

# ALASKA RULES OF COURT

## ADOPTION RULES

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##### Part I. General Provisions

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## PART I. GENERAL PROVISIONS

### Rule 1. Title—Scope—Construction—Situations Not Covered by the Rules.

(a) **Title.** These rules will be known and cited as the Adoption Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of adoption proceedings brought under AS 25.23.010 through 25.23.240.

(c) **Construction.** These rules will be construed and applied to promote fairness, accurate fact-finding, the expeditious determination of adoption proceedings, and the best interests of the child.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska Supreme Court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not validly enacted for the specific purpose of changing a rule, these rules supersede the statute.

(e) **Civil and Evidence Rules Applicable.** The Alaska Civil and Evidence Rules apply to adoption proceedings except to the extent that any provisions of the Civil or Evidence Rules conflict with the Adoption Rules. The provisions of Civil Rule 100 apply to adoption proceedings.

(f) **Application of the Indian Child Welfare Act and Regulations.** In all cases involving an Indian child, the statutory provisions of 25 U.S.C. 1901 et seq., and the ICWA regulations at 25 CFR Part 23, published at 81 Fed. Reg. 38778 (June 14, 2016) and effective December 12, 2016, shall apply.

(g) **Situations Not Covered by the Rules.** Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of relevant statutes, the Alaska and United States Constitutions or common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of adoption proceedings.

(SCO 972 effective January 15, 1990; amended by SCO 1469 effective October 15, 2002; by SCO 1897 effective December 12, 2016; and by SCO 1939 nunc pro tunc September 13, 2018.)

**Note:** Chapter 24, SLA 2018 (SB 134) concerned actions for termination of parental rights. According to section 19(b) of

the Act, AS AS 25.23.180(c), as amended by section 12 of the Act, and AS 25.23.180(o), enacted by section 17 of the Act, have the effect of amending Adoption Rules 1 and 6 by clarifying that a petition for involuntary termination of parental rights may be filed in a proceeding that is independent from an adoption or a proceeding under AS 47.10 and by restructuring AS 25.23.180(c), which eliminates AS 25.23.180(c)(3).

### Rule 2. Definitions.

(a) “Agency” means any person certified, licensed or otherwise specially empowered by law or regulation to place minors for adoption.

(b) “Child” means a son or daughter, whether by birth or adoption.

(c) “Consent” means the written giving of permission to an adoption in accordance with AS 25.23.060.

(d) “Extended family member” means a person as defined by the law or custom of the Indian child’s tribe, or, in the absence of such a law or custom, means a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(e) “Guardian ad litem” means a person appointed by the court to represent the best interests of the child in an adoption proceeding.

(f) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in 43 U.S.C. Section 1606.

(g) “Indian child” means any unmarried person who is under the age of 18 and who is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(h) “Indian child’s tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership, or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(i) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.

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(j) “Indian tribe” means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Department of the Interior because of their status as Indians, including an Alaska Native village as defined in 43 U.S.C. Section 1602(c).

(k) “Judge” means a superior court judge, a standing master, or a district court judge or magistrate judge appointed as a special master pursuant to Adoption Rule 3.

(l) “Minor” means a person who has not reached the age of majority.

(m) “Parent” means a biological or adoptive parent.

(n) “Parties” means the petitioners, person to be adopted, the parents of the person to be adopted, anyone who has a right to consent under AS 25.23.040, a guardian ad litem, and any person or entity who has intervened.

(o) “Relinquishment” means a written surrender of parental rights in compliance with AS 25.23.180.

(SCO 972 effective January 15, 1990; amended by SCO 1084 effective January 15, 1992; and by SCO 1829 effective October 15, 2014)

## Cross References

(f) **CROSS REFERENCE:** 25 U.S.C. § 1903(3).

(g) **CROSS REFERENCE:** 25 U.S.C. § 1903(4).

(h) **CROSS REFERENCE:** 25 U.S.C. § 1903(5).

## Rule 3. Appointment and Authority of Masters.

(a) **Appointment.** The presiding judge may appoint a standing master to conduct adoption proceedings. Appointments of standing masters must be reviewed annually. The presiding judge may appoint a special master to conduct a proceeding which is specified in the order of reference.

### (b) Authority, Order of Reference.

(1) An order of reference specifying the extent of the master’s authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

(2) A master’s report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except that a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and paragraph (d) of this rule.

(c) **Objection to Reference to a Master.** In addition to the peremptory challenge of a master provided for in Civil Rule 42(c), a party may file an objection to a referral to a master in the following manner:

(1) *Timeliness.* A party may file an objection no later than five days after receiving notice of an order of reference.

(2) *Grounds for Objection.* An objection to the assignment of a master must set forth sufficient grounds from which the court may determine whether good cause exists to remove the matter from the master’s jurisdiction. Good cause may include involvement of:

(i) complex questions of law which require a decision by a superior court judge; or

(ii) questions requiring prompt resolution which would be seriously impaired by reference to a master.

(d) **Standing Master’s Authority to Enter Orders.** A standing master is authorized to take the following actions without further approval by a superior court judge:

(1) appoint counsel and guardians ad litem;

(2) order home studies;

(3) set hearings and order continuances of the hearings;

(4) accept and approve stipulations; and

(5) accept voluntary relinquishments of parental rights and consents to adoption, and, in the case of an Indian child, make the requisite judicial certification of voluntary consent required by federal law.

(e) **Master’s Report, Recommendations.** A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge. The master shall advise the parties on the record of their right to file objections to any such decisions pursuant to paragraph (f) of this rule.

(f) **Objections to Master’s Report, Recommendations.** Objections to Master’s Report, Recommendations. Objections to a master’s report or recommendation must be filed within ten days of service of the report unless the court requires objections to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests an electronic recording of the recommendation, the time period for objection runs from receipt of the recording. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

(SCO 972 effective January 15, 1990; and amended by SCO 1555 effective October 15, 2004)

## Rule 4. Authority of District Court Judges and Magistrate Judges.

A district court judge or magistrate judge may not preside over adoption proceedings in the absence of appointment as a master pursuant to Adoption Rule 3 or, in the case of a district court judge, appointment by the chief justice as a superior court judge pro tempore.

(SCO 972 effective January 15, 1990; and amended by SCO 1829 effective October 15, 2014)

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## Rule 5. Venue.

(a) **Venue.** Except as provided in subsection (d), adoption proceedings must be brought in superior court in the judicial district or venue district in which, at the time of filing the petition, the petitioner or the person to be adopted resides or is in military service, or in which the agency having the care, custody, or control of the person to be adopted is located.

