

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1784

Adding new PART XI and CINA Rules 24 and 25 concerning the registration, confirmation, and enforcement of tribal court orders entered in child custody proceedings as defined by ICWA.

IT IS ORDERED:

The Child in Need of Aid Rules are amended to include a new PART XI and new Child in Need of Aid Rules 24 and 25, which read as follows:

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.

(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.

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;

(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.

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.

DATED: September 26, 2014

EFFECTIVE DATE: October 1, 2014

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger