

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1560

Amending Child in Need of Aid (CINA)
Rules 7 and 12 concerning Service on,
and Counsel for, Unknown Parents

IT IS ORDERED:

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

Rule 7. Petition for Adjudication — Summons.

(a) **Petition.** Formal proceedings may be commenced by the filing of a petition for adjudication of a child as a child in need of aid. The petition must be verified and must contain a statement of facts that would support a finding that the child is a child in need of aid under AS 47.10.011. If the child is believed to be an Indian child, the petition must so state and must state, if known, the Indian child's tribe. The petition may include a request for temporary custody under CINA Rule 10.

(b) **Notice of Hearing.** The Department shall provide a copy of the petition, as well as actual notice of the time and place of the initial hearing and of the parties' right to counsel, to the parents, guardian, and Indian custodian if these parties can be found after diligent efforts. In addition, actual notice of the proceedings must be given to any foster parent or other out-of-home care provider within a reasonable time before the hearing. If an Indian child is taken into emergency custody, the Department shall make reasonable efforts to ascertain and

provide actual notice to the child's tribe before the temporary custody hearing.

(c) **Summons.** The court shall issue a summons to be served with the petition on the child, parents, guardian, and guardian ad litem. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

(d) **Service of Petition and Summons.** The petition and summons must be served pursuant to Civil Rule 4 or as directed by the court. The child's summons must be served on the child's guardian ad litem, attorney or social worker. This person must deliver the summons to the child if the child is of an appropriate age. The court may appoint employees of the Department or any other competent person to serve the summons and petition. Inability to obtain service on any party does not deprive the court of jurisdiction.

(e) **Unknown Parent.** If the identity of the parent is unknown and the court is satisfied that no form of notice, even by publication, is reasonably likely to give actual notice to the parent, the court may waive notice.

(f)(e) **Notice in Cases Involving an Indian Child.**

(1) If there is reason to believe that the child is an Indian child, the Department shall give notice to the child's parents, Indian custodian, and to any tribe that may be the

child's tribe, of their rights under the Indian Child Welfare Act. This notice must be personally served or sent by certified mail with return receipt requested. If the identity or location of the parents or Indian custodian or tribe cannot be determined, notice that would otherwise have been sent to the missing persons or tribe must be given to the appropriate area office of the Bureau of Indian Affairs.

(2) The notice of rights under the Indian Child Welfare Act must contain the following information:

(A) The name of the Indian child.

(B) The child's tribal affiliation, if known. If notice is being sent to more than one tribe, a statement of all tribes being notified must be included.

(C) A copy of the petition.

(D) The location, mailing address, and telephone number of the court, and the time and place of the next hearing, if known.

(E) A statement of the right of the Indian custodian and the tribe to intervene in the proceeding.

(F) A statement that if the parents or Indian custodian are unable to afford counsel, counsel will be appointed to represent them.*

(G) A statement of the rights of the parents, Indian custodian or the tribe to have, on request, up to 30 days to prepare for the adjudication hearing.

(H) A statement of the potential legal consequences of an adjudication on the rights of the parents or Indian custodian.

(I) A statement that child custody proceedings are conducted on a confidential basis and that tribal officials are required to keep confidential the information contained in the notice and not reveal it to anyone who does not need the information in order to exercise the tribe's rights.

~~(g)~~(f) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the child and the family.

~~(h)~~(g) **Amendment.** A petition may be amended by leave of the court and with reasonable notice on all parties at any time before the adjudication order. Amendment with appropriate continuances will be permitted to promote the interests of justice and the welfare of the child and the family.

* An indigent Indian custodian has a right to court-appointed counsel under 25 U.S.C. § 1912(b). Counsel appointed under § 1912 may seek compensation pursuant to 25 CFR 23.13.

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

Rule 12. Right to Counsel.

(a) **Notice of Right to Counsel.** The court shall inform the parties at the first hearing at which they are

present of their respective rights to be represented by counsel at all stages of the proceedings.

(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 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.

(c) **Waiver of Right to Counsel.** The court shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and knowingly waives those benefits.

(d) **Appointment of Counsel for Absent or Unknown Parent.** The court shall appoint counsel to represent an absent parent at any hearing in which the termination of parental rights is or may be in issue if the parent has failed to appear after service of notice, including service by publication, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent. The court is not required to

appoint counsel for a parent if the court is satisfied that the identity of the parent is unknown.

*An indigent Indian custodian has a right to court-appointed counsel under 25 U.S.C. Section 1912(b). Counsel appointed under Section 1912 may seek compensation pursuant to 25 CFR Section 23.13.

DATED: March 31, 2005

EFFECTIVE DATE: October 15, 2005

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Carpeneti