

THE CINA/DELINQUENCY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSALS:

5. CINA Rule 24—Registration and Confirmation of Tribal Court Orders under the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963); and CINA Rule 25 Expedited Enforcement of Tribal Court Orders under the Indian Child Welfare Act (25 U. S. C. §§ 1901-1963) [Proposed New Rules]

The CINA/Delinquency Rules Committee *recommends* the following proposal to add a new CINA Rule 24 to address the registration, confirmation and enforcement of tribal court child custody orders, and a new CINA Rule 25 to address the expedited enforcement of such orders. In *State v. Native Village of Tanana*, 249 P.3d 734 (Alaska 2011), the Alaska Supreme Court held that child custody orders entered by tribal courts in proceedings held under ICWA are entitled to full faith and credit, to the same extent as other states' and foreign orders. The proposed new rules provide a process to support the enforcement of those orders.

Rule 24. Registration and Confirmation of Tribal Court Orders under the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(a) Applicability. This rule shall apply to orders issued by a tribal court of an Indian child's tribe when the Indian child's tribe may exercise jurisdiction in a child custody proceeding as defined by section 1903 of the Indian Child Welfare Act, except adoption decrees. A court of this state shall recognize and enforce a child custody determination registered in accordance with this rule, that was made by a federally recognized tribe in a protective child custody proceeding. As used in this rule and CINA Rule 25, a child custody proceeding is a protective proceeding for foster care placement, termination of parental rights, preadoptive placement, or placement with a parent other than in an inter-parent custody dispute.

(b) Procedure on Petition for Registration. An Indian tribe or any person may petition the court for registration of orders as defined in section (a) by filing:

(1) a letter, motion, petition, or other document requesting registration and confirmation of the tribal court's order;

(2) two signed copies of the tribal court's order sought to be registered;

(3) a notarized statement, under penalty of perjury, that the tribal court's order has not been vacated, stayed or modified; and whether this Tribal Court order, or any other order involving the same child or children has been registered in this or any other jurisdiction;

(4) the name and contact information of: (A) the tribal court issuing the child custody order; (B) the Indian child's tribe; (C) the person seeking registration; and (D) the

parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered, subject to subsection (c) of this rule; and (E) the person with physical custody of the child; and

(5) a request, if any, for non-expedited enforcement or expedited enforcement under CINA Rule 25.

(c) Application for Limited Disclosure. If a person or tribe seeking registration alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a person seeking registration or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the person seeking registration or determines that the disclosure is in the interest of justice.

(d) Filing and Notice by Registering Court. On receipt of the documents and information required in subsection (b) of this rule, the clerk of court shall:

(1) cause the tribal court's order to be filed in the same manner as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) distribute notice to the persons named in paragraph (b)(4) and provide them with an opportunity to contest the registration under subsection (f) of this rule.

(e) Contents of Notice. The notice required in paragraph (d)(2) shall state the following:

(1) a registered order is enforceable as of the date of registration in the same manner as an order issued by the superior court;

(2) a hearing to contest the validity of the registered order must be requested within 20 days after service of the notice; and

(3) failure to contest the registration will result in confirmation of the order and bar any further contest of the order on matters that could have been asserted.

(f) Request for Hearing on Confirmation of Registration. A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction to hear the child custody proceeding in which the tribal child custody order was entered;

(2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so; or

(3) the person contesting registration was entitled to notice, but notice was not given in

a manner reasonably calculated to give actual notice of the proceedings before the court that issued the order for which enforcement is sought, or if notice was given, the person contesting registration was not given a full and fair opportunity to be heard.

(g) Confirmation of Registration.

(1) The superior court shall confirm registration and notify the petitioner and all persons listed in paragraph (b)(4) by entry of a written order as follows:

(A) If the superior court does not receive a timely request for hearing, the registration is confirmed as a matter of law;

(B) If a hearing is held, the court shall confirm the registered order unless the person contesting registration establishes that one or more of the reasons listed in subsection (f) renders the tribal court order invalid.

(2) Confirmation of registration, whether after a hearing or as a matter of law if no hearing is requested, precludes further contest of the tribal court's child custody order with respect to any matter that could have been asserted at the time of registration;

(h) Enforcement of Registered Determinations. A court of this state may grant relief normally available under the law of this state, including writs of assistance, to enforce a registered child custody determination made by a federally recognized tribe.

(i) Confidentiality. A tribal court child custody order lodged for registration and confirmation is confidential and can be disclosed only to the persons listed in subsection (b) of this rule and as authorized under Administrative Rule 37.5 or by order of the superior court.

(j) Definitions. For purposes of this rule and CINA Rule 25, the terms "person" and "person acting as parent" are defined as provided in AS 25.30.909(12) and (13), except that the terms shall also include a federally recognized tribe.

Rule 25. Expedited Enforcement of Tribal Court Orders under the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963).

(a) Availability of Expedited Enforcement. A verified petition for expedited enforcement and request for writ of assistance may be filed in accordance with this rule for any tribal court order for which registration has been sought under CINA Rule 24.

(b) Contents of the Verified Petition. The verified petition shall set forth the following facts:

(1) whether the tribal court that issued the determination identified the jurisdictional

basis it relied on in exercising jurisdiction and, if so, what the basis was;

(2) whether a proceeding has been commenced in state court or tribal court that could affect the current proceedings, including proceedings relating to domestic violence protective orders, termination of parental rights, and adoptions and, if so, the name of the court, the case number, and the nature of the proceeding;

(3) the present physical address of the child and the person or persons having physical or legal custody, if known;

(4) whether relief in addition to the immediate physical custody of the child is sought and, if so, the relief sought;

(5) if the child custody determination has been registered and confirmed under CINA Rule 24 and, if so, the date and place of registration;

(6) whether the petitioner will request a writ of assistance; and

(7) a statement explaining why expedited enforcement is necessary.

(c) Ex Parte Hearing to Issue Writ of Assistance. A petitioner may request a writ of assistance in any case where a child has been removed or is in imminent danger of being removed from the person with whom the tribal court ordered placement. The court may conduct an ex parte hearing for further fact finding. If the court finds that a child has been removed or is in immediate danger of being removed from the person with whom the tribal court ordered placement, the court may issue a writ of assistance as follows:

(1) reciting the facts supporting the conclusion that immediate removal from the person with whom the tribal court ordered placement has or will occur;

(2) directing law enforcement officials to take physical custody of the child immediately;

(3) providing for return to the person with whom the tribal court ordered placement;

(4) if less intrusive remedies are not effective, authorizing law enforcement officers to enter private property to take physical custody of the child;

(5) if required by exigent circumstances, authorizing law enforcement officers to make a forcible entry at any hour; and

(6) serving the petition for expedited enforcement, the writ of assistance, and orders to appear or to protect the safety of the parties or the child immediately after the child is taken into physical custody.

(d) Hearing. Except where service occurs in accordance with paragraph (c)(6), the court shall serve the petition for expedited enforcement on the respondent and any person served with the petition for registration pursuant to CINA Rule 24(b)(4). The verified petition for expedited enforcement of a child custody determination shall be

heard on the next judicial day after the petition is served unless that date is impossible, in which case the court shall hold the hearing on the first judicial day possible. On the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter an order necessary to ensure the safety of the parties and the child. The order must state the time and place of the hearing and advise the respondent that, at the hearing, the court will order that the petitioner may take immediate physical custody of the child, and that such further hearings as necessary may be scheduled unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed and that:

(A) the issuing court did not have jurisdiction;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so;

(C) the respondent was entitled to notice, but notice was not given in a manner reasonably calculated to give actual notice of the proceedings before the court that issued the order for which enforcement is sought, or if notice was given, the person contesting registration was not given a full and fair opportunity to be heard.

(2) the child custody determination for which enforcement is sought was registered and confirmed but has been vacated, stayed, or modified by a court having jurisdiction to do so.

(e) Orders and Enforceability.

(1) The court may order such further relief as appropriate under Alaska law.

(2) A writ of assistance directing law enforcement to take physical custody of a child is enforceable throughout this state.

(f) Conditions on Placement of the Child. The superior court issuing an order or writ of assistance under this rule may impose conditions on the placement of the child to ensure the appearance of the child and child's custodian at subsequent hearings.