoid the introduction of unnecessary evidence;
- (8) identify unnecessary proof and cumulative evidence, and limitations or restrictions on the use of expert testimony;
- (9) determine whether the child will be present and testify at adjudication and, if so, under what conditions;
- (10) establish a reasonable limit on the time allowed for presenting evidence; and
- (11) consider such other matters as may aid in the resolution of the proceeding.

(c) **Duty to Update.** Parties have a continuing obligation to update information provided during the pretrial conference.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Rule 14. Stipulations.

Subject to approval by the court, parties may stipulate to any matter, including adjudication and disposition. However, stipulations to adjudication and disposition may be accepted only if the court determines that the parties understand their rights and have had a sufficient opportunity to consult with counsel. In the case of an Indian child, a stipulation to adjudication or disposition is not binding on a parent or Indian custodian unless it is in writing, agreed to in court (whether in person or telephonically), and signed by the parent or Indian custodian.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Note: See CINA Rule 16(a)(3) concerning stipulations to waive preparation of a predisposition report.

Cross References

CROSS REFERENCE: 25 U.S.C. § 1913(a).

PART VI. ADJUDICATION

Rule 15. Adjudication Hearing.

(a) **Nature and Timing of Proceeding.** The adjudication hearing is a trial to the court on the merits of the petition for adjudication. The adjudication must be completed within 120 days after a finding of probable cause is entered, unless the court finds good cause to continue the hearing. In determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child.

(b) **Notice.** The Department must provide notice of the adjudication hearing to the persons specified in CINA Rule 7(b) within a reasonable time prior to the hearing. In cases involving an Indian child, notice of the hearing must be received at least ten days before the hearing pursuant to CINA Rule 7(f)(1). Upon request, the court shall postpone the hearing to ensure that the Indian child's parents, Indian custodian or tribe have had thirty days from receipt of the notice to prepare for the hearing.

(c) **Burden of Proof.** The Department has the burden of proving by a preponderance of the evidence that the child is a child in need of aid.

(d) **Judgment.** At the conclusion of the adjudication hearing, the court shall make findings of fact and enter a judgment that the child is or is not a child in need of aid.

(e) **Failure of Proof.** If the court finds that the child is not a child in need of aid, it shall immediately order the child released from the Department's custody and returned to the child's parents, guardian, or custodian.

(f) **Orders Pending Disposition.** If the court finds that the child is a child in need of aid and the disposition is not held immediately following the adjudication, the court shall enter the following orders:

(1) The court shall order the child placed in the temporary custody of the Department or order the child returned to the home with supervision by the Department pending disposition. The court may approve the removal of the child from the child's home only if the court makes the findings required by CINA Rule 10(c)(3).

(2) If the court approves the child's removal, the court shall make the inquiry and findings required by CINA Rule 10.1. A finding that the Department has failed to make reasonable efforts, or, in cases involving an Indian child, that the requirements of 25 U.S.C. §§ 1912(d) or 1915(b) have not been met, is not in itself a ground for returning the child to the

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home and does not affect the court's ability to enter an adjudication order and extend temporary custody pending adjudication.

(3) The court shall set a time for the disposition hearing, which will be held without unreasonable delay. The court shall order a predisposition report, unless waived by stipulation under CINA Rule 16(a)(3), and other studies, examinations, or reports under CINA Rule 16 that are necessary for an informed disposition.

(SCO 845 effective August 15, 1987; amended by SCO 855 effective January 15, 1988; by SCO 1010 effective January 15, 1990; and by SCO 1355 effective July 15, 1999)

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Cross References

CROSS REFERENCE: AS 47.10.080(a); AS 47.10.081; AS 47.10.141(g); 25 U.S.C. § 1912.

PART VII. DISPOSITION

Rule 16. Reports in Aid of Disposition.

(a) Predisposition Reports.

(1) Unless waived by the parties with the approval of the court, the Department shall submit a predisposition report satisfying AS 47.10.081(b). In addition to the requirements of AS 47.10.081(b), the report must include the current case plan and should also include the following information: the child's family background and educational history; past contacts by the Department with the child and the child's family; the child's medical, psychological and psychiatric history; and recommendations regarding the disposition which would be in the best interests of the child. If the child is placed out of the home, the report must describe the efforts made to comply with the placement preference under the Indian Child Welfare Act or state law, as applicable.

(2) Unless waived by the parties with the approval of the court, the guardian ad litem shall submit a predisposition report. The report shall be child-focused and fact-based, and shall include the guardian ad litem's position regarding legal custody, placement, visitation, the child's case plan, and the parent's case plan. If there is a conflict between the guardian ad litem's position and the child's preference, that conflict must be disclosed in the report.

(3) Unless otherwise ordered by the court, the Department must file and serve its predisposition report on the parties fifteen days before the disposition hearing, and the guardian ad litem must file and serve its predisposition report on the parties ten days before the disposition hearing.

(4) The court will accept a stipulation to waive preparation of a predisposition report only if the parties have agreed to present adequate information upon which to enter an informed disposition order, including the current case plan.

(5) Other parties may submit their own reports in aid of disposition. Any such reports must be made available to the persons entitled to receive them at least ten days prior to the disposition hearing.

(b) **Supplementary Material.** The court may order mental and physical examinations of the child and the child's parents, guardian and Indian custodian. The court may order studies of the home of any person with whom the child might be placed, and may order any other reports to aid disposition.

(c) **Disclosure of Reports.** Unless otherwise ordered, copies of predisposition reports and supplementary materials must be served on all parties. The court may enter an order prohibiting release of all or part of a report to the child if disclosure would be likely to cause psychological harm to the child. The court shall inspect the reports in camera prior to entering a limitation on disclosure, and such a limitation does not bar the child's attorney or guardian ad litem from access to the material withheld from the child. The court may enter orders prohibiting release of the material by the attorney or guardian ad litem to the child.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999; and by SCO 1658 effective April 15, 2008)

Cross References

CROSS REFERENCE: AS 47.10.080; AS 47.10.081; AS 47.10.082; AS 47.10.230; AS 47.14.100(e); 25 U.S.C. § 1912(c); 25 U.S.C. § 1915; 25 U.S.C. § 1922.

Rule 17. Disposition.

(a) **Purpose of Hearing.** The purpose of a disposition hearing is to determine the appropriate disposition of a child who has been adjudicated a child in need of aid. A disposition hearing concerning the termination of parental rights is governed by CINA Rule 18.

(b) **Statements.** The parties may offer evidence in aid of disposition at the hearing. The court shall afford the parties, any grandparents of the child who are in attendance at the hearing, and any foster parents or other out-of-home care providers an opportunity to be heard.

(c) **Requirements for Disposition.** A disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the child has been placed outside the home, the court cannot enter a disposition order if the court finds (1) in cases involving a non-Indian child, that the Department has failed to make reasonable efforts as required by AS 47.10.086(a) to permit the child's return to the home, unless the court has determined under Rule 17.1 that reasonable efforts are not required; or (2) in cases involving an Indian child, that the requirements of 25 U.S.C. § 1912(d) (active efforts) have not

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been met.* If the court finds that the Department has failed to make required reasonable efforts or that the requirements of 25 U.S.C. § 1912(d) have not been met, the court must postpone entering a disposition order until the court finds that reasonable efforts or active efforts have been made. The child should remain in temporary custody pending disposition.

(d) Findings.

(1) A disposition order must be accompanied by findings of fact.

