

**IN THE SUPREME COURT OF THE STATE OF ALASKA**  
**ORDER NO. 1651**

Amending Child in Need of Aid  
Rules 17.1 and 18 concerning  
standards of proof (chapter 20  
SLA 2006).

**IT IS ORDERED:**

1. Child in Need of Aid Rule 17.1 is amended to read as follows:

**Rule 17.1. Determination that Reasonable Efforts Not  
Required.**

\* \* \* \*

**(d) Conduct of Proceeding.**

(1) *Right to Evidentiary Hearing.* A party may request an evidentiary hearing within the time specified in Civil Rule 77(e)(l). The court shall hold an evidentiary hearing upon request.

(2) *Standard of Proof.* The party requesting a determination that reasonable efforts are not required must present proof by clear and convincing a ~~preponderance of the evidence.~~

(3) *Child's Best Interests.* In determining whether reasonable efforts are required, the court's primary consideration is the child's best interests.

(4) *Findings.* The court must make specific findings in support of its decision.

2. A Note is added to the end of Child in Need of Aid Rule 17.1 to read as follows:

**Note to SCO 1651:** Chapter 20 SLA 2006 (HB 408) enacted changes relating to the standard of proof in child in need of aid proceedings. Section 1 of the Act amended AS 47.10.086(c) to change the standard of proof for a finding that reasonable efforts, as described in AS 47.10.086(a), are not required. The change to CINA Rule 17.1 is adopted to maintain consistency between the rule and the statutes.

3. Child in Need of Aid Rule 18 is amended to read as follows:

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

\* \* \* \*

(c) **Burden of Proof.** Before the court may terminate parental rights, the Department must prove:

(1) by clear and convincing evidence that

(A) the child has been subjected to conduct or conditions described in AS 47.10.011 and

(i) the parent has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or

(ii) the parent has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; or

(B) a parent is incarcerated and the requirements of AS 47.10.080(o) are met; and

(2) by clear and convincing a preponderance of the evidence that

(A) the Department has complied with the provisions of AS 47.10.086 concerning reasonable efforts; or

(B) in the case of an Indian child, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful; and

(3) by a preponderance of the evidence that ~~(C)~~ termination of parental rights is in the best interests of the child; and

~~(4)~~ in the case of an Indian child, by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

\* \* \* \*

4. The Note at the end of Child in Need of Aid Rule 18 is amended to read as follows:

**Note:** Chapter 20 SLA 2006 (HB 408) enacted changes relating to the standard of proof in child in need of aid proceedings. According to section 11 of the Act, the amendments to AS 47.10.086(c), AS 47.10.088(a), and AS 47.10.088(b) in sections 1-3 of the Act have the effect of amending Child in Need of Aid Rule 18 relating to the

termination of parental rights proceedings by increasing the standard of proof concerning some elements from proof by a preponderance of the evidence to proof by clear and convincing evidence. The change to CINA Rule 18 is adopted to maintain consistency between the rule and the statutes.

DATED: July 18, 2007

EFFECTIVE DATE: October 15, 2007

/s/  
Chief Justice Fabe

/s/  
Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Bryner

/s/  
Justice Carpeneti