

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1978

Amending Adoption Rule 9 concerning a child withdrawing consent and appointment of a special master; amending Child in Need of Aid (CINA) Rule 3 concerning a child's right to participate in proceedings; amending CINA Rule 10 concerning time for a temporary custody hearing; amending CINA Rule 12 and adopting CINA Rule 12.1 concerning appointing an attorney for a child; amending CINA Rule 14 concerning stipulating to the admissibility of evidence; amending CINA Rule 17.2 concerning stipulating to waive preparation of a permanency report; and amending CINA Rule 24 concerning alternate service of a tribal court order registration.

IT IS ORDERED:

1. Adoption Rule 9 is amended to read as follows:

Rule 9. Consents–Relinquishments.

(a) **Form.** A consent or relinquishment must be in writing and must include:

(1) notice of the person's right to withdraw the consent or relinquishment as provided by paragraphs (g), ~~and (h)~~ and (i) of this rule;

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(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 assigned 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 to act 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 assigned judge assigned to hear the entire proceeding must be telephonically present when the consent or relinquishment is taken. Both the special master and the assigned 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) **Parent's Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child may withdraw a consent or relinquishment by written notice to 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. Notice Notification is timely if received or postmarked on or before the last day of this time period. After the 10 day period, the The parent may request that 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) **Parent's Withdrawal of Consent or Relinquishment of an Indian Child.** The parent of an Indian child may withdraw a

consent or relinquishment by written notice to ~~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. Notice ~~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.

(i) **Child's Withdrawal of Consent.** A child 10 years of age or older may withdraw a consent by written notice to the court, or the person or agency obtaining the consent, within 10 days of signing the consent. Notice is timely if received or postmarked on or before the last day of this time period. After the 10 day period, the child may request that the court permit withdrawal of the consent pursuant to AS 25.23.070.

2. Child in Need of Aid Rule 3 is amended to read as follows:

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. Actual notice within a reasonable time before the hearing satisfies this rule. 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. ~~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.~~

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(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 a the child during particular testimonya proceeding, or parts of a proceeding, if the effect of that testimony wouldchild would be materially psychologically harmed harm the childby attendance. If the court excludes the child, the court shall 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. Child in Need of Aid Rule 10(a) is amended to read as follows:

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 ~~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.

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4. Child in Need of Aid Rule 12 is amended to read as follows:

Rule 12. Right to Counsel

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(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 under CINA Rule 12.1; ~~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.

* * * *

5. Child in Need of Aid Rule 12.1 is adopted as follows:

Rule 12.1. Appointment of Attorney for Child.

(a) Request for Appointment. Any party, including a 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 does not consent to placement in a psychiatric hospital or residential treatment center;

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

(C) The child objects to disclosure of psychotherapy information or records under CINA 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. 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.

6. The following cross references are added to the end of Child in Need of Aid Rule 12.1:

Cross References

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

7. Child in Need of Aid Rule 14 is amended to read as follows:

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 the parties' stipulation to admit evidence, including testimony and documentary evidence. The court shall draw its own conclusions based on evidence admitted by stipulation.

8. Child in Need of Aid Rule 17.2 is amended to read as follows:

Rule 17.2. Permanency Hearing.

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(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 court's approval. 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 an agreement to waive preparation of a permanency report only if the parties agree to present admissible evidence to support findings under subsection (e).

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9. Child in Need of Aid Rule 24 is amended to read as follows:

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

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(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)(4) 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).

* * * *

DATED: April 13, 2022

EFFECTIVE DATE: October 17, 2022

/s/
Chief Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson