

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1010

Amending CINA Rules 10(c)(3) &
(4), 15(g), 17(c), and 19(d)
concerning the Adoption
Assistance Act.

IT IS ORDERED:

1. CINA Rule 10(c)(3) and (4) are amended to provide:

(3) The court may grant the Department authority to remove the child from the child's home only if the court makes the following additional findings:

(A) [EITHER THAT REASONABLE EFFORTS HAVE BEEN MADE TO PREVENT REMOVAL OF THE CHILD FROM THE HOME IN ACCORDANCE WITH THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980, 42 USC § 671(a)(15), OR THAT, UNDER THE CIRCUMSTANCES OF THE CASE, IT IS NOT REASONABLE TO REQUIRE SUCH EFFORTS PRIOR TO REMOVAL;

(B)] in the case of a non-Indian child, that continued placement in the home is contrary to the welfare of the child; and

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

(D) IN CASES INVOLVING AN INDIAN CHILD, CONCERNING THE DEPARTMENT'S EFFORTS TO COMPLY WITH THE PLACEMENT REQUIREMENTS OF 25 U.S.C. SECTION 1915 (B).]

(4) In any case in which the Department has removed the child from the home pursuant to CINA Rule 6, or in which the court has authorized the Department to remove the child

pursuant to the preceding subparagraph, the court shall make findings:

(A) as to whether, under 42 U.S.C. § 671(a)(15), reasonable efforts under the circumstances of each case were made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return to the home; and

(B) in cases involving an Indian child, concerning the Department's efforts to comply with the placement requirements of 25 U.S.C. § 1915(b).

2. CINA Rule 15(g) is amended to provide:

(g) Additional Findings. In any case in which the court has authorized the Department to remove the child from the child's home, or continued a previous order for removal, the court shall make findings pursuant to 42 U.S.C. § 671(a)(15) as to whether, under the circumstances of the case, reasonable efforts were made to prevent or eliminate the need for removal of the child from the home, and to make it possible for the child to return to the home.

3. CINA Rule 17(c) is amended to provide:

(c) Findings.

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

(2) In cases involving an Indian child, the court must make additional findings before removing the child from his or her parents or Indian custodian. The court must find, based on 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. The court must also find by a preponderance of the evidence that the party

requesting removal of the Indian child has shown 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.

(3) In any case in which the court has authorized the Department to remove the child from the child's home or continued a previous order for removal, the court shall make the findings required by CINA Rule 15(g).

4. CINA Rule 19(d) is amended to provide:

(d) Findings.

(1) The court shall enter findings on annual review as to whether continued custody or supervision by the Department is in the best interests of the minor. In any case in which the court has authorized the Department to remove the child from the child's home, or continued a previous order for removal, the court shall make the findings required by CINA Rule 15(g).

(2) At the conclusion of a hearing under subparagraph (a) or (b), the court must make findings based on the totality of the evidence before the court. The child shall be returned home unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated as a child in need of aid continues to exist. If the child is not returned home, the court shall establish on the record:

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

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(4) the visitation history
between the parents and the child;

(5) whether additional services
are needed to facilitate the return of the
child to the child's parents; [AND]

(6) when return of the child
can be expected; and

(7) additional findings
required by CINA Rule 15(g).

DATED: October 12, 1989

EFFECTIVE DATE: January 15, 1990

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore