

IN THE SUPREME COURT OF THE STATE OF ALASKA  
ORDER NO. 1442

Amending CINA Rule 9(b) concerning  
the psychotherapist-patient privilege.

IT IS ORDERED:

1. Paragraph (b) of CINA Rule 9 is amended to read as follows:

\* \* \* \*

(b) **Privileges Inapplicable.**

(1) *Husband-Wife Privilege.* The husband-wife privilege, Evidence Rule 505, does not apply to the parent, child or custodian in Child in Need of Aid proceedings.

(2) *Physician-Patient Privilege.* The physician-patient privilege, Evidence Rule 504, does not apply to the parent, child or custodian in Child in Need of Aid proceedings.

(3) *Psychotherapist-Patient Privilege.*

(A) The psychotherapist-patient privilege, Evidence Rule 504, applies to the parent, child or custodian in Child in Need of Aid proceedings only to the extent described in this rule.

(B) The privilege applies to the child unless the child or the child's guardian ad litem waives the privilege, or the party seeking disclosure shows that the need for the requested disclosure outweighs the child's interest in confidentiality.

(C) The privilege does not apply to the parent unless the parent shows that the parent's interest in confidentiality outweighs the need for the requested disclosure. No disclosure may be made until the parent has an opportunity to make this showing.

(D) When considering a request to disclose or protect a communication, the court shall consider the following:

- (i) the content and nature of the communication;
- (ii) the purposes of AS 47.10, as expressed by AS 47.05.060, and of Evidence Rule 504;
- (iii) whether there is any other effective way to obtain the information; and
- (iv) whether the public interest and need for disclosure outweighs the potential injury to the patient and the patient's psychotherapist relationship.

Before ruling on such a request, the court may inspect records in camera. The court may allow, limit, or prohibit disclosure and use of the communication.

(E) If the court grants the request for disclosure of the child's privileged information, the court order must:

- (i) limit disclosure to those parts of the child's records which are essential to fulfill the purpose of the disclosure;
- (ii) limit disclosure to those persons whose need for the information is the basis for the order; and
- (iii) include such other measures as are necessary to limit disclosure for the protection of the child and the psychotherapist-patient relationship.

(F) Evidence Rule 504(c) does not apply in child in need of aid proceedings. Unless otherwise ordered, the child's psychotherapist-patient privilege may only be claimed or waived as follows:

- (i) If the child is twelve or older, the privilege may be claimed or waived by the child after consulting with an attorney, if an attorney has been appointed, or with the guardian ad litem.
- (ii) If the child is younger than twelve, the privilege may be claimed or waived by the guardian ad litem.

(iii) The person who was the psychotherapist at the time of the communication is presumed to have authority to claim the privilege on behalf of the child.

DATED: May 24, 2001

EFFECTIVE DATE: October 15, 2001

/s/ *Wanda C. Fabe*  
Chief Justice Fabe

/s/ *Walter W. Matthews*  
Justice Matthews

/s/ *Robert H. Eastaugh*  
Justice Eastaugh

/s/ *[Signature]*  
Justice Bryner

/s/ *Walter A. Carpeneti*  
Justice Carpeneti