(2) The court may approve the removal of the child from the child's home only if the court finds that continued placement in the home is contrary to the welfare of the child; and, in cases involving an Indian child, that there is clear and convincing evidence, including the testimony of qualified expert witnesses, that custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(e) **Evidence.** Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at the disposition hearing and in review of a disposition order if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(f) **Disposition Order—Subsequent Proceedings.** If the court orders the child committed to the Department under AS 47.10.080(c)(1), the disposition order must set the date for the permanency hearing required by AS 47.10.080(l). If the court releases the child under AS 47.10.080(c)(2), the disposition order must set the date for filing the report on annual review.

(SCO 845 effective August 15, 1987; amended by SCO 1010 effective January 15, 1990; by SCO 1355 effective July 15, 1999; and by SCO 1465 effective April 15, 2002)

* **Note:** As of June 1999, it is an open issue whether federal law permits a trial court to determine that active efforts are not required in a case or that such efforts may be discontinued.

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Cross References

CROSS REFERENCE: AS 47.10.080(c) and (r); AS 47.10.081; AS 47.10.082; AS 47.10.083; AS 47.10.141(g); 25 U.S.C. §§ 1912, 1915(b) and (c), 1922.

Rule 17.1. Determination that Reasonable Efforts Not Required.

(a) **Proceeding to Determine that Reasonable Efforts Not Required.** At any stage of a proceeding under these rules,

a party may file a motion for a determination that reasonable efforts of the type described in AS 47.10.086(a) are not required, specifying the basis for the motion under AS 47.10.086(c). If the party intends that any evidentiary hearing on the motion be combined with a scheduled trial or other hearing, the motion must be filed and served at least 30 days prior to that proceeding.

(b) **Proceeding to Determine that Reasonable Efforts May Be Discontinued.** At the permanency hearing required under AS 47.10.080(l), the court may find that a continuation of reasonable efforts is not in the best interests of the child under AS 47.10.086(b). Any party recommending such a finding must include that recommendation, specifying the factual basis for it, in its report for permanency hearing required by CINA Rule 17.2(c) or in a separate motion.

(c) **Permanency Hearing Required.** If the court determines that reasonable efforts are not required under AS 47.10.086(c) in a proceeding other than a permanency hearing, the court shall hold a permanency hearing under AS 47.10.080(l) within 30 days after the determination.

(d) Conduct of Proceeding.

(1) *Right to Evidentiary Hearing.* A party may request an evidentiary hearing within the time specified in Civil Rule 77(e)(1). The court shall hold an evidentiary hearing upon request.

(2) *Standard of Proof.* The party requesting a determination that reasonable efforts are not required must present proof by clear and convincing evidence.

(3) *Child's Best Interests.* In determining whether reasonable efforts are required, the court's primary consideration is the child's best interests.

(4) *Findings.* The court must make specific findings in support of its decision.

(SCO 1355 effective July 15, 1999; amended by SCO 1401 effective October 15, 2000; and by SCO 1651 effective October 15, 2007)

Note to SCO 1651: Chapter 20 SLA 2006 (HB 408 enacted changes relating to the standard of proof in child in need of aid proceedings. Section 1 of the Act amended AS 47.10.086(c) to change the standard of proof for a finding that reasonable efforts, as described in AS 47.10.086(a), are not required. The change to CINA Rule 17.1 is adopted to maintain consistency between the rule and the statutes.

Cross References

CROSS REFERENCE: AS 47.10.086

Rule 17.2. Permanency Hearing.

(a) **Purpose and Timing of the Hearing.** The purpose of the permanency hearing is to establish a permanency plan for each child committed to state custody under AS 47.10.080(c)(1) and to ensure that findings with respect to the plan are made as required by state and federal laws. The

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permanency hearing must be held: (1) within 12 months after the date the child entered foster care as calculated under AS 47.10.088(f); (2) within 30 days after the court determines pursuant to CINA Rule 17.1 that reasonable efforts are not required; or (3) upon application by a party, when good cause is shown.

(b) **Notice.** The court or the party requesting the permanency hearing shall notify the parties of the time set for the hearing, the right to counsel, and the right to submit statements, affidavits or other evidence to the court. The Department shall notify the foster parent or other out-of-home care provider of the time set for the hearing and the right to participate in the hearing. In cases involving an Indian child, the Department shall also provide notice to the child's tribe if the child's tribe has not intervened. A party seeking a continuance of a scheduled hearing must provide reasons for the request. The court may not grant a continuance of a scheduled hearing absent a finding of good cause.

(c) **Report.** The Department shall file and serve a permanency report no later than ten days prior to the permanency hearing. In the report, the Department shall describe its permanency plan for the child, and shall provide a detailed statement of the facts and circumstances supporting the plan.

(d) **Evidence.** Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at the permanency hearing if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(e) **Findings.** The court shall make written findings, including findings related to

(1) whether the child continues to be a child in need of aid;

(2) whether the child should be returned to the parent or guardian, and when;

(3) whether the child should be placed for adoption or legal guardianship and whether the Department is in compliance with AS 47.10.088(d) relating to the filing of a petition for termination of parental rights;

(4) whether there is compelling reason that the most appropriate placement for the child is in another planned, permanent living arrangement and the department has recommended the arrangement under AS 47.14.100(o); the findings under this subsection must include the steps that are necessary to achieve the new arrangement; and

(5) in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living or adult protective services.

If the court is unable to make a finding required under this subsection, the court shall schedule and hold another permanency hearing within a reasonable period of time as defined in AS 47.10.990(28).

(f) **Additional Findings.** In addition to the findings required under subsection (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid;

(3) if the permanency plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(4) whether the Department has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement).

(g) **Implementation.** The court may make appropriate orders to ensure timely implementation of the permanency plan.

(h) **Change in Permanency Plan.** If the permanency plan established by the court changes after the permanency hearing, the Department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the Department.

(i) **Subsequent Review.** The court shall hold a hearing to review the permanency plan at least annually until successful implementation of the plan.

(SCO 1355 effective July 15, 1999; amended by SCO 1580 effective nunc pro tunc to July 1, 2005; by SCO 1491 effective October 15, 2006; by SCO 1792 effective nunc pro tunc September 9, 2012; and by SCO 1891 effective October 24, 2016)

Note: Chapter 64, section 53, SLA 2005 (HB 53) amended Child in Need of Aid Rule 17.2 as reflected in section 3 of this Order. The change to CINA Rule 17.2 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(d) of the Act, AS 47.10.080(l), enacted in section 12, amends CINA Rule 17.2 by modifying the grounds for review of a permanent plan.

Note: Chapter 7, 4SSLA 2016 (HB 27), the Child Protection and Opportunity Act, enacted a number of changes relating to the placement of a child in need of aid. According to section 15 of the Act, AS 47.10.080(l), as amended by section 4, has the effect of amending CINA Rule 17.2, relating to permanency hearings, effective October 24, 2016, by adding a requirement for the court to make findings relating to the permanent placement of a child in need of aid and to the efforts

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of the Department of Health and Social Services to find a permanent placement for a child.

Cross References

CROSS REFERENCE: AS 47.10.080(c), (f), (l); AS 47.10.088(f); AS 47.10.086(d); AS 47.14.100(o); 45 CFR § 1356.21(b).

Rule 17.3 Petition or proxy for adoption or legal guardianship of a child under AS 47.10.111

(a) A petitioner may file a petition for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for adoption or legal guardianship of a child before the court approves adoption or legal guardianship as the permanent plan for the child, the court shall hold the petition for adoption or legal guardianship in abeyance until the court approves adoption or legal guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(l). If the child is in an out-of-home placement but is not placed with the petitioner at the time the petition is filed, the court shall hold a hearing within 90 days to review the permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings related to whether the petitioner is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable. If 25 U.S.C. 1915(a) applies, the court shall make written findings related to whether the current placement is in compliance with or whether there is good cause to deviate from the placement preferences.

(b) A person may file a proxy for a formal petition for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 as part of the same case. If a person files a proxy for a formal petition for adoption or legal guardianship of a child who is in out-of-home placement, and the child is not placed with the person who files the proxy at the time the person files the proxy, the court shall hold a hearing within 90 days to review the permanent plan for the child as required under AS 47.10.112(c). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings related to whether the person who filed the proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable, and, if 25 U.S.C. 1915(a) applies, whether the current placement is in compliance or whether there is good cause to deviate from the placement preferences.

(Adopted by SCO 1886 effective January 1, 2017)

Note: Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Section 17 of the Act amended the Child In Need of Aid Rules, effective January 1, 2017, by adding a new Rule 17.3 concerning adoption or guardianship petitions under AS 47.10.111 for children who are the subject of a pending CINA case. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

Rule 18. Termination of Parental Rights

(a) **Petition.** The Department may file a petition seeking termination of parental rights combined with or after the filing of a petition for adjudication of that child as a child in need of aid. The title of the petition must clearly state that termination of parental rights is sought. A petition for termination of parental rights must be served as provided by CINA Rule 7(d) and (e).

(b) **Purpose of Hearing.** The termination hearing is a disposition hearing to the court on the question of whether the parental rights to an adjudicated child in need of aid should be terminated. Upon a showing of good cause and with adequate notice to the parties, an adjudication hearing and a termination hearing may be consolidated.

(c) **Burden of Proof.** Before the court may terminate parental rights, the Department must prove:

(1) by clear and convincing evidence that

(A) the child has been subjected to conduct or conditions described in AS 47.10.011 and

(i) the parent has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or

(ii) the parent has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; or

(B) a parent is incarcerated and the requirements of AS 47.10.080(o) are met; and

(2) by clear and convincing evidence that

(A) the Department has complied with the provisions of AS 47.10.086 concerning reasonable efforts; or

(B) in the case of an Indian child, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful; and

(3) by a preponderance of the evidence that termination of parental rights is in the best interests of the child; and

(4) in the case of an Indian child, by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(d) **Relinquishment.** Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089 and Adoption Rule 9. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. § 1913(c) and Adoption Rule 9(b) and (d).

(e) **Trial.** A trial on the petition to terminate parental rights shall be held within six months after the date on which

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the petition to terminate parental rights is filed, unless the court finds that good cause is shown for a continuance. When determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child. The court shall make written findings when granting a continuance.

(f) **Evidence.** Hearsay that is not admissible under a recognized exception to the hearsay rule is not admissible at a trial on a petition to terminate parental rights to prove that the child has been subjected to conduct or conditions described in AS 47.10.011. Otherwise, hearsay may be admissible at the trial if it is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(g) **Judgment.** The court shall make findings of fact and enter an order within 90 days after the last day of trial on the petition to terminate parental rights. The court shall commit the child to the custody of the Department if parental rights are terminated.

(h) **Post-Termination Reports.** If a permanent placement for the child was not approved at the termination hearing, the Department shall report to the court within 30 days on the efforts being made to recruit a permanent placement. Thereafter, the Department shall report quarterly on efforts being made to find a permanent placement for the child. Copies of the Department's reports shall not be served on a parent whose rights have been terminated.

(SCO 845 effective August 15, 1987; amended by SCO 982 effective January 15, 1990; by SCO 1355 effective July 15, 1999; by SCO 1580 effective nunc pro tunc to July 1, 2005; by SCO 1620 effective nunc pro tunc to May 4, 2006; by SCO 1651 effective October 15, 2007; and by SCO 1721 effective April 15, 2010)

Note: Chapter 64, section 54, SLA 2005 (HB 53) amended Child in Need of Aid Rule 18 as reflected in section 5 of this Order. The change to CINA Rule 18 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(e) of the Act, AS 47.10.089, enacted in section 17, amends CINA Rule 18 by providing that a relinquishment must be in writing, allowing for the withdrawal of the relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing before the entry of an adoption or legal guardianship decree.

Note: Chapter 20 SLA 2006 (HB 408) enacted changes relating to the standard of proof in child in need of aid proceedings. According to section 11 of the Act, the amendments to AS 47.10.086(c), AS 47.10.088(a), and AS 47.10.088(b) in sections 1-3 of the Act have the effect of amending Child in Need of Aid Rule 18 relating to the termination of parental rights proceedings by increasing the standard of proof concerning some elements from proof by a preponderance of the evidence to proof by clear and convincing evidence. The change to CINA Rule 18 is adopted to maintain consistency between the rule and the statutes.

Cross References

CROSS REFERENCE: AS 25.23.180; AS 47.10.080 (c)(3); AS 47.10.088; 25 U.S.C. § 1912(d) and (f).

Rule 19. Annual Review.

(a) **Purpose and Timing of Review.** The court shall conduct an annual review for a child under the supervision of the Department pursuant to AS 47.10.080(c)(2) to determine if continued supervision, as it is being provided, is in the best interest of the child.

(b) **Report.** The Department shall file a written report at least twenty days before the anniversary date of a disposition order made under AS 47.10.080(c)(2). The Department shall serve the parties with copies of the report together with notice of the right to counsel, notice of the right to submit statements, affidavits or other evidence to the court and notice of the right to request an evidentiary hearing. The report must include the current case plan and must describe both the services offered by the Department and the services utilized by the parents or guardian to make it possible for the child to remain in the home.

(c) **Conduct of Review.** The review will take place without a hearing on the basis of written reports, statements and affidavits, unless an evidentiary hearing is requested by a party or ordered by the court on its own motion.

(d) **Notice—Indian Child.** In cases involving an Indian child, whose tribe has not intervened, a party requesting an evidentiary hearing shall provide notice of the hearing to the tribe.

(e) **Findings.** At the conclusion of the review, the court shall make written findings related to whether the child continues to be a child in need of aid and whether continued supervision by the Department is in the best interests of the child.

(SCO 845 effective August 15, 1987; amended by SCO 916 effective January 15, 1989; by SCO 958 effective July 15, 1989; by SCO 983 effective January 15, 1990; by SCO 1010 effective January 15, 1990; by SCO 1072 effective January 15, 1992; by SCO 1085 effective January 15, 1992; and by SCO 1355 effective July 15, 1999)

Note: Ch. 43, SLA 2001, amends AS 47.10.030, AS 47.10.070(a), and AS 47.10.080(f) to add provisions concerning notice to and participation by grandparents. According to §6 of the Act, these provisions have the effect of amending Child in Need of Aid Rules 3, 7, 10, 15, 17, and 19 by requiring that grandparents be given notice of and an opportunity to be heard at certain child-in-need-of-aid proceedings.

Cross References

CROSS REFERENCE: AS 47.10.080(c), (f), (l).

Rule 19.1. Review upon Application.

(a) **Visitation.** At any time in a proceeding, a parent or guardian who has been denied visitation, or the child's guardian ad litem, may move the court for a review hearing at

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which the Department must show by clear and convincing evidence that visits are not in the child's best interests.

(b) **Placement Transfer.** At any time in a proceeding, a party who is opposed to the Department transferring a child from one placement to another may move the court for a review hearing at which the requesting party must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child. In the case of an Indian child, the court must consider the placement preferences as set forth in 25 U.S.C. § 1915.

(c) **Disposition Order.** Pursuant to AS 47.10.100(a), the court may review a disposition order upon motion of a party or on its own motion. When a party seeks the return of a child to the child's home, if the party makes a prima facie showing that removal is no longer necessary, the burden of proof shifts to the Department as described below:

(A) in cases involving a non-Indian child, the court shall return the child to the home unless the Department proves by a preponderance of the evidence that return to the home is contrary to the welfare of the child;

(B) in cases involving an Indian child, the court shall restore the child to the child's parent or Indian custodian unless the Department proves by clear and convincing evidence, including the testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if returned to the custody of the parent or Indian custodian.

(d) **Other Review.** At any time in a proceeding, the court may review matters not otherwise covered by these rules upon motion of a party or on its own motion.

(e) **Request for Hearing by Adult Family Member or Family Friend.** If the Department denies a placement with a child's adult family member or family friend under AS 47.14.100(m), the adult family member or family friend is not required to intervene in the proceeding before requesting a hearing to review the decision. The adult family member or family friend's participation in the case is limited to being a participant in the hearing concerning the denial of placement with that adult family member or friend. The court will provide notice to the adult family member or family friend of any scheduled hearing, decision, or other action relating directly to the request made under this subsection.

(Adopted by SCO 1355 effective July 15, 1999; and amended by SCO 1750 effective April 15, 2011)

Cross References

CROSS REFERENCE: AS 47.10.080(p) and (s); AS 47.10.100(a); 25 U.S.C. § 1915.

Rule 19.2. Extension of Custody or Supervision.

(a) **Petition.** The Department or the child's guardian ad litem may file a petition for an extension of the commitment to custody or supervision. The petition must be filed at least thirty days prior to the expiration of the existing disposition order. The petitioner shall serve notice of the time set for a hearing on

the petition to those persons specified in CINA Rule 3(a) and to the child's tribe and Indian custodian, even if the tribe or Indian custodian has not intervened. If the tribe or Indian custodian has not intervened, the notice must include notice of the right to intervene in the action and to obtain documents filed in the case.

(b) **Extension of Custody or Supervision.** At the conclusion of the hearing the court shall determine whether the child continues to be a child in need of aid and whether continued custody or supervision by the Department is in the best interests of the child.

(c) **Report.** The petitioner must submit a written report that includes a detailed statement of the facts and circumstances supporting the petition for extension of custody or supervision. Unless otherwise ordered, the report must be served and filed at least ten days prior to the extension hearing.

(d) **Status Pending Decision.** If the court is unable to decide the extension petition before expiration of the existing disposition order, the court may extend custody or supervision for a reasonable time as defined in AS 47.10.990(28) pending a decision on the extension petition.

(SCO 1355 effective July 15, 1999)

Cross References

CROSS REFERENCE: AS 47.10.080(c).

Rule 20. Review Upon Petition Under 25 U.S.C. §1914.

(a) **Grounds for Petition.** In cases involving an Indian child, the child, parents, Indian custodian and child's tribe may petition the court to invalidate any order in the case upon a showing that the order violated any provision of 25 U.S.C. §§ 1911, 1912 or 1913. A petition under 25 U.S.C. § 1914 may be brought as a separate action if the petitioner is unable to participate in the challenged proceeding as a party.

(b) **Petition to Invalidate.** A petition filed under 25 U.S.C. § 1914 must be served on all parties to the action sought to be invalidated, including the Indian child's tribe and Indian custodian whether or not they have intervened. The petition must include:

(1) the identities of the petitioner and the Indian child subject to the petition, and the status of the petitioner under 25 U.S.C. § 1914;

(2) a statement of the particular provisions of 25 U.S.C. §§ 1911, 1912 or 1913 alleged to have been violated and the factual basis supporting the alleged violation; and

(3) any exhibits, reports or other evidence in support of the allegations.

(c) **Disposition.** If the court determines that the challenged order violated 25 U.S.C. §§ 1911, 1912 or 1913, the court shall immediately invalidate the order and take other appropriate action which may include dismissing the case and ordering the child returned to the parents or Indian custodian.

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(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Cross References

CROSS REFERENCE: 25 U.S.C. Sections 1911, 1912, 1913, and 1914.

PART VIII. APPELLATE REVIEW

Rule 21. Appeal and Petition for Review in Appellate Courts.

(a) **Grounds, Procedure.** An appeal of a final judgment or order, or a petition for review of an interlocutory order or decision, may be taken subject to Appellate Rule 218 or other appropriate appellate procedures.

(b) **Stay.** An order, judgment or decision of the superior court remains in effect pending appeal or review, unless stayed by order of the superior court or the supreme court.

(SCO 845 effective August 15, 1987; amended by SCO 1355 effective July 15, 1999)

Cross References

CROSS REFERENCE: AS 22.07.020(a)(3); AS 47.10.080(i); Appellate Rules 218, 402 & 403; 25 U.S.C. § 1914.

PART IX. COURT ADMINISTRATION

Rule 22. Confidentiality.

(a) **Confidentiality of Records.** The records of a child in need of aid proceeding are confidential. Only parties and their attorneys may have access to the court file except as otherwise authorized by statute or court order for good cause shown. Parties and their attorneys shall maintain the confidentiality of all information in the court's file. Other persons authorized access to the file are subject to such conditions as the court may set with notice to the parties.

(b) **Foster Parent's Right to Review.** A foster parent may have access to court records relating to a child whom the Department has placed with the foster parent or whom the Department proposes for placement. When a case involves more than one child, but the foster parent does not have custody of all the children in the case, the foster parent may have access only to those portions of the court records that relate to the child whom the Department has placed or proposed for placement with the foster parent. The foster parent must maintain the confidentiality of all parts of the record. For purposes of this rule, "foster parent" includes current and proposed foster parents.

(c) **Child's Name or Picture.** The name or picture of a child who is the subject of a CINA proceeding may not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization, or unless necessary to implement the permanency plan for the child after all parental rights of custody have been terminated.

(SCO 845 effective August 15, 1987; amended by SCO 1204 effective July 15, 1995; by SCO 1355 effective July 15, 1999; and by SCO 1580 effective July 7, 2005)

Note: AS 47.10.092, added by ch. 98 § 2 SLA 1994, affects CINA Rule 22 by authorizing the parent or legal guardian of a minor subject to a proceeding under AS 47.10.010-.142 to disclose confidential or privileged information about the minor, including information lawfully obtained from a court file, to the governor, the lieutenant governor, a legislator, the ombudsman appointed under AS 24.55, the attorney general, and the commissioners of health and social services, administration, or public safety, or an employee of these persons, for review or use in their official capacities. A person to whom such disclosure is made may not disclose confidential or privileged information about the minor to a person not authorized to receive it.

Note: Chapter 64, section 55, SLA 2005 (HB 53) amended Child in Need of Aid Rule 22. The change to CINA Rule 22 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 61(b) of the Act, sections 19 and 22-27 have the effect of changing CINA Rule 22 by allowing the disclosure of confidential information pertaining to a child, including allowing a child's name or picture to be made public in certain circumstances.

Cross References

CROSS REFERENCE: AS 47.10.090; 25 U.S.C. Section 1912(c).

PART X. TRANSFER OF JURISDICTIONS

Rule 23. Transfer of Jurisdiction to Tribal Court.

(a) **Who May File Petition.** In circumstances in which the Indian child's tribe may exercise jurisdiction in child welfare cases under 25 U.S.C. §1911(b), the Indian child's tribe, if it has intervened, a parent, or an Indian custodian, may file a petition to transfer CINA proceedings in state court to the tribal court of the Indian child's tribe.

(b) **Contents of Petition.** The petition shall state:

(1) the name, address and telephone number of the petitioner;

(2) the names, addresses and telephone numbers of the parents of the child, if known;

(3) the names, addresses and telephone numbers of any Indian custodians of the child, if known;

(4) the name, address and telephone number of the Indian child's tribe;

(5) the name, address and telephone number of the tribal court of the Indian child's tribe; and

(6) the tribal court's position, if known, on whether it will decline or accept jurisdiction in the case.

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(c) **Notice and Sample Forms.** With the petition, the petitioner shall also serve the parties with a notice stating the following:

(1) the parties must file and serve any response they wish to make to the petition within 20 days after service;

(2) if either parent opposes the transfer of jurisdiction to tribal court the petition will not be granted under 25 U.S.C. §1911(b), unless the parental rights of the parent have already been terminated by a court of competent jurisdiction;

(3) if the tribal court declines jurisdiction at any time before an order granting the petition is signed the petition will not be granted;

(4) if a party to the state court proceeding demonstrates good cause why jurisdiction should not be transferred, the petition will not be granted;

(5) if jurisdiction is transferred to tribal court and the tribal court exercises jurisdiction, any state court appointments of counsel for parents or Indian custodians, or of Guardians ad Litem or counsel for the child, will terminate; and

(6) that a tribal court may find a copy of a sample order to file with the state court to accept or decline jurisdiction, and that a parent or Indian custodian may find a copy of a sample form to file with the state court to agree or object to the proposed transfer, on the court system's website at: www.courts.alaska.gov.

(d) **Service.**

(1) *Parents or Indian Custodians.* The petitioner shall serve parents or Indian custodians by registered or certified mail, restricted delivery with return receipt requested, with copies of the petition for adjudication in state court, the petition to transfer to tribal court, and the notice described under subsection (c). The state court may waive service on a parent or Indian custodian under this paragraph when diligent inquiry has failed to locate that parent or Indian custodian.

(2) *Tribal Court.* If the petitioner is a parent or an Indian custodian, the petitioner shall serve the tribal court to which transfer is sought by registered or certified mail, return receipt requested, with copies of the petition for adjudication, the petition to transfer to tribal court, and the notice required under subsection (c).

(3) *Tribe.* The petitioner shall serve any tribe that may be the Indian child's tribe, regardless of whether a tribe has intervened. Service shall be by registered or certified mail, return receipt requested, with copies of the petition for adjudication and the petition to transfer to tribal court.

(4) *Other State Court Parties.* The petitioner shall serve the petition to transfer on all other parties in the state proceeding under Civil Rule 5(b) (set forth at the end of this rule).

(e) **Procedure.**

(1) *Parties' Responses.* Parties to the state court proceeding may serve and file a response within 20 days after service of the petition.

(A) *Parent's Statement.* A parent served with a petition to transfer shall file and serve a statement about whether they agree with or object to the proposed transfer within the time allotted to respond to the petition. If a parent objects to transfer, the court shall deny the petition.

(B) *Good Cause Not to Transfer.* The response of any party asserting that good cause exists not to transfer the case to tribal court shall state the alleged grounds for a finding of good cause not to transfer. Any other party may serve and file a supplemental response, limited to the issue of good cause, within ten days after service of the response. If material issues of fact are raised in the pleadings, the state court shall set an evidentiary hearing. A party asserting good cause not to transfer the case bears the burden of proof by a preponderance of the evidence.

(2) *Petitioner's Reply.* The petitioner may serve and file a reply within ten days after service of a response.

(f) **Acceptance or Declination by the Tribal Court.**

(1) Only the tribal court of the Indian child's tribe may accept or decline a transfer of jurisdiction under this rule.

(2) If the tribal court declines jurisdiction while the petition is pending, the state court shall dismiss the petition without further proceedings.

(3) If the tribal court has not stated its position regarding transfer by the time the petition is ripe for decision, the state court shall contact the tribal court to request a timely response. The state court shall keep a record of any communication with the tribal court, and the parties shall be informed promptly of the communication and granted access to the record.

(g) **Findings and Order.** In its order granting or denying the petition, the state court shall make findings on the following:

(1) whether the child is an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. §1903(4);

(2) whether the tribe to whose tribal court transfer is sought is the Indian child's tribe as defined in the Indian Child Welfare Act, 25 U.S.C. 1903(5);

(3) whether the Indian child's tribe has intervened in the state court proceeding;

(4) whether the Indian child's tribe has a tribal court, and whether that court has accepted jurisdiction over the child;

(5) whether a parent has objected to a transfer of jurisdiction to the tribal court; and

(6) whether there is good cause not to transfer jurisdiction to the tribal court.

(h) **Transfer to Tribal Court.**

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(1) If the state court grants the transfer of jurisdiction, it shall retain jurisdiction pending exercise of jurisdiction by the tribal court.

(2) When the tribal court exercises jurisdiction under (h)(1), the state court shall provide the tribal court with copies of any documents in the state court file requested by the tribal court.

(Adopted by SCO 1521 effective October 15, 2004)

Note: Nothing in this rule shall be construed to prevent the emergency removal or placement of an Indian child under state law in accordance with 25 U.S.C. §1922, as necessary to prevent imminent physical damage or harm to the child.

Cross References

CROSS REFERENCE: 25 U.S.C. §1911(b); 25 U.S.C. §1903.

SERVICE RULE—Civil Rule 5(b): The service provisions of Civil Rule 5(b), referred to in Rule 23(d)(4) above, are as follows: (b) **Service—How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, by mailing it to the attorney's or party's last known address, by transmitting it to the attorney's or party's facsimile machine telephone number as provided in Civil Rule 5.1(b), or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Mailing of a copy means mailing it by first class United States mail. Service by mail is complete upon mailing. Service by a commercial delivery company constitutes service by delivery and is complete upon delivery.

PART XI. TRIBAL COURT ORDERS ENTERED IN ICWA-DEFINED CHILD CUSTODY PROCEEDINGS

Rule 24. Registration and Confirmation of Tribal Court Orders under the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(a) **Applicability.** This rule shall apply only to orders issued by the tribal court of an Indian child's tribe when the Indian child's tribe exercises jurisdiction in a "child custody proceeding" as defined by section 1903(1) of the Indian Child Welfare Act, including, as defined by that section, a "foster care placement," "termination of parental rights," "preadoptive placement," and "adoptive placement" other than an adoption decree. Adoption decrees are not covered by this rule.

(b) **Procedure for Registration.** An Indian tribe or any person may register a tribal court order as identified in section (a) by filing:

(1) a letter, motion, petition, or other document requesting registration and confirmation of the tribal court's order;

(2) two copies of the tribal court's order sought to be registered;

(3) a notarized statement, under penalty of perjury, that the tribal court's order has not been vacated, stayed, or modified; and whether this tribal court order, or any other order involving the same child or children, has been registered in this or any other jurisdiction; and

(4) the name and contact information of: (A) the tribal court issuing the child custody order; (B) the Indian child's tribe; (C) the person seeking registration; (D) the parent or person acting as a parent who has been awarded custody or visitation in the child custody order sought to be registered, subject to subsection (c) of this rule; (E) the person with physical custody of the child or who claims rights of legal custody or physical custody of, or visitation with, the child; (F) the person from whom custody of the child was taken in the tribal court child custody proceeding; and (G) the parent whose rights have not been previously terminated. A letter, motion, petition, or other document requesting registration may be accompanied by a request for non-expedited enforcement or expedited enforcement under CINA Rule 25.

