



ALASKA COURT SYSTEM
State of Alaska
SNOWDEN ADMINISTRATIVE OFFICE BUILDING
820 West 4th Avenue
Anchorage, Alaska 99501-2005

Stacy K. Steinberg
Court Rules Attorney

(907) 264-8239
FAX (907) 264-8291
SSteinberg@akcourts.gov

September 22, 2021

REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES
(Comments Due by Monday, October 25, 2021)

The Alaska Supreme Court seeks comments on the following proposed rule changes. Proposed changes to existing rules are shown in “legislative” style: new language is underlined, and deleted language is struck through. Except as otherwise indicated, new text is not underlined when a new rule is proposed or when an existing rule is rescinded and readopted.

Comments are due by Monday, October 25, 2021. Please direct your comments via email to hflint@akcourts.us, or use the mailing address or fax number shown above. Thank you for your time and consideration.

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THE CINA/DELINQUENCY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSALS:

1. Adoption Rule 9—Special Master Appointments; Consent Withdrawal by Child.

The committee proposed an amendment to Rule 9(f) to allow the assigned judge, instead of the presiding judge for the district, to appoint a peace officer or a person authorized to administer oath or affirmations as a special master under Adoption Rule 3 for the limited purpose of sitting as the judge in whose physical presence the person gives the consent or relinquishment in an adoption case. The current process adds delays especially when the presiding judge is located in a different city from the adoption file.

The committee also considered a proposal addressing when a child may withdraw consent to adoption. Alaska Statute 25.23.040(a)(5) requires a minor who is over the age of 10 to consent to the child's adoption unless an exception is established. And the child can withdraw consent under certain conditions. AS 25.23.070(b). While Adoption Rule 9(c) addresses consent by a minor child, it does not address the minor's right to withdraw consent. The rule proposal addresses this deficiency and conforms to the current court practice.

Here is the CINA/Delinquency Rules Committee's recommendation:

Rule 9. Consents—Relinquishments.

* * * *

(f) **Consent or Relinquishment Before Special Master.** A consent or relinquishment required to be taken in the presence of a judge must be taken in the physical presence of a judge. However, in exceptional circumstances the judge assigned to hear the entire proceeding may ~~request that the presiding judge~~ appoint a peace officer or person authorized to administer oaths or affirmations as a special master under Adoption Rule 3 for the limited purpose of sitting as the judge in whose physical presence the person gives the consent or relinquishment. The judge assigned to hear the entire proceeding must be telephonically present when the consent or relinquishment is taken. Both the special master and the judge assigned to hear the entire proceeding must make oral or written findings concerning the identity of the person signing the consent or relinquishment, whether the person understood the consent or relinquishment, and whether the person signed voluntarily. The requirements of paragraph (c) also must be met.

(g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child, or a non-Indian child 10 years of age or older, may withdraw a consent or relinquishment by notifying in writing the court, or the person or agency obtaining the consent or relinquishment, within 10 days of the birth or signing of the consent or relinquishment, whichever is later. Notification is timely if received or

postmarked on or before the last day of this time period. The parent may move the court to permit withdrawal of the consent or relinquishment after the 10 day period pursuant to AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment.

(h) **Withdrawal of Consent or Relinquishment of an Indian Child.** The parent of an Indian child, or an Indian child 10 years of age or older, may withdraw a consent or relinquishment by notifying in writing the court or the person or agency obtaining the consent or relinquishment at any time before the signing of the decree of adoption for a consent or the order of termination for a relinquishment. Notification is timely if received or postmarked on or before the last day of this time period. A decree of adoption or order of termination may not be signed until 10 days have passed since the signing of the consent or relinquishment.

2. **CINA Rule 3(b)** — Presence of the Child at Hearings.