(b) **Change of Venue.** Venue may be changed in the interest of substantial justice pursuant to AS 22.10.040 after a petition is filed.

(c) **Venue Districts.** Venue districts as used in this rule refer to the districts referenced in the Venue District Map attached to Criminal Rule 18.

(d) **Venue for Proceedings Involving a Child in State Custody.** A petition to adopt a child in state custody under AS 47.10 must be brought in the superior court where the child-in-need-of-aid proceeding is pending or in the judicial district in which the petitioner resides as provided under AS 47.10.111 and AS 25.23.030(d).

(SCO 972 effective January 15, 1990; amended by SCO 1886 effective January 1, 2017; and by SCO 1898 effective January 1, 2017)

**Note:** Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Section 14 of the Act amended Adoption Rule 5, effective January 1, 2017, by adding a new subsection addressing where to file an adoption petition when the child is in state custody. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

## Rule 6. Petitions.

### (a) Petition for Adoption.

(1) An adoption petition must include the information required by AS 25.23.080 except as provided under (a)(4) of this rule. A separate petition must be filed for each person to be adopted. If the proceeding involves a minor, the petition must also state whether the minor to be adopted is an Indian child and whether any other court cases involving the minor are known to be pending.

(2) An adoption petition involving an Indian child must include a statement of petitioner's compliance with the placement preferences provided by 25 U.S.C. Section 1915(a). The petition must state the identity of the child's tribe, if known; whether the child is reasonably believed to be a resident or domiciliary of an Indian reservation as defined in 25 U.S.C. Section 1903(10); and whether the child is known to be a ward of a tribal court.

(3) The report of expenditures required by AS 25.23.090 may be incorporated into the petition.

(4) A proceeding to adopt a child in state custody under AS 47.10 must comply with AS 47.10.111. A proceeding to

adopt a child in state custody under AS 47.10 shall be heard either

(A) as part of the child-in-need-of-aid proceeding; or

(B) in the judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceedings and no party objects.

(b) **Petition for Termination of Parental Rights Based on Relinquishment.** A petition for termination based on the voluntary relinquishment of parental rights pursuant to AS 25.23.180(b) must state, in addition to the information required by paragraph (a), that the parent has or intends to relinquish parental rights to the child.

(c) **Petition for Involuntary Termination.** A petition for termination based on the involuntary termination of parental rights pursuant to AS 25.23.180(c)(1)-(3) must state, in addition to the information required by paragraph (a), the specific statutory and factual basis of the claim that parental rights should be involuntarily terminated.

(d) **Relationship of Petitions to Terminate Parental Rights and to Adopt.**

(1) A petition to terminate parental rights under paragraph (b) or (c) of this rule may be combined with a petition for adoption.

(2) In a petition for termination of parental rights under paragraph (b) or (c) of this rule filed before a petition for adoption, the term "petitioner" in AS 25.23.080(b)(4)-(6) will be interpreted to mean the person who will have custody of the child pending adoption.

(SCO 972 effective January 15, 1990; amended by SCO 1568 effective October 15, 2005; by SCO 1650 effective October 15, 2007; by SCO 1886 effective January 1, 2017; and by SCO 1939 nunc pro tunc September 13, 2018)

**Note:** Chapter 6, 4SSLA 2016 (HB 200) enacted changes to the procedures for adopting or becoming the guardian of a child in state custody. Sections 15 and 16 of the Act amended Adoption Rule 6(a), effective January 1, 2017, to incorporate and reference the new requirements for proceedings to adopt a child in state custody. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

**Note:** Chapter 24, SLA 2018 (SB 134) concerned actions for termination of parental rights. According to section 19(b) of the Act, AS 25.23.180(c), as amended by section 12 of the Act, and AS 25.23.180(o), enacted by section 17 of the Act, have the effect of amending Adoption Rules 1 and 6 by clarifying that a petition for involuntary termination of parental rights may be filed in a proceeding that is independent from an adoption or a proceeding under AS 47.10 and by restructuring AS 25.23.180(c), which eliminates AS 25.23.180(c)(3).

## Rule 7. Guardians Ad Litem.

(a) **When Appointed.** The court may appoint a guardian ad litem for a child in an adoption proceeding when necessary to promote the child's best interests.

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(b) **Appointment.** Guardians ad litem will be appointed in accordance with the provisions of AS 25.23.100 and Administrative Rule 12. The court shall specify the duties of the guardian ad litem and the duration of the appointment in its order of appointment.

(c) **Service.** A guardian ad litem is a party and must be served with pleadings and notices according to the civil rules.

(SCO 972 effective January 15, 1990; amended by SCO 1092 effective July 15, 1992)

## Rule 8. Right to Counsel.

(a) **Counsel of Choice.** The court shall ensure at the first appearance of a parent that the parent is informed of the right to counsel of their choice at the parent's own expense. The court shall ensure that a child is advised of the right to counsel at the time the child appears to sign a consent to adoption.

### (b) Appointed Counsel.

(1) The court shall appoint counsel at public expense pursuant to Administrative Rule 12(e)(1)(A)(i) to represent an indigent parent of an Indian child.

(2) The court shall appoint the Office of Public Advocacy to represent an indigent parent against whom an involuntary termination of parental rights is sought pursuant to AS 25.23.180(c)(3).

(3) The court shall also appoint counsel at public expense pursuant to Administrative Rule 12 to represent:

(A) an indigent parent against whom an involuntary termination of parental rights is sought on grounds other than stated in AS 25.23.180(c)(3), if the action is brought by the state or by a party represented by the Alaska Legal Services Corporation or the Alaska Pro Bono Program; and

(B) an indigent parent who is defending against a claim that the parent's consent to adoption is not required under AS 25.23.050(a).

(4) The court may appoint counsel under AS 25.24.310 to represent a minor child who is to be adopted.

(SCO 972 effective January 15, 1990; amended by SCO 1092 effective July 15, 1992; and by SCO 1169 effective July 15, 1994; by SCO 1187 effective July 15, 1995; and by SCO 1296 effective January 15, 1998)

\*An indigent Indian custodian has a right to court-appointed counsel under 25 U.S.C. § 1912(b). Counsel appointed under § 1912 must seek compensation pursuant to 25 CFR 23.13.

## 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.

(b) **Consent or Relinquishment Involving an Indian Child.** A consent or relinquishment involving an Indian child must be signed in a hearing in the presence of a judge unless the consent is by an agency. In addition to the explanations required by paragraph (d), the court shall inquire as to what efforts have been made to comply with the placement preferences of 25 U.S.C. Section 1915(a). Consent for adoption or relinquishment of parental rights of an Indian child may not be given prior to or within ten days following the birth of the child.

### (c) Consent By a Minor.

(1) A consent by a minor child over the age of 10 to the child's adoption must be signed in writing and must be in the presence of the court unless the court in the best interest of the minor dispenses with the minor's consent or the requirement that the child consent in court.

(2) A consent by a parent who is a minor to an adoption of the parent's child must be signed in the presence of the court.

(d) **Consent or Relinquishment Before the Court.** If a consent or relinquishment is to be signed in the presence of the court, the judge shall first determine that the terms and consequences of the document were explained in detail to the person in a language that the person understands. The court also must determine that the person understands these terms and consequences, and that the person voluntarily signs the consent or relinquishment. If the identity or whereabouts of the other parent is in question, the court shall inquire into these matters.

(e) **Consents or Relinquishments Not Before the Court.** A consent or relinquishment to an adoption not taken in the presence of a judge must comply with AS 25.23.060. A relinquishment not taken in the presence of a judge must comply with AS 25.23.180(b).

(f) **Consent or Relinquishment Before Special Master.** A consent or relinquishment required to be taken in the presence of a judge must be taken in the physical presence of a judge. However, in exceptional circumstances the judge assigned to hear the entire proceeding may request that the presiding judge appoint a peace officer or person authorized to administer oaths or affirmations as a special master under

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Adoption Rule 3 for the limited purpose of sitting as the judge in whose physical presence the person gives the consent or relinquishment. The judge assigned to hear the entire proceeding must be telephonically present when the consent or relinquishment is taken. Both the special master and the judge assigned to hear the entire proceeding must make oral or written findings concerning the identity of the person signing the consent or relinquishment, whether the person understood the consent or relinquishment, and whether the person signed voluntarily. The requirements of paragraph (c) also must be met.

(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.

(h) **Withdrawal of Consent or Relinquishment of an Indian Child.** The parent of an Indian child may withdraw a consent or relinquishment by notifying in writing the court or the person or agency obtaining the consent or relinquishment at any time before the signing of the decree of adoption for a consent or the order of termination for a relinquishment. Notification is timely if received or postmarked on or before the last day of this time period. A decree of adoption or order of termination may not be signed until 10 days have passed since the signing of the consent or relinquishment.

(SCO 972 effective January 15, 1990; amended by SCO 1276 effective July 15, 1997; and by SCO 1580 effective nunc pro tunc to July 1, 2005)

**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.

## Rule 10. Notice.

(a) **Notice to Parties.** Petitioner shall give notice of the adoption hearing to the persons required by AS 25.23.100(a). The notice must contain the information required by AS 25.23.100(b) and must be served in the manner provided by this rule and Civil Rule 4, except that in an adoption involving an Indian child, notice must be by personal service or certified or registered mail with proof of service dated no later than 10 days before the adoption hearing. Notice of the adoption hearing must also be given to extended family members of an Indian child who have intervened in the adoption proceeding

or participated as a party in any prior child custody proceeding involving the child.

(b) **Waiver.** A party may waive the party's right to notice by filing a written notarized waiver with the court.

(c) **Notice to Parents Whose Whereabouts Are Unknown.** If the name of a parent who has not consented to the adoption is known, but the person's whereabouts cannot be ascertained after diligent inquiry, the petitioner may move the court to allow notice under Civil Rule 4(e). Any notice posted or published under Civil Rule 4(e) must give the full name, if known, of the person to whom the notice is directed. All other parties must be identified by initials rather than names. In an adoption involving an Indian child, additional notice to the parent must be sent in care of the Secretary of the Interior.

(d) **Notice to Unknown Parent.** If the identity of the parent is unknown and the court is satisfied that no form of notice, even under Civil Rule 4(e), is reasonably likely to give actual notice to the parent, the court may waive notice.

(e) **Notice to Indian Tribe.** In an adoption or relinquishment proceeding involving an Indian child, notice must be given to the child's tribe at the time of the petition or, if the child's tribe is not known at this time, reasonably promptly after the tribe has been determined. However, notice is not required if parental rights are to be voluntarily terminated and the parent files a statement that the tribe has not been served with notice in order to protect the privacy of the parent. The notice, if required, must be by personal service or certified or registered mail, with proof of service dated no later than 10 days before the adoption hearing and, if applicable, also 10 days before the entry of the decree of termination. The notice, if required, must be sent with a copy of the petition and must contain:

- (1) a statement that the Indian child's tribe has a right to intervene in the proceeding;
- (2) a statement of the right of the tribe to request twenty additional days to prepare for the proceedings;
- (3) the mailing address and telephone number of the court;
- (4) a statement that the tribe may have a right to petition the court to transfer the proceedings to a tribal court authorized to exercise jurisdiction under federal law; and
- (5) a statement that since adoption proceedings are usually conducted on a confidential basis, tribal officials shall keep the information contained in the notice confidential.

(SCO 972 effective January 15, 1990; amended by SCO 1879 effective October 15, 2016)

## Rule 11. Hearings.

(a) **Conduct of Hearing.** Adoption hearings are confidential proceedings tried by the court without a jury and must be conducted pursuant to AS 25.23.150(a).

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(b) **Exclusion of Witnesses.** Witnesses may be excluded from a hearing pursuant to Evidence Rule 615.

(c) **Telephonic Participation.** The court may conduct any hearing with telephonic participation as provided by Civil Rule 99, except as provided by Adoption Rule 9(f). Payment of telephone costs is governed by Administrative Rule 48.

(d) **Testimony Under Oath.** All testimony must be given under oath or affirmation as required by Evidence Rule 603.

(e) **Contested Adoptions.** The court may issue a pretrial order when the parties contest any issue. The court shall consider the advisability of appointing a guardian ad litem in contested adoptions.

(f) **Burden and Standard of Proof.** The burden is on the petitioner to prove all relevant issues in the adoption. The standard of proof as to the finding that the adoption is in the best interests of the person to be adopted is by a preponderance of the evidence. The standard of proof as to a finding that a consent is not required under AS 25.23.050(a) is by clear and convincing evidence.

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In an adoption involving an Indian child, the burden of proof is also on the petitioner to show by a preponderance of the evidence that the placement is within the placement preferences or that there is good cause for allowing a non-preferred placement pursuant to 25 U.S.C. Section 1915. The burden and standard of proof in proceedings for the involuntary termination of parental rights in conjunction with adoption proceedings must comply with CINA Rule 18.

