

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO. 1580**

Implementing Chapter 64 SLA 2005 (HB 53) mandating direct court rule changes and noting indirect court rule changes as follows:

Amending Child in Need of Aid Rules 3(c), 3(f), 17.2(f), 18(d)(1), and 22(c), and adding Notes to Child in Need of Aid Rules 3, 17.2, 18, and 22 concerning direct and indirect court rule amendments;

Amending Adoption Rules 9(a), 9(g), and 13(a), and adding Notes to Adoption Rules 9 and 13 concerning direct and indirect court rule amendments;

Adding a new paragraph to Evidence Rule 801(d), and adding a Note to Evidence Rule 801 concerning the direct court rule amendment; and

Adding Notes to Probate Rules 14 and 15 concerning indirect court rule amendments.

**IT IS ORDERED:**

1. Child in Need of Aid Rules 3(c) and 3(f) are amended to read as follows:

**Rule 3. Hearings.**

\* \* \* \*

(c) **Presence of Grandparent or Out-of-Home Care Provider.** A grandparent of a child and the out-of-

home care provider are entitled to be heard at any hearing at which the person is present. However, the court may limit the presence of these persons in a hearing that has been closed to the public under (f)(2) of this rule to the time during which the person's testimony is being given if the court determines that such a limitation is necessary under the circumstances listed in (f)(2)(C) of this rule.

\* \* \* \*

(f) **General Public Access to Hearings.**

(1) Except as provided in (2) of this paragraph, and unless prohibited by federal or state statute or regulation, court order, or other court rule, hearings are open to the public.

(2) The following hearings are closed to the public:

(A) the initial court hearing after the filing of a petition that begins the child-in-need-of-aid case;

(B) a hearing following the initial hearing in which a parent, child, or other party to the case is present but has not had an opportunity to obtain legal representation;

(C) a hearing, or a part of a hearing, for which the court issues a written order finding that allowing the hearing, or part of the hearing, to be open to the public would reasonably be expected to stigmatize or be emotionally damaging to a child; inhibit a child's testimony in the hearing; disclose matters otherwise required to be kept confidential by state or federal statute or regulation,

court order, or court rule; or interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial in a criminal proceeding.

(3) Before ruling on a request under (2)(C) of this paragraph concerning potential interference with a criminal investigation or proceeding, the court shall give notice and an opportunity to be heard to the state or a municipal agency that is assigned to the criminal investigation or to the prosecuting attorney.

(4) If the court closes a hearing to the public under (2)(C) of this paragraph, the court shall close only the portions of the hearing necessary to prevent the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing, is open to the public, the court shall hear in camera any information offered regarding the location, or readily leading to the location, of a parent, child, or other party to the case who is a victim of domestic violence or whose safety or welfare may be endangered by the public release of information. Access to testimony heard in camera under this subparagraph is limited to the court and authorized court personnel.

(5) Notwithstanding any other provision of this rule, the court shall issue an order to prohibit all persons in a hearing open to the public from disclosing to any person a name, picture, or other information that would readily lead to the identification of a child who is the subject of the proceeding. If a person violates the order, the court may impose any appropriate sanction, including contempt and closure of any further hearings to the person.

(6) A party to the proceeding may move the court to close to the public a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this paragraph. A member of the public may request in writing to be served with a motion filed under this subparagraph. If such a request has been filed in advance of the filing of the motion, the party filing the motion must also serve the member of the public who requested notice under this subparagraph. The court may waive the service required under this subparagraph to a member of the public if a motion to close the hearing, or part of the hearing, is made under this subparagraph immediately before or during the hearing and the court finds that

(A) the need for closure was not reasonably foreseeable sufficiently in advance of the hearing to allow for notice;

(B) there is good cause not to delay the hearing in order to achieve notice, taking into consideration the age of the child and the potential adverse effect that a delay could have on the child; and

(C) whatever notice is practicable under the circumstances has occurred.