The Psychotropic Mediations/Residential Care Subcommittee of the Court Improvement Program (CIP) Committee proposed an amendment to CINA Rule 3(b) addressing the presence of the child at court hearings. The subcommittee felt that the current rule is flawed because it does not state sufficiently that the child has a right to attend a hearing and the rule should begin with this foundational premise. The subcommittee view was that it is beneficial for the child to be present at court hearings and some judges exclude the child from hearings.

Over the course of five meetings, the CINA/Delinquency Rules Committee discussed the rule and refined the proposal. The committee agreed the child has a right to attend a hearing and the goal is to strengthen Rule 3. The committee revised Rule 3(b) to affirmatively and clearly state that the child who is the subject of the CINA case has a right to be present at all hearings and to address the court and participate. The committee added language on who must provide notice to the child: the child's attorney, if one is appointed, or the guardian ad litem (GAL). The right to a hearing may be waived: if the child is age 10 or older, the child may waive the right through the child's attorney, if one is appointed, or the GAL; for a child younger than age 10, the right may be waived by the GAL unless the child objects. The committee majority chose age 10 for the bright line for differing notice and waiver requirements because that is the age for consent in adoption cases. At each hearing, the court must determine if the child was provided notice; if not, the court has discretion to continue the hearing. The committee also addressed when a child may be excluded from a hearing – when a child would be materially harmed by attendance. The “materially harmed” standard replaces the current “psychologically harmed” language. Some members of the committee were concerned that leaving the psychologically harmed standard in the rule might require a psychologist to establish the child would be psychologically harmed or cause discovery problems regarding the child's mental health records and privileged information in those records. If the court excludes a child from a hearing, the court should make specific findings explaining why the child was excluded.

Here is the CINA/Delinquency Rules Committee's recommendation:

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. The child's attorney, or the guardian ad litem if the child does not have an attorney, shall notify the child who is age 10 or older of the right to be present and participate in the hearing. Notice to a child under the age of 10 is satisfied by notifying the foster parent or out-of-home care provider. At each hearing the court shall determine if the child has received notice of the hearing and may continue the hearing if notice was not provided.

(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 child has a right to be present at all hearings and to address the court and participate. The right to be present may be waived unless the court requires the child to be present. If the child is age 10 or older, the right may be waived by the child through the child's attorney, if one has been appointed, or through the guardian ad litem. If the child is younger than age 10, the right may be waived by the child's guardian ad litem unless the child objects. 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.~~

* * * *

(d) **Parties Excluded.**

(1) ~~The presumption of this rule is that children have the right to attend CINA proceedings. The court should not routinely exclude children from CINA proceedings. The court may exclude the child during particular testimony a proceeding, or parts of a proceeding, if the effect of that testimony would child would be materially psychologically harmed harm the child by attendance. If the court excludes the child, the court should make specific findings explaining why the child was excluded.~~

(2) 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.

* * * *

3. CINA Rule 10(a) — Temporary Custody Hearing Time Period.

CINA Rule 10 provides that a temporary custody hearing must be held within a “reasonable time” after the Office of Children Services files a petition and does not take emergency custody. Around the state in the different courts, the time period for scheduling the hearing can range from three to thirty days. The rule proposal would require the hearing to take place no later than five business days after the petition is filed or at an earlier date requested by the petitioner. The rule change would provide more uniformity in practices in the courts around the state.

Here is the CINA/Delinquency Rules Committee’s recommendation:

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) no later than five business days following the filing of a petition or an earlier date as requested by the petitioner at the time of filing ~~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.

* * * *

4. **CINA Rule 12 and NEW Rule 12.1** — Appointment of Attorney for Child.

The Court Improvement Program Committee (CIP) proposed a new court rule to provide clarity, guidance, and consistency in determining when the court should appoint an attorney for a child in a CINA case. This issue arose when a CIP subcommittee was looking at issues related to medication of youth and placement in residential treatment centers. The subcommittee determined that both of these circumstances raised important legal issues and the child should be entitled to legal representation. It noted that existing law, AS 47.10.050(a), does not provide clarity or guidance for the circumstances that require an attorney appointment. The statute simply allows the court to appoint an attorney to represent the child in a CINA proceeding if it appears that “the welfare of the child will be promoted by the appointment of an attorney . . .” AS 47.10.050(a). The current court rule, Rule 12(a)(3), requires the court to appoint an attorney for the child when it “determines that the interests of justice require the appointment of an attorney to represent the child’s expressed interests . . .” The subcommittee noted that the American Bar Association’s Center for Children and the Law, the National Association of Counsel for Children, and First Star have developed standards requiring the appointment of counsel for every child in a child welfare case. The subcommittee did not advocate that an attorney should be appointed for every child, but that Alaska’s rules should be more in line with national child advocacy organizations. The subcommittee proposed two categories of appointments: mandatory and discretionary with guidelines.

Some members of the CINA/Delinquency Rules Committee commented that attorney appointments are inconsistent around the state and thought it would be helpful to have more specific guidelines in the court rule.

The committee agreed a separate rule should address appointing an attorney for a child and proposed a new rule, CINA Rule 12.1. The new rule addresses who may request the court to appoint an attorney for the child. The new rule breaks appointments into two categories: mandatory and discretionary appointments. The rule also outlines the scope of the appointment as well as the attorney’s role.

Here is the CINA/Delinquency Rules Committee’s recommendation to amend Rule 12 and adopt a new Rule 12.1:

Rule 12. Right to Counsel.

* * * *

(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~~

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

* * * *

Rule 12.1. Appointment of Attorney for Child. (NEW)

(a) Request for Appointment. Any party, including the child, may request the appointment of an attorney for the child, either in writing or orally on the record. The court may also make the appointment on its own initiative.

(b) Appointment Types.

(1) Mandatory Appointments. The court shall appoint an attorney for a child who is 10 years of age or older in any of the following circumstances:

(A) The child is placed in a psychiatric hospital or a residential treatment center, and the child does not consent to the placement;

(B) The child does not consent to administration of psychotropic medication;

(C) The child objects to disclosure of psychotherapy information or records under Rule 9(b);

(D) A request for a court order authorizing emergency protective custody has been made under AS 47.10.141(c); or

(E) The child is pregnant or has custody of a minor child.

(2) Discretionary Appointments. In determining whether to appoint an attorney for a child for situations not covered in subsection (b)(1), the court may appoint an attorney in other circumstances including, but not limited to:

(A) The child's and guardian ad litem's positions are not aligned on placement, family or sibling contact, permanency goal, case plan, or another important issue in the case;

(B) The child would benefit from a confidential relationship with an attorney; or

(C) The child is not residing in the designated placement.

(c) Scope of Appointment. The court may limit the scope or duration of the attorney appointment to the issue that necessitated the appointment.

(d) Attorney's Role. The attorney's role is to advocate for the child's expressed wishes. The attorney shall maintain a normal client-lawyer relationship as required by Rule 1.14 of the Alaska Rules of Professional Conduct.

Cross References

CROSS REFERENCE: AS 18.85.100; AS 44.21.410; AS 47.10.050; Administrative Rule 12.

5. CINA Rule 14 — Stipulated Evidence.

The rule proposal would clarify that the parties may stipulate to the admissibility of evidence, including testimony and documentary evidence. The rule only addresses stipulating to evidence and does not address conclusions that may be drawn from the evidence.

The current rule would be expanded from one paragraph to three subsections. The proposed rule language would start with subsection (a) containing a general statement that the parties may stipulate to any matter (existing rule language), followed by subsection (b) addressing stipulations to adjudication and disposition (same language as current rule plus language adding foster care placement), and ending with new subsection (c) addressing stipulated evidence (all new language).

Here is the CINA/Delinquency Rules Committee's recommendation:

Rule 14. Stipulations.

(a) **General.** Subject to approval by the court, parties may stipulate to any matter, ~~including adjudication and disposition.~~

(b) **Stipulations to Adjudication and Disposition.** ~~However, stipulations—~~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 that includes foster care placement ~~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.

(c) **Stipulated Evidence.** In any trial or hearing, the court may accept a stipulation of the parties to evidence, including testimony and documentary evidence, offered by any party. If the court accepts stipulated evidence, the court may enter findings supported by the stipulated evidence.

6. CINA Rule 17.2 — Stipulated Waiver of Permanency Report.

The Rule 17.2 proposal would allow the parties to waive the preparation and filing of a permanency report with the approval of the court. The proposal contains a safeguard to ensure the parties will present adequate information for the court to enter findings required in subsection (e). The rule amendment would provide consistency for permanency report waivers in courts around the state.

Here is the CINA/Delinquency Rules Committee’s recommendation:

Rule 17.2. Permanency Hearing.

* * * *

(c) **Report.** The Department shall file and serve a permanency report no later than ten days prior to the permanency hearing, unless waived by the parties with the approval of the court. 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. The court may accept a stipulation to waive preparation of a permanency report only if the parties agree to present information sufficient to enter findings under subsection (e).

* * * *

7. CINA Rule 23 — Transfer of Jurisdiction to Tribal Court.

The committee reviewed Rule 23 to ensure the rule was in line with the federal Indian Child Welfare Act regulations. The regulations allow a parent, an Indian custodian, or the Indian child's tribe to request, orally on the record or in writing, the state court to transfer jurisdiction to the tribe. 25 C.F.R. § 23.115. After discussing the proposal at several meetings, the committee proposes the following amendments:

- Specifying that a request to transfer the case to the tribe maybe be made orally or in writing;
- Adding a new subsection (b) addressing an oral request on the record to transfer jurisdiction to the tribe. The new subsection provides that a written petition to transfer is not required if a party makes an oral request on the record and all parties, and the Indian child's tribe that would receive jurisdiction, agree on record to the transfer. If all parties are not present when the oral request is made, a written petition must be filed. Also, a written petition must be filed if the parent or Indian custodian asks the state court to transfer jurisdiction to the child's Indian tribe and the tribe has not intervened.
- Requiring email addresses for persons and entities listed in a petition.
- Requiring the petition to include the position of the parties on the proposed transfer, if known.
- Requiring the information that is currently in a notice must be provided either on record by the court or in writing by the petitioner.
- Requiring the court to provide service information if the petitioner is not a party to the case;
- Requiring the petition to be served on all parties, including the parents, Indian custodian, and a tribe (if it is a party), under Civil Rule 5(b)(first class mail or hand delivery); the requirement to serve the parents, Indian custodian, and the child's tribe by registered or certified mail, return receipt requested, is deleted;
- Deleting the requirement to serve the child's Indian tribe if it is has not intervened;
- Clarifying that good cause not to transfer jurisdiction to the tribal court cannot include factors prohibited from consideration under 25 C.F.R. § 23.118(c);
- Adding a new subparagraph to re-lettered subsection (g) addressing the effective date for jurisdiction transfer – 10 days after the state court grants the petition unless otherwise agreed upon by the parties;
- Deleting the requirement for the court to find whether the Indian child's tribe has intervened in the state court proceeding and whether the Indian child's tribe has a tribal court;
- Adding the requirement for the court to establish an effective date 10 days after the it grants the petition unless otherwise agreed upon by the parties;

- Deleting requirement in re-letter subsection (i) that the state court retains jurisdiction pending the tribal court's exercise of jurisdiction; and
- Requiring the state court to provide copies from the file to the tribal court if the state court grants the jurisdiction transfer instead of when the tribal court exercises jurisdiction.

Here is the CINA/Delinquency Rules Committee's recommendation:

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, either orally or in writing, may ~~file a~~ petition to transfer CINA proceedings in state court to the tribal court of the Indian child's tribe.