(g) **Representation by Non-Attorney.** Unless the court for good cause requires representation by an attorney, an Indian tribe that has intervened may be represented by a non-attorney designated by the Indian tribe. The tribe must file a written authorization for representation by the designated non-attorney before the non-attorney may represent the tribe. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal. A guardian ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

(SCO 972 effective January 15, 1990; amended by SCO 998 effective January 15, 1990; and by SCO 1688 effective April 15, 2009)

## Rule 12. Tribal Intervention and Removal.

(a) **Intervention.** In any adoption or relinquishment proceeding involving an Indian child, the Indian child's tribe and an Indian custodian, if any, may intervene as a matter of right at any stage in the proceeding.

(b) **Removal.**

(1) In an adoption involving the termination of parental rights of a parent of an Indian child, the parent, Indian custodian or the tribe may move to have the matter removed to

a tribal court pursuant to 25 U.S.C. Section 1911.

(2) When a petition for removal to tribal court is filed, the court must find that the tribal court is authorized to exercise jurisdiction under federal law before transferring jurisdiction to the tribal court. The court may set a hearing on the petition for removal with notice to all parties to determine whether the tribal court has declined jurisdiction, and, if jurisdiction has not been declined, to determine whether any objection has been raised by either parent to the removal pursuant to 25 U.S.C. Section 1911(b).

(3) Civil Rule 77 applies to petitions for removal to tribal court.

(SCO 972 effective January 15, 1990)

## 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.

(b) **Involuntary Termination of Parental Rights.** Proceedings for the involuntary termination of parental rights in conjunction with adoption proceedings must comply with CINA Rule 18, except as otherwise provided by AS 25.23.180(c)(2) and (3). 25 U.S.C. Section 1912 also applies to all involuntary termination proceedings involving an Indian child.

(SCO 972 effective January 15, 1990; amended by SCO 1276 effective July 15, 1997; and by SCO 1580 effective nunc pro tunc to July 1, 2005)

**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),

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(h), and (j), enacted in sections 4 and 17, amend Adoption Rule 13 by authorizing review hearings for voluntary relinquishments.

## Rule 14. Decree of Adoption.

(a) **Findings.** At the conclusion of the hearing, the court shall enter findings of fact concerning:

- (1) whether the required consents were filed or excused;
- (2) whether a report of petitioner's expenditures was required, and if so, whether the report was accepted by the court;
- (3) whether all appropriate notices were timely given;
- (4) if the adoption was of a minor, whether the required residence of the minor with petitioner exists;
- (5) whether a home study was required, and if so, whether the home study was accepted by the court;
- (6) whether the adoption is in the best interests of the minor; and
- (7) whether visitation rights are being allowed under AS 25.23.130(c).

The court's findings also must include a description and an estimate of value of any property of the person to be adopted.

(b) **Additional Finding for Indian Children.** In the case of an Indian child, the court must enter additional findings regarding:

- (1) whether any additional notices required in Rule 10(e) were timely given;
- (2) whether the parent's consent was voluntary and in compliance with 25 U.S.C. Section 1913; and
- (3) whether the placement complies with the preferences set out in 25 U.S.C. Section 1915 or good cause exists for deviation from the placement preferences.

(SCO 972 effective January 15, 1990; amended by SCO 1276 effective July 15, 1997)

## Rule 15. Appeal.

(a) **Grounds, Procedure.** An appeal of a final judgment or order, or a petition for review of an interlocutory order or decision in an adoption case, may be taken subject to Appellate Rule 218 or other appropriate appellate procedures.

(b) **Stay.** An order, judgment or decision of the superior court remains in effect pending appeal or review, unless stayed by order of the superior court or the supreme court.

(SCO 972 effective January 15, 1990)

## Rule 16. Records.

(a) **Report of Adoption.** The court shall require a report of adoption and a biological information sheet to be filled out so that it can be filed with the Bureau of Vital Statistics with the decree of adoption. The court shall refer requests for adoption documents to the Bureau of Vital Statistics.

(b) **Substitute Birth Certificate.** At the request of the adoptive parent and upon payment of fees and completion of forms, the clerk of court shall send a request for a substitute birth certificate to the appropriate state's vital statistics office.

(c) **Indian Child Adoption Reports.** The court shall send a copy of the decree, a report providing all information required by 25 U.S.C. Section 1951, and an affidavit requesting anonymity, if any, to the Secretary of the Interior. A copy of this report must be kept in the case file.

(d) **Confidential Files.** Access to the court file prior to a decree of adoption is limited to the parties unless ordered otherwise by the court. Access to the file after a decree of adoption is limited as provided by AS 25.23.150, subject to informational requests under AS 18.50.500, AS 18.50.510, and 25 U.S.C. Section 1917.

(e) **Adoption Index.** An alphabetical index of all adoption cases will be kept under the name by which the person to be adopted will be known if the petition is granted. The adoption index is confidential.

(f) **Certificate of Adoption or Termination of Parental Rights.** A person whose parental rights have been terminated under AS 25.23.130 or AS 25.23.180 may request a certificate to be issued by the clerk which confirms that a decree of adoption or termination has been entered terminating the parent and child relationship between the person and a particular child. Before issuing a certificate, the clerk shall require sufficient identification to establish that the person requesting the certificate is the parent named in the decree. The certificate may disclose only the following information about the adoption or termination:

- (1) the case number;
- (2) the name of the parent whose rights were terminated;
- (3) the date the decree was entered;
- (4) the name of the child prior to the adoption or termination; and
- (5) the child's date of birth.

(SCO 972 effective January 15, 1990; amended by SCO 1060 effective July 15, 1991; by SCO 1286 effective October 1, 1997; and by SCO 1404 effective October 15, 2000)

## Rule 17. Challenges to Validity of Adoption Decree.

(a) **Procedure.** A person may move to set aside the decree by filing a motion stating the grounds for challenging the validity of the decree, with service on other parties, subject to the time limitations of AS 25.23.140(b) and (c), and 25 U.S.C. Section 1913(d). The court shall schedule a hearing

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after reasonable notice to the parties. At the hearing, the burden is on the party challenging the decree to show by a preponderance of the evidence that the decree is not valid.

(b) **Petition under 25 U.S.C. Section 1914.** A petition alleging a violation of any provision of 25 U.S.C. Section 1911, 1912 or 1913 is governed by the procedures set out in CINA Rule 20.

(SCO 972 effective January 15, 1990)

## APPENDIX

### ALASKA ADOPTION STATUTES

#### Chapter 23. Adoption.

#### § 25.23.005. Construction of chapter; rights of persons affected by adoption.

This chapter shall be liberally construed to the end that the best interests of adopted children are promoted. Due regard shall be given to the rights of all persons affected by a child's adoption.