(c) **Application for Limited Disclosure.** If a person or tribe seeking registration alleges in an affidavit or a pleading under oath that the health, safety, or liberty of the child or the person awarded custody or visitation would be jeopardized by disclosure of identifying information, the information shall be made confidential or sealed and may not be disclosed to the other persons named in paragraph (b)(4) unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the child or the person awarded custody or visitation, and determines that the disclosure is in the interest of justice.

(d) **Filing and Notice by Registering Court.** On receipt of the documents and information required in subsection (b) of this rule, the clerk of court shall:

(1) cause the tribal court's order to be filed in the same manner as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) distribute notice using any method of service allowed by Civil Rule 4 to the persons named in paragraph (b)(4) and provide them with an opportunity to contest the registration under subsection (f) of this rule.

(e) **Contents of Notice.** The notice required in paragraph (d)(2) shall state the following:

(1) a registered order is enforceable as of the date of registration in the same manner as an order issued by the superior court;

(2) a hearing to contest the validity of the registered order must be requested within 20 days after service of the notice; and

(3) failure to contest the registration will result in confirmation of the order and bar any further contest of the order on matters that could have been asserted.

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(f) **Request for Hearing on Confirmation of Registration.** A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the tribal court did not have jurisdiction over the parties or the child custody proceeding in which the tribal child custody order was entered;

(2) the child custody order sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so; or

(3) the person contesting registration was entitled to notice, but notice was not given in a manner reasonably calculated to give actual notice of the proceedings before the court that issued the order for which enforcement is sought, or if notice was given, the person contesting registration was not given an opportunity to be heard.

(g) **Confirmation of Registration.**

(1) The superior court shall confirm or deny registration and notify the petitioner and all persons listed in paragraph (b)(4) by entry of a written order as follows:

(A) If the superior court does not receive a timely request for hearing, a registered order that conforms with subsections (a) and (b) is confirmed as a matter of law;

(B) If a hearing is held, the court shall confirm a registered order that conforms with subsections (a) and (b) unless the person contesting registration establishes that one or more of the reasons listed in subsection (f) renders the tribal court order invalid.

(2) Confirmation of registration, whether after a hearing or as a matter of law if no hearing is requested, precludes further contest of the tribal court's child custody order with respect to any matter that could have been asserted at the time of registration.

(h) **Enforcement of Registered Orders.** A court of this state shall recognize and enforce a child custody order registered in accordance with this rule. A court of this state may grant relief normally available under the law of this state, including writs of assistance, to enforce a registered child custody order by a federally recognized tribe.

(i) **Confidentiality.** A tribal court child custody order filed for registration and confirmation is confidential and can be disclosed only to the persons listed in subsection (b) of this rule and as authorized under Administrative Rule 37.5 or by order of the superior court.

(j) **Definitions.** For purposes of this rule and CINA Rule 25, the terms "person" and "person acting as parent" are defined as provided in AS 25.30.909(12) and (13), except that the terms shall also include a federally recognized tribe.

(SCO 1784 effective October 1, 2014)

Note: Under the Indian Child Welfare Act, 25 U.S.C. § 1911(d), tribal court orders entered in Indian child custody proceedings are entitled to the same full faith and credit that is given to orders entered by state courts. To qualify for full faith and credit, the issuing court must have personal and subject

matter jurisdiction and render its judgment in accordance with minimum due process.

Note: Because tribal adoption decrees are registered through the Alaska Bureau of Vital Statistics, they are not covered by this rule.

Note: This rule does not apply to tribal court child custody orders that are not covered by the Indian Child Welfare Act. The Indian Child Welfare Act generally does not apply to divorce or divorce-like child custody proceedings between parents. See 25 U.S.C. § 1903(1); *State of Alaska v. Native Village of Tanana*, 249 P.3d 734, 739 n.19 (Alaska 2011).

Rule 25. Expedited Enforcement of Tribal Court Orders under the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(a) **Availability of Expedited Enforcement.** A verified petition for expedited enforcement and request for writ of assistance may be filed in accordance with this rule for any tribal court order for which registration has been sought under CINA Rule 24.

(b) **Contents of the Verified Petition.** The verified petition shall set forth the following facts:

(1) whether the tribal court that issued the order identified the jurisdictional basis it relied on in exercising jurisdiction and, if so, what the basis was;

(2) whether a proceeding has been commenced in state court or tribal court that could affect the current proceedings, including proceedings relating to domestic violence protective orders, termination of parental rights, and adoptions and, if so, the name of the court, the case number, and the nature of the proceeding;

(3) the present physical address of the child and the person or persons having physical or legal custody, if known;

(4) whether relief in addition to the immediate physical custody of the child is sought and, if so, the relief sought;

(5) if the child custody order has been registered and confirmed under CINA Rule 24 and, if so, the date and place of registration;

(6) whether the petitioner will request a writ of assistance; and

(7) a statement explaining why expedited enforcement is necessary.

(c) **Ex Parte Hearing to Issue Writ of Assistance.** A petitioner may request a writ of assistance in any case where a child has been removed or is in imminent danger of being removed from the person with whom the tribal court ordered placement. The court may conduct an ex parte hearing for further fact finding. If the court finds that a child has been removed or is in immediate danger of being removed from the person with whom the tribal court ordered placement, the court may issue a writ of assistance as follows:

(1) reciting the facts supporting the conclusion that immediate removal from the person with whom the tribal court ordered placement has or will occur;

(2) directing law enforcement officials to take physical custody of the child immediately;

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(3) providing for return to the person with whom the tribal court ordered placement;

(4) if less intrusive remedies are not effective, authorizing law enforcement officers to enter private property to take physical custody of the child;

(5) if required by exigent circumstances, authorizing law enforcement officers to make a forcible entry at any hour; and

(6) serving the petition for expedited enforcement, the writ of assistance, and orders to appear or to protect the safety of the parties or the child immediately after the child is taken into physical custody.

(d) **Hearing.** Except where service occurs in accordance with paragraph (c)(6), the court shall serve the petition for expedited enforcement on the respondent and any person served with the petition for registration pursuant to CINA Rule 24(b)(4). The verified petition for expedited enforcement of a child custody order shall be heard on the next judicial day after the petition is served unless that date is impossible, in which case the court shall hold the hearing on the first judicial day possible. On the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter an order necessary to ensure the safety of the parties and the child. The order must state the time and place of the hearing and advise the respondent that, at the hearing, the court will order that immediate physical custody of the child be delivered to the person with whom the tribal court ordered placement, and that such further hearings as necessary may be scheduled unless the respondent appears and establishes that:

(1) the child custody order has not been registered and confirmed and that:

(A) the tribal court did not have jurisdiction over the parties or the child custody proceeding in which the tribal child custody order was entered;

(B) the child custody order for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so; or

(C) the respondent was entitled to notice, but notice was not given in a manner reasonably calculated to give actual notice of the proceedings before the court that issued the order for which enforcement is sought, or if notice was given, the respondent was not given an opportunity to be heard; or

(2) the child custody order for which enforcement is sought was registered and confirmed but has been vacated, stayed, or modified by a court having jurisdiction to do so.

(e) **Orders and Enforceability.**

(1) The court may order such further relief as appropriate under Alaska law.

(2) A writ of assistance directing law enforcement to take physical custody of a child is enforceable throughout this state.

(f) **Conditions on Placement of the Child.** The superior court issuing an order or writ of assistance under this rule may impose conditions on the placement of the child to ensure the appearance of the child and child's custodian at subsequent hearings.

(SCO 1784 effective October 1, 2014)

Note: Under the Indian Child Welfare Act, 25 U.S.C. § 1911(d), tribal court orders entered in Indian child custody proceedings are entitled to the same full faith and credit that is given to orders entered by state courts. To qualify for full faith and credit, the issuing court must have personal and subject matter jurisdiction and render its judgment in accordance with minimum due process.

APPENDIX

INDIAN CHILD WELFARE ACT

25 U.S.C. §§ 1901—1923, 1951

§ 1901. Congressional findings.

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes” and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy.

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by

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providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903. Definitions.

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) “child custody proceedings” shall mean and include—

(i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;

(iii) “preadoptive placement” which shall mean the permanent placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) “extended family member” shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) “Indian child’s tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) “parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) “reservation” means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) “Secretary” means the Secretary of the Interior; and

(12) “tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings.

(a) Exclusive jurisdiction.

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court.

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention.

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the

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Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes.

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings.

(a) Notice; time for commencement of proceedings; additional time for preparation.

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel.

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents.

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures.

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child.

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child.

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

§ 1913. Parental rights, voluntary termination.

(a) Consent; record; certification matters; invalid consents.

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent.

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody.

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

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(d) Collateral attack; vacation of decree and return of custody; limitations.

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. Placement of Indian children.

(a) Adoptive placements; preferences.

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences.

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences.

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable.

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability.

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

§ 1916. Return of custody.

(a) Petition; best interests of child.

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure.

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the

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individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

§ 1918. Reassumption of jurisdiction over child custody proceedings.

(a) Petition; suitable plan; approval by Secretary.

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession.

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval.

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary

disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected.

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. Agreements between States and Indian tribes.

(a) Subject coverage.

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected.

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than that rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action.

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Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Pub. L. 95-608. Title III. § 301, Nov. 8, 1978, 92 Stat. 3077).

§ 1923. Effective date.

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

§ 1951. Information availability to and disclosure by Secretary.

(a) Copy of final decree or order, other information; anonymity affidavit; exemption from Freedom of Information Act.

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended. (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment.

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INDIAN CHILD WELFARE ACT REGULATIONS

[25 C.F.R. Part 23](#), published at [81 Fed. Reg. 38778](#) (June 14, 2016) and effective December 12, 2016.

From Subpart A—Purpose, Definitions, and Policy

§ 23.2 Definitions.

Act means the Indian Child Welfare Act (ICWA), Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.*

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

Assistant Secretary means the Assistant Secretary—Indian Affairs, the Department of the Interior.

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, the Department of the Interior.

Child-custody proceeding. (1) “Child-custody proceeding” means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) *Foster-care placement*, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) *Termination of parental rights*, which is any action resulting in the termination of the parent-child relationship;

(iii) *Preadoptive placement*, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(iv) *Adoptive placement*, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed

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in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child-custody proceeding.

Consortium means an association or partnership of two or more eligible applicants who enter into an agreement to administer a grant program and to provide services under the grant to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of services within the area.

Continued custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.

Domicile means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

Extended family member is defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, is a person who has reached age 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Grants officer means an officially designated officer who administers ICWA grants awarded by the Bureau of Indian Affairs, the Department of the Interior.

Hearing means a judicial session held for the purpose of deciding issues of fact, of law, or both.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606.

Indian child means any unmarried person who is under age 18 and either:

- (1) Is a member or citizen of an Indian Tribe; or
- (2) Is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe.

Indian child's Tribe means:

- (1) The Indian Tribe in which an Indian child is a member or eligible for membership; or
- (2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in §23.109.

Indian custodian means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

Indian foster home means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).

Indian organization, solely for purposes of eligibility for grants under subpart D of this part, means any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians.

Indian preference means preference and opportunities for employment and training provided to Indians in the administration of grants in accordance with section 7 (b) of the

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Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3 (c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602 (c).

Involuntary proceeding means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency.

Off-reservation ICWA program means an ICWA program administered in accordance with 25 U.S.C. 1932 by an off-reservation Indian organization.

Parent or *parents* means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Service areas solely for newly recognized or restored Indian tribes without established reservations means those service areas congressionally established by Federal law to be the equivalent of a reservation for the purpose of determining the eligibility of a newly recognized or restored Indian tribe and its members for all Federal services and benefits.

State court means any agent or agency of a state, including the District of Columbia or any territory or possession of the United States, or any political subdivision empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (e.g., truancy, incorrigibility).

Subgrant means a secondary grant that undertakes part of the obligations of the primary grant, and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant-supported activity.

Technical assistance means the provision of oral, written, or other relevant information and assistance to prospective grant applicants in the development of their grant proposals. Technical assistance may include a preliminary review of an application to assist the applicant in identifying the strengths and weaknesses of the proposal, ongoing program planning, design and evaluation, and such other program-specific assistance as is necessary for ongoing grant administration and management.

Title II means title II of Public Law 95-608, the Indian Child Welfare Act of 1978, which authorizes the Secretary to make grants to Indian tribes and off-reservation Indian organizations for the establishment and operation of Indian child and family service programs.

Tribal court means a court with jurisdiction over child-custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian Tribe, or any other administrative body of a Tribe vested with authority over child-custody proceedings.

Tribal government means the federally recognized governing body of an Indian tribe.

Upon demand means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

Value means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

[59 FR 2256, Jan. 13, 1994, as amended at 81 FR 38864, June 14, 2016]

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From Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts

§ 23.11 Notice.

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in §23.111, consistent with the confidentiality requirement in §23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by §23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address:

Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Juneau Regional Director, Bureau of Indian Affairs, 709 West 9th Street, Juneau, Alaska 99802-1219. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the

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following address: Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section).

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in §23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

[81 FR 38866, June 14, 2016]

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

§23.101 What is the purpose of this subpart?

The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

§23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in §23.2.

Agency means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a Tribe, or a majority of whose members are Indians.

§23.103 When does ICWA apply?

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

(1) A child-custody proceeding, including:

(i) An involuntary proceeding;

(ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and

(iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

(2) An emergency proceeding.

(b) ICWA does not apply to:

(1) A Tribal court proceeding;

(2) A proceeding regarding a criminal act that is not a status offense;

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(3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or

(4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of "Indian child," then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

§23.104 What provisions of this subpart apply to each type of child-custody proceeding?

