

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1996

Amending CINA Rule 23
concerning transferring jurisdiction
to the Indian child's tribe; and
adding Commentary.

IT IS ORDERED:

1. Child In Need of Aid Rule 23 is amended to read as follows:

Rule 23. Transfer of Jurisdiction to Tribe.~~Tribal Court.~~

(a) **Who May ~~File~~ Petition.** ~~In circumstances in which the Indian child's tribe may exercise jurisdiction in child welfare cases under 25 U.S.C. § 1911(b), the~~ The Indian child's tribe, if it has intervened, a parent, or an Indian custodian, either orally or in writing, may file a petition to transfer CINA proceedings in state court to the tribal court of the Indian child's tribe jurisdiction of the Indian child's tribe.

(b) **Oral Petition.** When the request to transfer jurisdiction is made orally, on record, the party shall not be required to file a written petition if all parties, and the Indian child's tribe to receive jurisdiction, have indicated their agreement to the transfer on record. If any party is not present when the oral petition is made, a written petition must be filed. If a parent or Indian custodian petitions to transfer to the Indian child's tribe that has not intervened, that party shall be required to file a written petition.

~~(c)~~ (b) **Contents of Petition.** The petition shall state:

- (1) the name, email and mailing addresses~~address~~, and telephone number of the petitioner;

- (2) the names, email and mailing addresses, and telephone numbers of the parents of the child, if known;
- (3) the names, email and mailing addresses, and telephone numbers of any Indian custodians of the child, if known;
- (4) the name, email and mailing addressesaddress, and telephone number of the Indian child's tribe;
- (5) the name, email and mailing addressesaddress, and telephone number of the tribal court ~~of the~~designated by the Indian child's tribe; ~~and~~
- (6) the tribal court's position, if known, on whether it will decline or accept jurisdiction in the case; and
- (7) the positions of the parties on the proposed transfer, if known.

~~(d)(e)~~ **Notice and Sample Forms.** With ~~the~~ every petition, notice of the following must be provided either on record by the court or in writing by the petitioner: petitioner shall also serve the parties with a notice stating the following:

- (1) the parties must file and serve any response they wish to make to the petition within 20 days after service;
- (2) if either parent opposes the transfer of jurisdiction to tribal court the petition will not be granted under 25 U.S.C. §_1911(b), unless the parental rights of the parent have already been terminated by a court of competent jurisdiction;
- (3) if the tribal court declines jurisdiction at any time before an order granting the petition is signed the petition will not be granted;
- (4) if a party to the state court proceeding demonstrates good cause why jurisdiction should not be transferred, the petition will not be granted;
- (5) if jurisdiction is transferred to tribal court and the tribal court exercises jurisdiction, any state court appointments of counsel for

parents or Indian custodians, or of Guardians ad Litem or counsel for the child, will terminate; and

(6) ~~that~~ a tribal court may find a copy of a sample order to file with the state court to accept or decline jurisdiction, and that a parent or Indian custodian may find a copy of a sample form to file with the state court to agree or object to the proposed transfer, on the court system's website at: www.courts.alaska.gov.

~~(e)~~(d) **Service of Written Petition.**

(1) Service Information. If the petitioner is not a party to the proceedings, the court shall, upon request, provide the service information of the parties to the petitioner either in writing or orally.

~~(2)~~(1) Service on Parties. ~~Parents or Indian Custodians.~~ The petitioner must serve all parties under Civil Rule 5(b). ~~The petitioner shall serve parents or Indian custodians by registered or certified mail, restricted delivery with return receipt requested, with copies of the petition for adjudication in state court, the petition to transfer to tribal court, and the notice described under subsection (e).~~ The state court may waive service on a parent or Indian custodian under this paragraph when diligent inquiry has failed to locate that parent or Indian custodian.

~~(3)~~(2) Service on Tribe and Tribal Court. If the petitioner is a parent or an Indian custodian, the petitioner shall serve the Indian child's tribe to which transfer is sought and the tribal court to which transfer is sought under Civil Rule 5(b) by registered or certified mail, return receipt requested, with copies of the petition for adjudication, the petition to transfer to tribal court, and the notice required under subsection ~~(d)~~(e).

~~(3)~~ Tribe. The petitioner shall serve any tribe that may be the Indian child's tribe, regardless of whether a tribe has intervened. ~~Service shall be by registered or certified mail, return receipt~~

~~requested, with copies of the petition for adjudication and the petition to transfer to tribal court.~~

~~(4) *Other State Court Parties.* The petitioner shall serve the petition to transfer on all other parties in the state proceeding under Civil Rule 5(b) (set forth at the end of this rule).~~

~~(f)~~**(e) Procedure.**

(1) *Parties' Responses.* Parties to the state court proceeding may serve and file a response within 20 days after service of the petition or the oral request.

(A) *Parent's Statement.* A parent served with a petition to transfer may shall, file within the time allotted to respond to the petition, file and serve a statement about whether the parent agrees they agree with or objects object to the proposed transfer ~~within the time allotted to respond to the petition.~~ If a parent timely objects to transfer, the court shall deny the petition.

(B) *Good Cause Not to Transfer.* The response of any party asserting that good cause exists not to transfer the case to tribal court shall state the alleged grounds for a finding of good cause not to transfer. Any other party may serve and file a supplemental response, limited to the issue of good cause, within ten days after service of the response. If material issues of fact are raised in the pleadings, the state court shall set an evidentiary hearing. A party asserting good cause not to transfer the case bears the burden of proof by a preponderance of the evidence. Good cause may not include factors prohibited from consideration under 25 C.F.R. § 23.118(c).

(2) *Petitioner's Reply.* The petitioner may serve and file a reply within ten days after service of a response.

(g)(f) Acceptance or Declination by the Tribal Court.

(1) Only the tribal court ~~of~~ designated by the Indian child's tribe to exercise jurisdiction may accept or decline a transfer of jurisdiction under this rule.

(2) If the tribal court declines jurisdiction while the petition is pending, the state court shall dismiss the petition ~~without further proceedings~~.

(3) If the tribal court has not stated its position regarding transfer by the time the petition is ripe for decision, the state court shall contact the tribal court to request a timely response. The state court shall keep a record of any communication with the tribal court, and the parties shall be informed promptly of the communication and granted access to the record.

(4) If the tribal court accepts jurisdiction, the tribal court may propose an effective date for jurisdiction transfer. The effective date of the transfer will be 10 days after distribution of the state court order transferring jurisdiction unless otherwise agreed upon by the parties.

(h)(g) Findings and Order.

(1) In its order granting or denying the petition, the state court shall make findings on the following:

(A)(1) whether the child is an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(4);

(B)(2) whether the tribe to whose ~~tribal court~~ jurisdiction transfer is sought is the Indian child's tribe as defined in the Indian Child Welfare Act, 25 U.S.C. § 1903(5);

~~(3) whether the Indian child's tribe has intervened in the state court proceeding;~~

~~(C)(4)~~ whether the Indian child's tribe has a tribal court, and whether that the tribal court has designated by the Indian child's tribe has accepted jurisdiction over the child;

~~(D)(5)~~ whether a parent has objected to a transfer of jurisdiction to the tribal court; and

~~(E)(6)~~ whether there is good cause under 25 C.F.R. § 23.118 not to transfer jurisdiction to the tribal court.

(2) If it grants the petition, the state court order shall:

(A) establish an effective date 10 days after distribution of the state court order granting the petition unless otherwise agreed to by the parties;

(B) require the Department, upon request, to provide child protection information in its possession to the tribe exercising jurisdiction;

(C) require the Department to release funds held in trust for the child under AS 47.10.115 upon order of the tribal court without further action by the state court; and

(D) address any other issues necessary to assist in the smooth and efficient transfer to the tribal court.

~~(i)(h)~~ **Transfer to Tribal Court.**

~~(1) If the state court grants the transfer of jurisdiction, it shall retain jurisdiction pending exercise of jurisdiction by the tribal court.~~

~~(2) When the tribal court exercises jurisdiction under (h)(1),~~ If the state court grants the transfer of jurisdiction, the state court shall provide the tribal court with copies of any documents in the state court file requested by the tribal court.

2. The following Commentary is added to the end of Child in Need of Aid Rule 23:

Commentary.*—In recognition of the ICWA policy in 25 U.S.C. § 1902, the state court should work with the tribal court to ensure that the transfer of the Indian child's custody and the CINA proceeding is accomplished smoothly and minimizes disrupting services to the family.*

DATED: May 10, 2023

EFFECTIVE DATE: October 16, 2023

/s/
Chief Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson

/s/
Justice Pate