(§ 1 ch 29 SLA 1990)

#### § 25.23.010. Who may be adopted.

Any person may be adopted.

(§ 1 ch 84 SLA 1974)

#### § 25.23.020. Who may adopt.

(a) The following persons may adopt:

(1) a husband and wife together;

(2) an unmarried adult;

(3) the unmarried father or mother of the person to be adopted;

(4) a married person without the other spouse joining as a petitioner, if the person to be adopted is not the other spouse, and if

(A) the other spouse is a parent of the person to be adopted and consents to the adoption; or

(B) the petitioner and the other spouse are legally separated; or

(C) the failure of the other spouse to join in the petition or to agree to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Nothing in this section affects legitimation under AS 25.20.050.

(§ 1 ch 84 SLA 1974)

#### § 25.23.030. Venue.

(a) Proceedings for adoption shall be brought in the superior court for the district in which, at the time of filing or granting the petition, the petitioner or the person to be adopted resides or is in military service, or in which the agency having the care, custody, or control of the minor is located.

(b) If the court finds in the interest of substantial justice, under AS 22.10.040, that the adoption proceeding should be heard in another judicial district, the court may transfer, stay or dismiss the proceeding in whole or in part on conditions that are just.

(c) Proceedings for the termination of parental rights on the grounds set out in AS 25.23.180(c)(3) shall be brought in the superior court for the district in which the child that is the subject of the action resides.

(d) The venue for an adoption proceeding for a child in state custody under AS 47.10 is the

(1) superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or

(2) judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceeding and no party objects.

(§ 1 ch 84 SLA 1974; am § 1, 2 ch 50 SLA 1987; am § 4 ch 6 4SSLA 2016)

#### § 25.23.040. Persons required to consent to adoption.

(a) Unless consent is not required under AS 25.23.050, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by

(1) the mother of the minor;

(2) the father of the minor, if the father was married to the mother at the time the minor was conceived or at any time after conception, the minor is the father's child by adoption, or the father has otherwise legitimated the minor under the laws of the state;

(3) any person lawfully entitled to custody of the minor or empowered to consent;

(4) the court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) the minor, if 10 years of age or older, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) the spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse or by the guardian or conservator of an incapacitated adult.

## ADOPTION RULES

(§ 1 ch 84 SLA 1974; am § 40 ch 50 SLA 1989)

### **§ 25.23.050. Persons as to whom consent and notice not required.**

(a) Consent to adoption is not required of

(1) for purposes of this section, a parent who has abandoned a child for a period of at least six months;

(2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause, including but not limited to indigency,

(A) to communicate meaningfully with the child, or

(B) to provide for the care and support of the child as required by law or judicial decree;

(3) the father of a minor if the father's consent is not required by AS 25.23.040(a)(2);

(4) a parent who has relinquished the right to consent under AS 25.23.180;

(5) a parent whose parental rights have been terminated by order of the court under AS 25.23.180(c)(3) or AS 47.10.080(c)(3);

(6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

(7) a parent of the person to be adopted, if the person is 18 or more years of age;

(8) a guardian or custodian specified in AS 25.23.040(a)(3) or (4) who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably; or

(9) the spouse of the person to be adopted, if the requirement of consent to the adoption is waived by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Except as provided in AS 25.23.100, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

(§ 1 ch 84 SLA 1974; am § 4 ch 63 SLA 1977; am § 3 ch 50 SLA 1987; am § 1 ch 38 SLA 2008)

### **§ 25.23.060. Execution of consent; consent as power of attorney.**

(a) The required consent to adoption shall be executed, at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgments. The consent is not valid unless the consent

form states that the person consenting to the adoption has the right to withdraw that consent as provided in AS 25.23.070(b), and unless the person consenting to the adoption acknowledges receipt of a copy of the consent form. The person giving consent shall state in the consent form whether the child is a member of an Indian tribe or the biological child of a member of an Indian tribe, so that the court may determine whether the provisions of 25 U.S.C. 1901–1963 (Indian Child Welfare Act of 1978) apply.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent is executed in the presence of the court or a person authorized to take acknowledgments and contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

(c) A consent executed under this section is effective as a power of attorney under AS 13.26.020. Unless the consent form provides otherwise, and regardless of whether the form names or identifies the adoptive parent, the consent delegates to the adoptive parent all powers that may be delegated under AS 13.26.020. The power of attorney takes effect when the child is delivered to the adoptive parent, and remains in effect as long as the consent is in effect; but the power of attorney is not effective beyond one year, unless the court extends it for good cause. The power of attorney does not terminate on the death or disability of the person executing the consent, unless the consent form so states. This subsection may not be construed to alter the requirements of AS 47.70 (the Interstate Compact on the Placement of Children).

(§ 1 ch 84 SLA 1974; am § 5, 6 ch 140 SLA 1986)

### **§ 25.23.070. Withdrawal of consent.**

(a) A consent to adoption may not be withdrawn after the entry of a decree of adoption.

(b) A consent to adoption may be withdrawn before the entry of a decree of adoption, within 10 days after the consent is given, by delivering written notice to the person obtaining the consent, or after the 10-day period, if the court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the person to be adopted and the court orders the withdrawal.

(§ 1 ch 84 SLA 1974; am § 7 ch 140 SLA 1986)

### **§ 25.23.080. Petition for adoption.**

(a) The caption of a petition for adoption shall be styled substantially "In the Matter of the Adoption of...". The person to be adopted shall be designated in the caption under the name by which the person is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known may not be disclosed in the petition or in the decree of adoption. (b) A petition for adoption shall be signed and verified by the petitioner, filed with the clerk of the court, and state

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(1) the date and place of birth of the person to be adopted, if known;

(2) the name to be used for the person to be adopted;

(3) the date of placement of the minor and the name of the person placing the minor;

(4) the full name, age, place and duration of residence of the petitioner;

(5) the marital status of the petitioner, including the date and place of marriage, if married;

(6) that the petitioner has facilities and resources, including those available under a hard-to-place child subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the person to be adopted;

(7) a description and estimate of value of any property of the person to be adopted; and

(8) the name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of the consent normally required to the adoption.

(c) A certified copy of the birth certificate or verification of the birth record of the person to be adopted, if available, the information specified in AS 25.23.185(a), if available, and the required consents, relinquishments, and termination orders shall be filed with the clerk.

(d) A petitioner petitioning to adopt a child in state custody under AS 47.10 shall file the petition for adoption in either the court where the child-in-need-of-aid proceedings are pending or the judicial district in which the petitioner resides, as required under AS 25.23.030(d) and AS 47.10.111.

(§ 1 ch 84 SLA 1974; am § 1 ch 36 SLA 1977; am § 8 ch 140 SLA 1986; am § 5 ch 6 4SSLA 2016)

## § 25.23.090. Report of petitioner's expenditures.

(a) Except as specified in (b) of this section, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with

(1) the birth of the minor;

(2) placement of the minor with petitioner;

(3) medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) services relating to the adoption or to the placement of the minor for adoption that were received by or on behalf of

the petitioner, either natural parent of the minor, or any other person.

(b) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

(c) Any report made under this section shall be signed and verified by the petitioner.

(§ 1 ch 84 SLA 1974)

## § 25.23.100. Notice of petition, investigation and hearing.

(a) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition unless the petition is held in abeyance under AS 47.10.111. At least 20 days before the date of hearing, the petitioner shall give notice of the filing of the petition and of the time and place of hearing to (1) the department, unless the adoption is by a stepparent of the child; (2) any agency or person whose consent to the adoption is required by this chapter, but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in AS 25.23.050(a) (1)–(3), (6), (8) and (9), but who has not consented. The notice to the department shall be accompanied by a copy of the petition.

(b) Notice to persons specified in AS 25.23.050 shall include a statement of the grounds under which consent to the adoption is not required. Notice given under this section shall be adequate to give actual notice of the proceedings, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of hearing shall contain all names by which the minor has been identified and shall state in summary form the effect of a decree of adoption. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs. Notice by publication may not be given unless, for compelling reasons, the court orders it to be given under the procedure established in Rule 4 of the Alaska Rules of Civil Procedure. Proof of the giving of the notice shall be filed with the court before the petition is heard, subject to the time limitations in (e) of this section.

(c) A reasonable investigation shall be made by the department or the petitioner to assure that all persons listed in (a) of this section are located and given notice of the proposed adoption. The investigation shall be conducted so that the rights of all parties are protected, including but not limited to the right to privacy and the right to be notified. An affidavit describing the investigation shall be filed with the court if all persons listed in (a) of this section are not located.

(d) Except as provided in (g) and (i) of this section, an investigation shall be made by the department or any other qualified agency or person designated by the court to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor

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and whether the proposed adoption is in the best interest of the minor.

(e) A written report of the investigation shall be filed with the court by the investigator before the petition is heard so long as the report is filed within 30 days of the designation by the court of the department, agency or person to make the investigation.

(f) The report of the investigation shall contain an evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.

(g) Unless directed by the court, an investigation and report is not required in cases in which an agency is a party or joins in the petition for adoption, a stepparent is the petitioner, the person to be adopted is within the fourth degree of lineal or collateral consanguinity to the petitioner, or the person to be adopted is an adult. In other cases, the court may waive the investigation only if it appears that waiver is in the best interest of the minor and that the adoptive home and the minor are suited to each other. The department which is required to consent to the adoption may give consent without making the investigation.

(h) The department or the agency or persons designated by the court to make the required investigation may request other departments or agencies within or outside of this state to make investigations of designated portions of the inquiry as may be appropriate and to make a written report as a supplemental report to the court and shall make similar investigations and reports on behalf of other agencies or persons designated by the courts of this state or another state.

(i) After the filing of a petition to adopt an adult the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required, but who has not consented. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.

(j) *[Repealed, § 22 ch 140 SLA 1986.]*

(§ 1 ch 84 SLA 1974; am § 4 ch 167 SLA 1975; am § 1 ch 150 SLA 1976; am § 9, 10, 22 ch 140 SLA 1986; am § 2 ch 38 SLA 2008; am § 6 ch 6 4SSLA 2016)

### **§ 25.23.110. Required residence of minor.**

A final decree of adoption may not be issued until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home and the department or any other qualified agency or person designated by the court has had an opportunity to observe or investigate the adoptive home. This observation or investigation is not required in proceedings where an investigation is not required under AS 25.23.100(g) and (i).

(§ 1 ch 84 SLA 1974)

### **§ 25.23.120. Hearing.**

(a) The presence of the petitioner and the person to be adopted is not required at the hearing on the petition unless ordered by the court.

(b) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.

(c) If at the conclusion of the hearing the court determines that the required consents have been obtained or excused and that the adoption is the best interest of the person to be adopted, it may issue a final decree of adoption.

(d) If the requirements for a decree under (c) of this section have not been met, the court shall dismiss the petition and determine, in the best interests of the minor, the person including the petitioner to have custody of the minor.

(§ 1 ch 84 SLA 1974)

**Revisor's notes.**—Formerly AS 20.15.120. Renumbered in 1982.

### **§ 25.23.125. Preference of minor to be adopted; guardian ad litem; protective orders.**

(a) If the person to be adopted is a minor under the age of 10 and the person is of sufficient age and intelligence to state desires concerning the adoption, the court shall consider the person's desires.

(b) The court may appoint a guardian ad litem or attorney, or both, under AS 25.24.310 for a minor who is to be adopted.

(c) The court may issue a protective order or other order that is in the best interest of a minor who is to be adopted.

(§ 11 ch 140 SLA 1986)

### **§ 25.23.127. Adult family member preference to adopt.**

Taking into consideration a child's stated preference under AS 25.23.125(a) and consent given under AS 25.23.040(a)(5), and unless the court finds that a petition to adopt the child by an adult family member is contrary to the best interest of the child, the court shall grant a petition to adopt a child by an adult family member who has had physical custody of the child for at least 12 consecutive months before the parental rights to the child have been terminated. In this section, "adult family member" has the meaning given in AS 47.10.990.

((§ 3 ch 64 SLA 2005))

### **§ 25.23.130. Effect of adoption decree.**

(a) A final decree of adoption, whether issued by a court of this state or of any other state, has the following effect as to matters within the jurisdiction or before a court of this state:

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(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted person of all parental rights and responsibilities, and, except as provided in (c) of this section, to terminate all legal relationships between the adopted person and the natural parents and other relatives of the adopted person, so that the adopted person thereafter is a stranger to the former relative for all purposes including inheritance, unless the decree of adoption specifically provides for continuation of inheritance rights, and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship; and

(2) to create the relationship of parent and child between petitioner and the adopted person, as if the adopted person were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted person from their operation or effect.

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(b) Notwithstanding the provisions of (a) of this section, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.

(c) Nothing in this chapter prohibits an adoption that allows visitation between the adopted person and the person's natural parents or other relatives.

(d) Except as provided in (e) of this section, a decree terminating parental rights on the grounds set out in AS 25.23.180(c)(3) voids all legal relationships between the child and the biological parent so that the child is a stranger to the biological parent and to relatives of the biological parent for all purposes, including interpretation of documents executed before or after the termination of parental rights that do not include the child by name or by a description not based on a parental or blood relationship.

(e) Inheritance rights between a child and a biological parent are not voided by a decree terminating parental rights on the grounds set out in AS 25.23.180(c)(3) unless the decree specifically provides for the termination of inheritance rights.

(§ 1 ch 84 SLA 1974; am § 12, 13 ch 140 SLA 1986; am § 4 ch 50 SLA 1987)

**Note:** In 1995, the legislature enacted AS 13.12.114 on inheritance rights between parent and child. This section changes the law governing inheritance rights of adopted children. According to AS 13.12.114(d), to the extent there is a conflict between AS 13.12.114 and AS 25.23.130, AS 13.12.114 controls.

## § 25.23.140. Appeal and validation of adoption decree.

(a) An appeal from any final order or decree rendered under this chapter may be taken in the manner and time provided for appeal from a judgment in a civil action.

(b) Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor, or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.

(c) Subject to the disposition of an appeal, one year after a decree is issued terminating parental rights on grounds set out in AS 25.23.180(c)(3), the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

(§ 1 ch 84 SLA 1974; am § 5 ch 50 SLA 1987)

## § 25.23.150. Confidential nature of hearings and records in adoption proceedings.

(a) All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.

(b) The papers and records relating to an adoption or a termination of parental rights under AS 25.23.180(c)(3) that are a part of the permanent record of a court are subject to inspection only upon consent of the court. The papers and records relating to an adoption or a termination of parental rights under AS 25.23.180(c)(3) on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisions of AS 18.50.

(c) Except as otherwise provided by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of an adoptive parent, an adopted child, a child who is the subject of a proceeding under AS 25.23.180(c)(3), or biological parent whose parental rights have been terminated on grounds set out in AS 25.23.180(c)(3).

(d) The court may order the disclosure of a natural parent's identity or address only if

(1) the court makes an express finding that the disclosure is required because of a medical necessity or other extraordinary circumstance; and

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(2) the natural parent unless the parent's parental rights have been terminated on grounds set out in AS 25.23.180(c)(3), the child, and the adoptive parents are afforded proper notice and a hearing; the court may waive the hearing and notice requirements if it finds there is a medical necessity that poses an immediate risk to life.

(§ 1 ch 84 SLA 1974; am § 14 - 16 ch 140 SLA 1986; am § 6 - 8 ch 50 SLA 1987)

### **§ 25.23.160. Recognition of foreign decree affecting adoption.**

A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued under due process of law by a court of any other jurisdiction within or outside of the United States shall be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree were issued by a court of this state.

(§ 1 ch 84 SLA 1974)

### **§ 25.23.170. Applications for birth certificates.**

Within 30 days after an adoption decree becomes final, the clerk of the court shall, if requested by the adoptive parents, prepare an application for a birth certificate in the name of the adopted person. Upon issuing a decree terminating parental rights on grounds set out in AS 25.23.180(c)(3) the court may order the preparation of an application for a birth certificate in the name of the child without reference to the parent whose parental rights have been terminated. The clerk of the court shall forward the application

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adopted person was born and a copy of the decree to the department for statistical purposes; and

(2) for a person born outside the United States to the state registrar of vital statistics.

(§ 1 ch 84 SLA 1974; am § ch 76 SLA 1982; am § 9 ch 50 SLA 1987)

### **§ 25.23.173. Indian child adoption reports.**

After entering a final decree or order in an Indian child adoptive placement, the court shall send to the Secretary of the Interior a copy of the decree or order and other information required by 25 U.S.C. 1951 (sec. 301(a) of the Indian Child Welfare Act of 1978).

(§ 17 ch 140 SLA 1986)

### **§ 25.23.175. Findings concerning persons born outside the United States.**

In the case of the adoption of a person born outside the United States, if requested by the adoptive parents, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth and parentage of the adopted person. The findings shall

be certified by the court and included with the report of adoption filed with the state registrar of vital statistics in accordance with AS 18.50.210.

(§ 5 ch 76 SLA 1982)

### **§ 25.23.180. Relinquishment and termination of parent and child relationships.**

(a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or before an adoption proceeding as provided in this section.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent, a copy of which shall be given to the parent,

(1) in the presence of a representative of an agency taking custody of the child, whether the agency is within or outside of the state or in the presence and with the approval of the court within or outside of this state in which the minor was present or in which the parent resided at the time it was signed, which relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal; or

(2) in any other situation if the petitioner has had custody of the minor for two years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of adoption.

(c) The relationship of parent and child may be terminated by a court order issued in connection with a proceeding under this chapter or a proceeding under AS 47.10 on the grounds

(1) specified in AS 47.10.080(o) or 47.10.088;

(2) that a parent who does not have custody is unreasonably withholding consent to adoption, contrary to the best interest of the minor child; or

(3) that the parent committed an act constituting sexual assault or sexual abuse of a minor under the laws of this state or a comparable offense under the laws of the state where the act occurred that resulted in conception of the child and that termination of the parental rights of the biological parent is in the best interests of the child.

(d) For the purpose of an adoption proceeding under this chapter, a decree issued by a court of competent jurisdiction in this or another state terminating all rights of a parent with reference to a child or the relationship of parent and child dispenses with the required

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(1) consent by that parent to an adoption of that child; and

(2) notice of a proceeding to that parent unless otherwise required by this section.

(e) A petition for termination of the relationship of parent and child made in connection with an adoption proceeding or in an independent proceeding for the termination of parental rights on grounds set out in (c)(3) of this section may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) another person having a legitimate interest in the matter.

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(f) Before the petition is heard, notice of the hearing on the petition and opportunity to be heard shall be given the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and, in the discretion of the court, a person appointed to represent any party.

(g) Notwithstanding the provisions of (b) of this section, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship on grounds set out in (c)(1) and (2) of this section may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

(h) The respondent to a petition filed for the termination of parental rights on grounds set out in (c)(3) of this section is entitled to representation in the proceedings by an attorney. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of sexual abuse of a minor or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

(j) In a relinquishment of parental rights executed under (a) of this section, a parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child. A retained privilege must be stated in writing with specificity. Not less than 10 days after the relinquishment is signed, the court may enter an order terminating parental rights if the court finds that termination of parental rights under the terms of the agreement is in the child's best interest. If a parent has retained one or more privileges, the court shall incorporate the retained

privileges into the termination order with a recommendation that the retained privileges be incorporated in an adoption or legal guardianship decree.

(k) A voluntary relinquishment may not be withdrawn and a termination order may not be vacated on the ground that a retained privilege has been withheld from the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil Procedure.

(l) After a termination order is entered, a person who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of or to vacate a privilege retained in the termination order. The court may modify, enforce, or vacate the retained privilege if the court finds, by clear and convincing evidence, that it is in the best interest of the child to do so.

(m) After a termination order is entered and before the entry of an adoption or legal guardianship decree, a prospective adoptive parent or a guardian of a child who is the subject of an adoption decree may request, after providing notice as specified under this subsection, that the court decline to incorporate a privilege retained in a termination order and recommended for incorporation in an adoption or guardianship decree under (j) of this section. The request made under this subsection may only be considered by the court after providing at least 20 days' notice by certified mail to the last known address of the person who has voluntarily relinquished parental rights to the child. The notice under this subsection must describe the request and explain that the recipient of the notice may submit a written statement under penalty of perjury to the court that the recipient either agrees with or opposes the request. The notice must also include the deadline for submitting the statement and the mailing address of the court. The court may decline to incorporate a retained privilege if the person who retained the privilege agrees with the request or if the court finds that it is in the child's best interest.

(n) A person who relinquished parental rights is entitled to the appointment of an attorney if a hearing is requested under (l) or (m) of this section to the same extent as if the parent's rights had not been terminated in a child-in-need-of-aid proceeding.

(§ 1 ch 84 SLA 1974; am 32 ch 21 SLA 1985; am § 10-13 ch 50 SLA 1987; am § 12 ch 99 SLA 1998; am § 4 ch 64 SLA 2005)

## § 25.23.185. Records and information.

(a) At the time a petition for adoption is filed with the court, the agency or individual placing the person for adoption, or the petitioner, shall file with the court, for release to the state registrar of vital statistics, the following information, or an explanation of its unavailability, on forms provided by the department:

(1) the address of each parent named on the original birth certificate; and

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(2) background information required under AS 18.50.510.

(b) Upon entry of a decree of adoption, the clerk of the court shall transmit to the Bureau of Vital Statistics the information provided under (a) of this section. The bureau shall attach the information to the original birth certificate of the adopted person.

(c) A child adoption agency licensed under former AS 47.35 and a child placement agency licensed under AS 47.32 shall maintain records of the information required to be furnished to the court under this section or under regulations of the commissioner implementing this section. If a child adoption agency or child placement agency ceases to place persons for adoption, it shall transfer its records to the commissioner.

(§ 18 ch 140 SLA 1986; am § 4 ch 124 SLA 1994; am § 13 ch 57 SLA 2005)

### § 25.23.190. Subsidy for hard-to-place child.

A hard-to-place child in the permanent custody of the department in a foster home for not less than one year may not be denied the opportunity for a permanent home if the achievement of this depends on continued subsidy by the state.

(§ 1 ch 84 SLA 1974; am § 2 ch 36 SLA 1977)

### § 25.23.200. Investigation of home for subsidized hard-to-place child.

Persons who are caring for a hard-to-place child on a foster parent basis and who have applied to adopt the hard-to-place child and to receive payments for the care and support of the hard-to-place child shall be evaluated as to their suitability as adoptive parents by means of an adoptive home study. Persons who are caring for a hard-to-place child in the state's custody and who wish to be appointed legal guardians of the child under AS 13.26.045, and to receive payments for the care and support of the child, shall be evaluated as to their suitability as guardians by means of a guardianship study. A home study or guardianship study shall be made by the commissioner's adoption staff or on the commissioner's behalf by an authorized agency or individual that provides adoption services.

(§ 1 ch 84 SLA 1974; am § 3 ch SLA 1977; am § 2 ch 204 SLA 1990)

### § 25.23.210. Amount and duration of subsidy payments.

(a) The department may adopt regulations to set the amount and length of time that a subsidy for a hard-to-place child may be granted.

(b) A subsidy granted by the department under this section may be

(1) paid for a specified length of time not to extend after the child's 18<sup>th</sup> birthday; and

(2) a deferred subsidy; in this paragraph, "deferred subsidy" means that no monetary reimbursement is paid to a family but other benefits are paid for the child.

(c) A subsidy granted under this section may not

(1) exceed the existing rate for foster care; or

(2) be changed without the written request or consent of the person caring for the child.

(d) The department shall review whether the amount of a subsidy granted for a child is appropriate on request of the person caring for the child.

(e) Subsidies shall be paid from the same public funds and in the same manner as foster care payments.

(§ 1 ch 84 SLA 1974; am § 4 ch 36 SLA 1977; am § 1 ch 31 SLA 2003; am § 3 ch 38 SLA 2008)

### § 25.23.220. Annual reevaluation of subsidy.

(Repealed § 4 ch 31 SLA 2003).

### § 25.23.230. Regulations.

The department shall adopt regulations necessary to implement the provisions of AS 25.23.185 -25.23.240.

(§ 1 ch 84 SLA 1974; am § 19 ch 140 SLA 1986)

### § 25.23.240. Definitions.

In this chapter, unless the context otherwise requires,

(1) "adult" means an individual who has reached the age of majority;

(2) "agency" means any person certified, licensed, or otherwise specially empowered by law or regulation to place minors for adoption;

(3) "child" means a son or daughter, whether by birth or by adoption;

(4) "commissioner" means the commissioner of health and social services;

(5) "court" means the superior court of this state, and, when the context requires, the court of another state empowered to grant petitions for adoption or guardianship or to terminate parental rights;

(6) "department" means the Department of Health and Social Services;

(7) "hard to place child" means a minor who is not likely to be adopted or to obtain a guardian by reason of physical or mental disability, emotional disturbance, recognized high risk of physical or mental disease, age, membership in a sibling group, racial or ethnic factors, or any combination of these conditions;

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(8) “minor” means a person who has not reached the age of majority;

(9) “sexual abuse of a minor” means a sexual offense defined in AS 11.41.434, 11.41.436, 11.41.438, or 11.41.440;

(10) “sexual assault” means a sexual offense defined in AS 11.41.410 or 11.41.420;

(11) “stepparent” means the spouse of a natural parent of the child residing in the same household.

(§ 1 ch 84 SLA 1974; am § 5 ch 36 SLA 1977; am § 20 ch 140 SLA 1986; am § 14, 15 ch 50 SLA 1987; am § 4, 5 ch 204 SLA 1990)

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