

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1561

Amending Child in Need of Aid
(CINA) Rule 8 concerning
disclosures, depositions, and
discovery

IT IS ORDERED:

Child in Need of Aid (CINA) Rule 8 is rescinded and new CINA Rule 8 is adopted to read as follows:

~~**Rule 8. — Depositions and Discovery.**~~

~~(a) **By the Parties.** The Civil Rules govern depositions and discovery in child in need of aid proceedings with the following exceptions:~~

~~—(1) the court may shorten time periods for discovery;~~

~~—(2) no minor under 16 years of age may be deposed except upon court order; and~~

~~—(3) the presence of parties or others at depositions is governed by CINA Rule 3.~~

~~(b) **By the Court.** 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 evidence has not been fully developed.~~

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 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.

(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.

DATED: September 8, 2005

EFFECTIVE DATE: April 15, 2006

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Carpeneti