\* \* \* \*

2. The following note is added to the end of CINA Rule 3:

**Note:** Chapter 64, sections 51 and 52, SLA 2005 (HB 53) amended Child in Need of Aid Rule 3(c) and (f) to make child in need of aid hearings generally open to the public, with certain exceptions, as reflected in section 1 of this Order. The changes to CINA Rule 3(c) and (f) are

adopted for the sole reason that the legislature has mandated the amendments. In addition, according to section 61(a) of the Act, sections 9 and 10 of the Act, and AS 47.10.080(u), enacted in section 14, have the effect of changing CINA Rule 3 by allowing members of the public to attend court hearings except in certain circumstances.

3. Child in Need of Aid Rule 17.2(f) is amended to read as follows:

**Rule 17.2. Permanency Hearing.**

\* \* \* \*

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid;

(3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(4) whether the Department has made reasonable efforts to finalize the permanent plan for the child.

\* \* \* \*

4. The following note is added to the end of CINA Rule 17.2:

**Note:** Chapter 64, section 53, SLA 2005 (HB 53) amended Child in Need of Aid Rule 17.2 as reflected in section 3 of this Order. The change to CINA Rule 17.2 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(d) of the Act, AS 47.10.080(l), enacted in section 12, amends CINA Rule 17.2 by modifying the grounds for review of a permanent plan.

5. Child in Need of Aid Rule 18(d)(1) is amended to read as follows:

**Rule 18.** Termination of Parental Rights.

\* \* \* \*

(d) **Relinquishment.**

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. § 1913(c).

\* \* \* \*

6. The following note is added to the end of CINA Rule 18:

**Note:** Chapter 64, section 54, SLA 2005 (HB 53) amended Child in Need of Aid Rule 18 as reflected in section 5 of this Order. The change to CINA Rule 18 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(e) of the Act, AS 47.10.089, enacted in section 17, amends CINA Rule 18 by providing that a relinquishment must be in writing, allowing for the withdrawal of the relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing before the entry of an adoption or legal guardianship decree.

7. Child in Need of Aid Rule 22(c) is amended to read as follows:

**Rule 22. Confidentiality.**

\* \* \* \*

(c) **Child's Name or Picture.** The name or picture of a child who is the subject of a CINA proceeding may not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization, or unless necessary to implement the permanency plan for the child after all parental rights of custody have been terminated.

8. The following note is added to the end of CINA Rule 22:

**Note:** Chapter 64, section 55, SLA 2005 (HB 53) amended Child in Need of Aid Rule 22. The change to CINA Rule 22 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 61(b) of the Act, sections 19 and 22-27 have the effect of changing CINA Rule 22 by allowing the disclosure of confidential information pertaining to a child, including allowing a child's name or picture to be made public in certain circumstances.

9. Adoption Rules 9(a) and 9(g) are 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) of this rule;

(2) the address and telephone number of the court in which the adoption or relinquishment proceeding has or is expected to be filed;

(3) a statement of the right to counsel as stated in Rule 8;

(4) a statement concerning whether or not any visitation rights or other parental privileges are sought to be retained after the adoption;



(5) if a consent, the information required in AS 25.23.060; and

(6) if signed by a parent, a statement of whether the parent is a minor.

\* \* \* \*

(g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child may withdraw a consent or relinquishment by 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. Notification is timely if received or postmarked on or before the last day of this time period. The parent may 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.

\* \* \* \*

10. The following note is added to the end of Adoption Rule 9:

**Note:** Chapter 64, sections 56 and 57, SLA 2005 (HB 53) amended Adoption Rule 9 as reflected in section 9 of this Order. The change to Adoption Rule 9 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(b) of the Act, AS 25.23.180(j) – (n) and AS 47.10.089, enacted in sections 4 and 17, amend Adoption Rule 9 by requiring retained privileges to be set out in the relinquishment form

and order and by providing additional procedures related to the relinquishment.