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in §23.103(a):

Section	Type of proceeding
23.101-23.106 (General Provisions)	Emergency, Involuntary, Voluntary.
<i>Pretrial Requirements:</i>	
23.107 (How should a State court determine if there is reason to know the child is an Indian child?)	Emergency, Involuntary, Voluntary.
23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?)	Emergency, Involuntary, Voluntary.
23.109 (How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?)	Emergency, Involuntary, Voluntary.
23.110 (When must a State court dismiss an action?)	Involuntary, Voluntary.
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?)	Involuntary (foster-care placement and termination of

Section	Type of proceeding
	parental rights).
23.112 (What time limits and extensions apply?)	Involuntary (foster-care placement and termination of parental rights).
23.113 (What are the standards for emergency proceedings involving an Indian child?)	Emergency.
23.114 (What are the requirements for determining improper removal?)	Involuntary.
<i>Petitions to Transfer to Tribal Court:</i>	
23.115 (How are petitions for transfer of a proceeding made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.116 (What happens after a petition for transfer is made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.117 (What are the criteria for ruling on transfer petitions?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.118 (How is a determination of "good cause" to deny transfer made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.119 (What happens after a petition for transfer is granted?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
<i>Adjudication of Involuntary Proceedings:</i>	
23.120 (How does the State court ensure that active efforts have been made?)	Involuntary (foster-care placement and termination of parental rights).
23.121 (What are the applicable standards of evidence?)	Involuntary (foster-care placement and termination of parental rights).
23.122 (Who may serve as a qualified expert witness?)	Involuntary (foster-care placement and termination of parental rights).

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Section	Type of proceeding
23.123 Reserved	N/A.
<i>Voluntary Proceedings:</i>	
23.124 (What actions must a State court undertake in voluntary proceedings?)	Voluntary.
23.125 (How is consent obtained?)	Voluntary.
23.126 (What information must a consent document contain?)	Voluntary.
23.127 (How is withdrawal of consent to a foster-care placement achieved?)	Voluntary.
23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?)	Voluntary.
<i>Dispositions:</i>	
23.129 (When do the placement preferences apply?)	Involuntary, Voluntary.
23.130 (What placement preferences apply in adoptive placements?)	Involuntary, Voluntary.
23.131 (What placement preferences apply in foster-care or preadoptive placements?)	Involuntary, Voluntary.
23.132 (How is a determination of “good cause” to depart from the placement preferences made?)	Involuntary, Voluntary.
<i>Access:</i>	
23.133 (Should courts allow participation by alternative methods?)	Emergency, Involuntary.
23.134 (Who has access to reports and records during a proceeding?)	Emergency, Involuntary.
23.135 Reserved.	N/A.
<i>Post-Trial Rights & Responsibilities:</i>	
23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?)	Involuntary (if consent given under threat of removal), voluntary.
23.137 (Who can petition to invalidate an action for certain ICWA violations?)	Emergency (to extent it involved a specified violation), involuntary, voluntary.
23.138 (What are the rights to information about adoptees' Tribal affiliations?)	Emergency, Involuntary, Voluntary.
23.139 (Must notice be given of a change in an adopted Indian child's status?)	Involuntary, Voluntary.

Section	Type of proceeding
<i>Recordkeeping:</i>	
23.140 (What information must States furnish to the Bureau of Indian Affairs?)	Involuntary, Voluntary.
23.141 (What records must the State maintain?)	Involuntary, Voluntary.
23.142 (How does the Paperwork Reduction Act affect this subpart?)	Emergency, Involuntary, Voluntary.
<i>Effective Date:</i>	
23.143 (How does this subpart apply to pending proceedings?)	Emergency, Involuntary, Voluntary.
<i>Severability:</i>	
23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?)	Emergency, Involuntary, Voluntary.

Note: For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

§23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the FEDERAL REGISTER each year and makes the list available on its Web site at www.bia.gov.

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see www.bia.gov).

§23.106 How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

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(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

Pretrial Requirements

§23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an “Indian child,” the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child” in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an “Indian child.” A Tribe receiving information related to this inquiry must keep documents and information confidential.

§23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an “Indian child.” An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

§23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of “Indian child” through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.

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(c) If an Indian child meets the definition of “Indian child” through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates, for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each Tribe;

(iii) Tribal membership of the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose

§23.110 When must a State court dismiss an action?

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and §23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

§23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* §23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;

(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);

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(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(6) Statements setting out:

(i) The name of the petitioner and the name and address of petitioner's attorney;

(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.

(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.

(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and §23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in §23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

§23.112 What time limits and extensions apply?

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and §23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and §23.111;

(2) 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and §23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and §23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and §23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and §23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

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(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and §23.111 may also be available under State law or pursuant to extensions granted by the court.

§23.113 What are the standards for emergency proceedings involving an Indian child?

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see *www.bia.gov*);

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

(3) It has not been possible to initiate a "child-custody proceeding" as defined in §23.2.

§23.114 What are the requirements for determining improper removal?

(a) If, in the course of any child-custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.

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(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger

Petitions To Transfer to Tribal Court

§23.115 How are petitions for transfer of a proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

§23.116 What happens after a petition for transfer is made?

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

§23.117 What are the criteria for ruling on transfer petitions?

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

- (a) Either parent objects to such transfer;
- (b) The Tribal court declines the transfer; or
- (c) Good cause exists for denying the transfer.

§23.118 How is a determination of “good cause” to deny transfer made?

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

§23.119 What happens after a petition for transfer is granted?

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

Adjudication of Involuntary Proceedings

§23.120 How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

§23.121 What are the applicable standards of evidence?

(a) The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

§23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

§23.123 [Reserved]

Voluntary Proceedings

§23.124 What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in §23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is

a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in §23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§23.129-23.132.

§23.125 How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.

(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

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§23.126 What information must a consent document contain?

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

§23.127 How is withdrawal of consent to a foster-care placement achieved?

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

§23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§23.129 When do the placement preferences apply?

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in §23.130 and §23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under §23.132 exists to not apply those placement preferences.

§23.130 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
- (2) Other members of the Indian child's Tribe; or
- (3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

§23.131 What placement preferences apply in foster-care or preadoptive placements?

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

- (1) Most approximates a family, taking into consideration sibling attachment;
- (2) Allows the Indian child's special needs (if any) to be met; and
- (3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

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(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
- (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

§23.132 How is a determination of “good cause” to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Access

§23.133 Should courts allow participation by alternative methods?

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

§23.134 Who has access to reports and records during a proceeding?

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

§23.135 [Reserved]

Post-Trial Rights & Responsibilities

§23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

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(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

§23.137 Who can petition to invalidate an action for certain ICWA violations?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's Tribe.

(b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

§23.138 What are the rights to information about adoptees' Tribal affiliations?

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

§23.139 Must notice be given of a change in an adopted Indian child's status?

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

Recordkeeping

§23.140 What information must States furnish to the Bureau of Indian Affairs?

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;

(2) Names and addresses of the biological parents;

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(3) Names and addresses of the adoptive parents;

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(4) Name and contact information for any agency having files or information relating to the adoption;

§23.143 How does this subpart apply to pending proceedings?

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

Severability

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

§23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

§23.141 What records must the State maintain?

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

§23.142 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

ALASKA COURT RULES

CROSS REFERENCES FROM DELINQUENCY AND CINA RULES TO PRIOR CHILDREN'S RULES

Delinquency Rules	Children's Rules	CINA Rules	Children's Rules
1	1, 32	1	1, 32
2	---	2	---
3	12, 13	3	12, 13
4	2	4	2
5	2	5	5
6	4	6	5, 6
7	6, 7	7	8, 10
8	8, 10	8	20
9	20	9	13, 17
10	17	10	7
11	21	11	11
12	7	12	11, 14, 15
13	27	13	---
14	12	14	---
15	11	15	12
16	11, 14, 15	16	---
17	---	17	22
18	---	18	22
19	---	19	28
20	3	20	---
21	12	21	29
22	---	22	---
3	22		
24	---		
25	28		
26	29		
27	---		

CHILD IN NEED OF AID RULES OF PROCEDURE