



ALASKA COURT SYSTEM

State of Alaska

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REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES

(Comments Due by Monday, October 3, 2022)

The Alaska Supreme Court seeks comments on the following proposed rule changes. Proposed changes to existing rules are shown in “legislative” style: new language is underlined, and deleted language is struck through. Except as otherwise indicated, new text is not underlined when a new rule is proposed or when an existing rule is rescinded and readopted.

Comments are due by Monday, October 3, 2022. Please direct your comments to Haley Porter via email, hporter@akcourts.gov, or use the mailing address shown above. Thank you for your time and consideration.

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THE FAMILY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

1. Civil Rule 5.2 – Foreign Orders and Judgments; Clarifying Registration Procedures.

Alaska Court System administrative staff proposed several clarifying amendments to Civil Rule 5.2 that addresses registration and modification of foreign child custody and support orders and judgments. They identified these changes when they were creating and modifying court forms for registration and modification of out-of-state custody and foreign support orders. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governs the registration process for custody determinations. See AS 25.30.300 - .910. The Uniform Interstate Family Support Act (UIFSA) governs the registration process for child and spousal support orders. See AS 25.25.601 - .714. The Family Rules Committee considered and edited the proposal.

Subsection (d) addressing service would be amended in several ways. For out-of-state child custody determinations, the enforcement subparagraph is broken into two sections: nonexpedited and expedited enforcement. A nonexpedited enforcement motion may be served according to Civil Rule 5. For expedited enforcement, the petition or motion for expedited enforcement along with the hearing order must be served “as soon as reasonably possible and at least by the day before the hearing.” The court determines the method of service and the rule lists several options. For a warrant for physical custody, the existing rule language is revised and requires the law enforcement officer executing the warrant to serve the non-moving party or respondent.

Next, for service of a petition or motion modifying an out-of-state custody order, the committee proposes two options for consideration and comment because it did not reach a consensus on whether an out-of-state custody order must be registered for modification before an Alaska court can modify it. The UCCJEA does not directly address this issue and the committee could not find any Alaska caselaw directly on point. The reason this is important is because if registration is required, procedurally a parent would file a motion to modify custody. If registration is not required, then a parent could file a petition to modify custody. Two members contended that registration for modification is implicit in the process. AS 25.30.320 provides the basis for Alaska to obtain jurisdiction to modify another state’s custody order. If the Alaska court has jurisdiction, the court must determine if a substantial change of circumstances has occurred since entry of the custody order. The court must look at the other state’s order to determine if a substantial change of circumstances has occurred; implicit in the process is a finding that the other state’s order is a valid order. Thus, the two members contended that registration of the order was the logical path before the Alaska court could modify the order. Because the committee could not agree, the committee wanted to present both proposals to the Alaska Supreme Court. The options are listed below in the proposed rule language.

A new subsection (e) requires the court to issue a confirmation order when the court registers a foreign support or custody order and the non-registering party does not

timely contest the registration or establish a defense against the registration. The court system already has forms for confirming a child support (DR-347) or custody order (DR-485).

Last, new subsection (f) addresses the response time for a motion to modify custody and support. The main goal of this section is addressing the response due date when a motion is filed contemporaneously with a petition to register the order. While an opposition to a motion is due 10 days after service (Civil Rule 77), this timeline does not work when the motion is filed at the same time as the petition to register because the other party has a longer time frame to contest registration (typically 20 days). Strictly under the Rule 77 timeframe, the opposition is due before the order is registered and confirmed. If the order is not registered and confirmed, the court does not proceed to addressing the motion to modify. The new subsection (f) addresses the response time in this instance and also provides that service is according to Civil Rule 5. The subsection also provides that a motion to modify a nonconfirmed out-of-state custody or support order is not ripe for decision until the court issues the confirmation order.

Here is the Family Rules Committee's recommendation:

Rule 5.2. Foreign Orders and Judgments.

* * * *

(d) Service of Motions, Petitions, and Complaints to Enforce or Modify Registered Support and Child Custody Orders.

(1) *Support Orders.* A party may serve a motion or complaint to enforce or modify a registered out-of-state support order by first class mail under Civil Rule 5.

(2) *Child Custody Determinations.*

(A) *Enforcement.*

(i) Nonexpedited Enforcement. A party may serve a motion ~~or petition~~ to enforce a registered out-of-state custody determination ~~by first class mail under~~ according to Civil Rule 5.

(ii) Expedited Enforcement. The moving party or petitioner must serve a motion or A-petition for expedited enforcement under AS 25.30.460 and the court's order for hearing on the opposing party as soon as reasonably possible and at least by the day before the hearing. must be served to provide timely notice. The court, in its discretion, will determine the method of service to be used, which may include:

- first-class mail;
- email;
- hand-delivery by the moving party or petitioner;
- hand-delivery by a non-party who is not less than 18 years of age;

- hand-delivery by a licensed process server; or
- any other method of service the judge considers necessary to achieve timely service.

(iii) Warrant for Physical Custody. If the motion to enforce the registered out-of-state child custody determination includes an application for a warrant to take physical custody of a child, the documents may be served before, but must be served no later than immediately after the child is taken into physical custody according to AS 25.30.490. If the court issues a warrant to take physical custody of a child under AS 25.30.490, the law enforcement officer executing the warrant must serve the non-moving party or respondent with the motion or petition, warrant, and order for hearing when the child is taken into physical custody or immediately thereafter.

Option 1

Rule language if a party can request modification of an out-of-state custody order without first registering it.

(B) *Modification.* A party ~~may~~ must serve an initial motion to modify a registered out-of-state child custody determination or a petition to modify a nonregistered registered out-of-state child custody determination by any means of service authorized by according to Civil Rule 4.

Option 2

Rule language if a party must first register a custody order before requesting the court to modify it.

(B) *Modification.* A party ~~may~~ must serve an initial motion to modify a registered out-of-state child custody determination or petition to modify a registered out-of-state child custody determination by any means of service authorized by according to Civil Rule 4.

(e) Confirmation Order. When a foreign support or custody order is registered in Alaska, the court must issue a confirmation order if the non-registering party does not timely contest the registration or establish a defense against the registration.

(f) Response to Motion to Modify.

A response to an initial motion to modify a custody or support order is due either 10 days from the date of service, or the date the non-registering party's request for hearing is due, whichever is later. The response may be served according to Civil Rule 5. Subsequent motions to modify are governed by Civil Rule 77 and Civil Rule 5. A motion to modify a nonconfirmed out-of-state child custody or support order is not ripe for decision until the confirmation order is issued.

THE CIVIL RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

2. (New) Civil Rule 5.4 – Registration of Tribal Court Orders Under the Comity Doctrine; Establishing Procedures.

Alaska Legal Services Corporation (ALSC) and the Association of Village Council Presidents' (AVCP) proposed an amendment to Civil Rule 5.2 to address registration of certain tribal orders. Alaska courts around the state do not apply the same procedures for registering certain tribal orders. A court rule would provide uniformity across the state and minimize confusion for parties and court staff.

ALSC explained that tribal courts in Alaska are active particularly in the area of domestic relations. Some tribes are issuing child support orders, paternity orders, and child custody orders. While child support orders are recognized under full faith and credit procedures under federal law¹ and state statutes², other types of tribal civil orders, such as paternity, can be recognized and enforced by state courts under comity principles. But currently no court rules address recognition of tribal civil court orders under comity principles. Courts around the state do not handle the cases the same way.

After input from a subcommittee, the Civil Rules Committee recommended a new rule modeled after CINA Rule 24, Registration and Confirmation of Tribal Court Orders under the Indian Child Welfare Act (ICWA), with several significant modifications. First, the rule is specifically limited to certain orders from federally recognized tribes, e.g. divorce, dissolution, custody, paternity, minor name change, and adult name change cases. Second, the committee identified that tribal child custody orders issued under ICWA are entitled to full faith and credit while other tribal domestic relations orders are subject to comity recognition. Thus, the committee recommendation provides for judicial review of the tribal order instead of automatic registration as permitted under full faith and credit processes. Last, the petitioner, not the court, is required to serve the registration documents on the parties and tribal court, and the petitioner must accomplish service under Civil Rule 4.

The committee also recommends a use note at the end of the rule that refers to two Alaska Supreme Court decisions on comity recognition and concurrent tribal-state jurisdiction.

Here is the Civil Rules Committee's recommendation:

Rule 5.4. Registration of Tribal Court Orders Under the Comity Doctrine

(a) Applicability. This rule applies to tribal court orders of federally recognized tribes in divorce, dissolution, custody, paternity, minor name change, and adult name change cases. This rule does not apply where a state or federal law provides different procedures for recognition

¹ See the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. §1738B.

² See the Uniform Interstate Family Support Act, AS 25.25.101 - .903.

including protection orders under the Violence Against Women Act, tribal child support orders under the Uniform Interstate Family Support Act, and child protection orders subject to CINA Rules 24 and 25.

(b) Procedure for Filing Tribal Court Order. An Indian tribe, tribal organization or any person may request to register a tribal court order identified in subsection (a) by filing the following documents in superior court:

- (1) a letter, motion, petition, or other document requesting that the superior court register and confirm the tribal court's order;
- (2) a copy of the tribal court's order sought to be registered;
- (3) a statement, made under penalty of perjury, that the tribal court order has not been vacated, stayed, or modified; and whether the tribal court order has been registered in Alaska or any other jurisdiction; and
- (4) contact information including the last known address, phone number, and email address of
 - (A) the tribal court that issued the order,
 - (B) each party in the tribal court case, and
 - (C) the person seeking registration.

(c) Service. The Indian tribe, tribal organization, or the person asking to register the tribal court order must:

- (1) serve the people and tribal court named in paragraph (b)(4), under Civil Rule 4, with a copy of all documents filed with the superior court and a notice of the registration request; and
- (2) file proof of service with the superior court. The proof of service must:
 - (A) confirm the people and tribal court listed in (b)(4) were all served;
 - (B) state which Civil Rule 4 method of service was used; and
 - (C) confirm that service included all the documents filed with the superior court and the notice of registration request.

(d) Contents of the Notice of Registration Request. The notice of registration request required in paragraph (c)(1) must state the following:

- (1) a registered tribal court order is enforceable as if it was issued by the state superior court;
- (2) a party who wants to object to registering the tribal court

order must file a request for a hearing within 20 days after being served the notice of registration request; and

(3) if no party objects to registering the order, the superior court may register it, and the parties may not have another chance to argue against registering it.

(e) Request for Hearing on Confirmation of Registration. A person or entity who wants to object to the registration of a tribal court order must file a request for a hearing with the registering state superior court within 20 days after being served the notice.

(f) Confirmation of Registration.

(1) After a hearing, or expiration of the 20-day period, the superior court must confirm registration of the tribal court order under the comity doctrine unless the superior court determines that:

- (A) the person or entity requesting the registration did not follow subsections (a) through (d) of this rule;
- (B) the tribal court did not have jurisdiction over the parties or the proceeding in which the tribal court order was entered;
- (C) the tribal court order being registered has been vacated, stayed, or modified by a court having jurisdiction to do so;
- (D) the person or entity objecting to registration was entitled to notice, but was not given reasonable notice before the tribal court made its decision, or if notice was given, the person objecting to registration was not given an opportunity to be heard by the tribal court before making its decision; or
- (E) comity recognition would be against the public policy of the State of Alaska.

(2) If the superior court determines that the tribal court order should be granted comity recognition, the superior court must

- (A) enter a written order confirming registration of the tribal court order, and
- (B) distribute it to the person or entity requesting registration, the tribal court, and all persons listed in paragraph (b)(4).

(3) If the superior court determines that the tribal court order should not be granted comity recognition, the superior court must

- (A) enter a written order denying registration of the tribal court order, and

(B) distribute it to the person or entity requesting registration, the tribal court, and all persons listed in paragraph (b)(4).

(g) Recognition and Enforcement of Registered Orders. Alaska courts recognize and enforce tribal court orders registered in accordance with this rule. A court of this state may grant any relief available under the law of this state to enforce a registered tribal court order.

NOTE

Under *John v. Baker*, 982 P.2d 738 (Alaska 1999), the Alaska Supreme Court held that tribal court orders should be given comity recognition as a general rule. Recognition should only be denied if the tribal court lacked personal or subject matter jurisdiction, a party was denied due process (although differences in tribal court processes should be respected), or the order is against the public policy of the State of Alaska.

In *Nulato Tribal Court v. Superior Court*, Fourth Judicial District, S-16941, the Alaska Supreme Court confirmed the court had “long recognized that concurrent jurisdiction over domestic relations is exercised by the State and tribal courts.”

State court recognition assists state agencies and other organizations that are otherwise unsure about how to treat tribal court orders. As a practical consequence of concurrent jurisdiction, the state court system must provide a mechanism for recognizing tribal court name change orders.

THE CINA RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

3. CINA Rule 15 – Adjudication Hearing; Clarifying Application of the Evidence Rules.

The CINA Rules Committee recommends amending CINA Rule 15 to clarify the application of the Evidence Rules in adjudication hearings. The committee specifically referred to footnote 17 in *Taryn M.*³ that explains the application of the Evidence Rules in the different phases of CINA proceedings. The amendment would parallel the other CINA Rules that already include a subsection addressing hearsay evidence.

The CINA Rules Committee recommends (vote: 7 favor; 1 against) the following amendment:

Rule 15. Adjudication Hearing.

* * * *

(d) Evidence. The Alaska Rules of Evidence apply to the required finding that the child is a child in need of aid under AS 47.10.011.

~~(d)~~(e) Judgment. At the conclusion of the adjudication hearing, the court shall make findings of fact and enter a judgment that the child is or is not a child in need of aid.

(Re-letter subsequent subsections)

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³ *Taryn M. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, No. S-16326, 2017 WL 3122387, at *5 n.17 (Alaska July 19, 2017).

THE CINA RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

4. CINA Rule 19.2 – Extension of Custody or Supervision; Revisions.

The CINA Rules Committee recommends the following changes to CINA Rule 19.2 addressing extension of custody or supervision:

- Adds a new deadline for the Department/OCS to file the petition for extension of custody or supervision. Currently, the rule provides the petition must be filed at least thirty days prior to the expiration of the existing disposition order. The proposal will now provide that the petition must be filed at least thirty days prior to the earlier of (1) the expiration of the existing disposition order (this is in the current rule) or (2) the extension of custody hearing;
- Requires the petition to include a detailed statement of the facts and circumstances supporting the request to extend custody or supervision;
- Allows the parties to waive filing of a written petition with the court's approval;
- Eliminates the requirement for the petitioner to file a written report with a detailed statement of the facts and circumstances supporting the petition because the petitioner already provided that information with the petition in the new language in subsection (a); and
- Allows any party to submit a response supporting or objecting to continued custody or supervision.

Here is the CINA Rules Committee's recommendation:

Rule 19.2. Extension of Custody or Supervision.

(a) **Petition.** The Department or the child's guardian ad litem may file a petition for an extension of the commitment to custody or supervision. The petition must be filed at least thirty days prior to the earlier of (1) the expiration of the existing disposition order or (2) the extension of custody hearing. The petition must include a detailed statement of the facts and circumstances supporting the request for extension of custody or supervision. The filing of a written petition may be waived by agreement of the parties with approval of the court prior to or at the time of the hearing. The petitioner shall serve notice of the time set for a hearing on the petition to those persons specified in CINA Rule 3(a) and to the child's tribe and Indian custodian, even if the tribe or Indian custodian has not intervened. If the tribe or Indian custodian has not intervened, the notice must include notice of the right to intervene in the action and to obtain documents filed in the case.

(b) **Extension of Custody or Supervision.** At the conclusion of the hearing the court shall determine whether the child continues to be a child in need of aid and whether continued custody or supervision by the Department is in the best interests of the child.

(c) **Response Report.** Any party may submit a response in support of

or objection to continuing custody or supervision. ~~The petitioner must submit a written report that includes a detailed statement of the facts and circumstances supporting the petition for extension of custody or supervision. Unless otherwise ordered, the response report must be served and filed at least ten days prior to the extension hearing.~~

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THE CINA RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

5. (New) CINA Rule 26 – Intervention by Indian Child’s Tribe or Indian Custodian; Establishing Procedures.

Federal law provides that the child’s tribe and an Indian custodian has a right to intervene in a CINA proceeding involving an Indian child, but the federal law does not outline a procedural process for intervention. See 25 U.S.C. § 1911(c). Currently, the intervention process is not uniform among the state courts in Alaska. Some judges will not accept a “notice” for the tribe to intervene and the judge will tell the tribe it must file a motion under Civil Rule 24. Other times, the clerk’s office will not accept a “notice” and will tell the tribe to file a motion under Civil Rule 24. Based on federal law in 25 U.S.C. § 1911(c), the committee view is that the intervention process in CINA cases should different than other civil cases and filing a notice, not a formal motion under Civil Rule 24, is sufficient. The committee proposed a new rule outlining the procedural details of intervention. This new rule would provide uniformity among courts and clarity for the parties and intervenors.

The CINA Rules Committee recommends the following new Rule and Note:

Rule 26. Intervention by Indian Child’s Tribe or Indian Custodian.

- (a) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have the right to intervene at any point in the proceeding.
- (b) The court shall, upon request, provide the service information of the parties and future hearing information to the Indian custodian or Indian child’s tribe either in writing or orally.
- (c) Any Indian custodian or Indian child’s tribe seeking to intervene must file with the court where the matter is pending a notice of intervention which should be served on all parties.
- (d) The court shall have discretion to accept an oral notice of intervention made on record.
- (e) The court shall issue a written acknowledgment of the intervention and serve the acknowledgment on all parties.
- (f) Any party may respond to a notice of intervention or written acknowledgment of intervention within 10 days of service. A reply must be filed within 5 business days after service of the response.

Note: The use of the word “notice” instead of “motion” was purposeful to be consistent with the Indian Child Welfare Act, which establishes the Indian child’s tribe’s right to intervene as a party in CINA proceedings. No motion under Civil Rule 24 is required in light of the Indian Child Welfare Act’s clear language of the express right to intervene. 25 U.S.C. § 1911(c).

The CINA Rules Committee also recommends combining Parts X and XI headings and the rules under those headings into one, combined heading:

Part X. TRANSFER OF JURISDICTIONS AND ~~PART XI~~ TRIBAL COURT ORDERS ENTERED IN ICWA-DEFINED CHILD CUSTODY PROCEEDINGS.

Rule 23. Transfer of Jurisdiction to Tribal Court.

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

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

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Rule 26. Intervention by Indian Child's Tribe or Indian Custodian.

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