11. Adoption Rule 13(a) is amended to read as follows:

**Rule 13. Decree of Termination.**

(a) **Voluntary Relinquishment.** A decree terminating parental rights may be entered after a voluntary relinquishment pursuant to AS 25.23.180 or AS 47.10.089. The court shall enter findings of fact which must include a statement concerning whether visitation rights are being allowed under AS 25.23.130(c) or other privileges are being retained under AS 25.23.180 or AS 47.10.089, and whether the time limit for withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the presence of the court, findings also must be entered as to whether the parent understood the consequences of the relinquishment, and whether the relinquishment was voluntarily signed.

In the case of a voluntary relinquishment of parental rights to an Indian child, the court shall make additional findings concerning whether any notice required by Rule 10(e) was timely given; whether the relinquishment was voluntary and in compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's placement complies with the preferences set out in 25 U.S.C. Section 1915 or good cause exists for deviation from the placement preference.

\* \* \* \*

12. The following note is added to the end of Adoption Rule 13:

**Note:** Chapter 64, section 58, SLA 2005 (HB 53) amended Adoption Rule 13 as reflected in section 11 of this Order. The change to Adoption Rule 13 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 60(b) of the Act, AS 25.23.180(j) – (n) and AS 47.10.089, enacted in sections 4 and 17, amend Adoption Rule 13 by requiring retained privileges to be set out in the relinquishment form and order and by providing additional procedures related to the relinquishment. According to section 60(c) of the Act, AS 25.23.180(k) – (n) and AS 47.10.089(g), (h), and (j), enacted in sections 4 and 17, amend Adoption Rule 13 by authorizing review hearings for voluntary relinquishments.

13. Evidence Rule 801(d) is amended to read as follows:

**Rule 801. Definitions.**

\* \* \* \*

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

(1) *Prior Statement by Witness.* The declarant testifies at the trial or hearing and the statement is

(A) inconsistent with the declarant's testimony. Unless the interests of justice otherwise require, the prior statement shall be excluded unless

(i) the witness was so examined while testifying as to give the witness an opportunity to explain or to deny the statement or

(ii) the witness has not been excused from giving further testimony in the action; or

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or

(C) one of identification of a person made after perceiving the person; or

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(3) *Recorded Statement by Child Victims of Crime.* The statement is a recorded statement by the victim of a crime who is less than 16 years of age and

(A) the recording was made before the proceeding;

- (B) the victim is available for cross-examination;
- (C) the prosecutor and any attorney representing the defendant were not present when the statement was taken;
- (D) the recording is on videotape or other format that records both the visual and aural components of the statement;
- (E) each person who participated in the taking of the statement is identified on the recording;
- (F) the taking of the statement as a whole was conducted in a manner that would avoid undue influence of the victim;
- (G) the defense has been provided a reasonable opportunity to view the recording before the proceeding; and
- (H) the court has had an opportunity to view the recording and determine that it is sufficiently reliable and trustworthy and that the interests of justice are best served by admitting the recording into evidence.

14. The following note is added to the end of Evidence Rule 801:

**Note:** Chapter 64, section 59, SLA 2005 (HB 53) amended Evidence Rule 801 as reflected in section 13 of this Order. The change to Evidence Rule 801 is adopted for the sole reason that the legislature has mandated the amendment.

15. The following note is added to the end of Probate Rule 14:

**Note:** Chapter 64 SLA 2005 (HB 53) enacted extensive changes to the child in need of aid and adoption statutes. According to section 60(a) of the Act, AS 13.26.064, enacted by section 2, amends Probate Rule 14 by providing that retained privileges be set out in the guardianship decree and by providing additional procedures related to a voluntary relinquishment of parental rights.

16. The following note is added to the end of Probate Rule 15:

**Note:** Chapter 64 SLA 2005 (HB 53) enacted extensive changes to the child in need of aid and adoption statutes. According to section 60(a) of the Act, AS 13.26.064, enacted by section 2, amends Probate Rule 15 by providing that retained privileges be set out in the guardianship decree and by providing additional procedures related to a voluntary relinquishment of parental rights.

DATED: July 7, 2005

EFFECTIVE DATE: Nunc pro tunc to July 1, 2005

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Chief Justice Bryner

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Justice Matthews

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Justice Eastaugh

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Justice Fabe

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Justice Carpeneti