(b) Oral Petition. When the request to transfer jurisdiction is made orally, on record, the party shall not be required to file a written petition if all parties, and the Indian child's tribe to receive jurisdiction, have indicated their agreement to the transfer on record. If any party is not present when the oral petition is made, a written petition must be filed. If a parent or Indian custodian petitions to transfer to the Indian child's tribe that has not intervened, that party shall be required to file a written petition.

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

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

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

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

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

(5) the name, email and mailing 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; and

(7) the positions of the parties on the proposed transfer, if known.

~~(d)(e)~~ **Notice and Sample Forms.** With the every petition, the following information must be provided either on record by the court or in writing by the petitioner: 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.

(e)(d) Service of Written Petition.

(1) Service Information. If the petitioner is not a party to the proceedings, the court shall, upon request, provide the service information of the parties to the petitioner either in writing or orally.

~~(2)(1) Service on Parties. Parents or Indian Custodians. The petitioner must serve all parties under Civil Rule 5(b). 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.~~

~~(3)(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 under Civil Rule 5(b) 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 (d)(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).~~

~~(f)(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 or oral request.

(A) *Parent's Statement.* A parent served with a petition to transfer ~~may~~ 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. Material issues will not include factors prohibited from consideration under 25 C.F.R. § 23.118(c).

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

~~(g)(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 to transfer 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.

(4) If the tribal court accepts jurisdiction, the tribal court may propose an effective date for jurisdiction transfer. The effective date of the transfer will be 10 days after the state court order transferring jurisdiction unless otherwise agreed upon by the parties.

~~(h)(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;~~

~~(3)(4) whether the Indian child's tribe has a tribal court, and whether that the tribal court has accepted jurisdiction over the child;~~

~~(4)(5) whether a parent has objected to a transfer of jurisdiction to the tribal court; and~~

~~(5)(6) whether there is good cause under 25 C.F.R. § 23.118 not to transfer jurisdiction to the tribal court; and~~

~~(6) establishes an effective date 10 days after the state court grants the petition unless otherwise agreed to by the parties.~~

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

~~(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~~ If the state court grants the transfer of jurisdiction, the state court shall provide the tribal court with copies of any documents in the state court file requested by the tribal court.

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.

8. CINA Rule 24(d) — Registration of Tribal Court Orders; Alternative Service.

The CINA/Delinquency Rules Committee considered a proposal to expand options for serving notice of a tribal court order registration under CINA Rule 24. The current rule requires the clerk of court to distribute notice of the registration by any method of service allowed by Civil Rule 4. The standard process is that the clerk sends the notice by certified mail, restricted delivery, to the persons listed in Rule 24(b)(4). In practice, many courts wait weeks or months for the post office to provide the green card (i.e. return receipt). Other times the post office does not provide the green card to the court, returns it as “undelivered”, or returns the green card but it is signed by the wrong person.

The rule proposal would provide another pathway for service. It would allow the registering party to accomplish service by alternative methods under Civil Rule 4(e) that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard. Often the registering party may have additional information on the location of the persons to be served and the registering party has the incentive to ensure service is quickly accomplished.

The proposal would also provide that the clerk of court would notify the registering party if the clerk of court has been unable to complete service. This provision would alert the registering party of the service problem and allow an avenue for the registering party to accomplish service.

These new provisions would aid speedier processing of tribal court order registrations under the rule.

Here is the CINA/Delinquency Rules Committee’s recommendation:

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

* * * *

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

(1) the clerk of court shall:

(A)(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~~

(B)(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; ~~and~~

(C) notify the registering party if service is not completed under (d)(1)(B).

(2) The registering party may accomplish service by alternative methods in a manner that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard as under Civil Rule 4(e)(3). Service accomplished under this

subparagraph satisfies service under (d)(1)(B).

* * * *