

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1355

Amending the Child in Need of Aid Rules to  
implement 1998 amendments to AS 47.12.

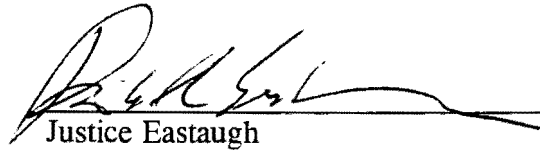
IT IS ORDERED:

The Child in Need of Aid Rules are amended as shown in the attachment to this order.

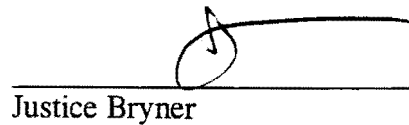
DATED: June 3, 1999

EFFECTIVE DATE: July 15, 1999

  
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Chief Justice Matthews

  
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Justice Eastaugh

  
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Justice Fabe

  
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Justice Bryner

  
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Justice Carpeneti

**Rule 1. Title - Scope - Construction - Situations Not Covered by the Rules.**

(a) **Title.** These rules will be known and cited as the Child in Need of Aid Rules or the CINA Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of child in need of aid proceedings brought under AS 47.10.010(a).

(c) **Construction.** These rules will be construed and applied to promote fairness, accurate fact-finding, the expeditious determination of children's matters, 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 enacted for the specific purpose of changing a rule, these rules supersede the statute to the extent of the inconsistency.

(e) **Civil Rules Applicable.** Civil Rules 3(b) - (g), 4, 5, 5.1, 6, 10, 11, 15, 42, 45(a) - (f), 46, 53, 59, 60, 61, 63, 76, 77, 81, 90, 98, and 100 apply to child in need of aid proceedings except to the extent that any provisions of these civil rules conflict with the Child in Need of Aid Rules.

(f) **Situations Not Covered by These Rules.** Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of the Civil Rules, applicable statutes, the Alaska and United States Constitutions or the 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 child in need of aid proceedings.

**Cross References**

**CROSS REFERENCES:** AS 22.15.100(8); AS 47.05.060; AS 47.05.065; AS 47.10.005; AS 47.10.082; Alaska Constitution, Art. IV § 15.

**Rule 2. Definitions.**

(a) "Child" means a person under 18 years of age when the petition for adjudication is filed who remains subject to the jurisdiction of the court.

(b) "Custodian" means a natural person 18 years of age or older to whom a parent has transferred temporary physical care, custody, and control of the child for the period of time immediately preceding the conduct alleged in the petition.

(c) "Department" means the Department of Health and Social Services of the State of Alaska.

(d) "Guardian" means a natural person who is legally appointed guardian of the person of a child.

(e) "Guardian ad litem" means a person appointed by the court to represent the best interests of the child in the CINA proceeding as distinguished from a guardian of the person defined in paragraph (d).

(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. § 1606.

(g) "Indian child" means any unmarried person who is under the age of 18 and who is either (1) a member of an Indian tribe, or (2) 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 (1) the Indian tribe in which an Indian child is a member or eligible for membership or (2), 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.

(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. § 1602(c).

(k) "Parent" means a biological or adoptive parent whose parental rights have not been terminated.

(l) "Party" means the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian who has intervened, an Indian child's tribe which has intervened, and any other person who has been allowed to intervene by the court.

**Cross References**

**CROSS REFERENCES:** AS 25.20.010; AS 47.10.990; 25 U.S.C. § 1903.

(f) 25 U.S.C. § 1903(3).

(g) 25 U.S.C. § 1903(4).

(h) 25 U.S.C. § 1903(5).

- (i) 25 U.S.C. § 1903(6).
- (j) 25 U.S.C. § 1903(7).

**Rule 3. Hearings.**

(a) **Notice.** Notice of each hearing must be given to all parties and any foster parent or other out-of-home care provider within a reasonable time before the hearing. Service on the child may be accomplished by serving the child's guardian ad litem, attorney or social worker. Notice to a foster parent or out-of-home care provider must be provided by the Department.

(b) **Presence of the Child.** A child who is not of suitable age to understand or participate in the proceedings need not be present at hearings unless the court so orders. The court may excuse the presence of a child who is of suitable age if attendance would be detrimental to the child. The child or the child's guardian ad litem may waive the child's right to be present at a particular hearing.

(c) **Presence of Foster Parent.** A foster parent or other out-of-home care provider is entitled to be heard at any hearing at which the person is present. However, the court may limit the presence of the foster parent or care provider to the time during which the person's testimony is being given if it is (1) in the best interest of the child; or (2) necessary to protect the privacy interests of the parties and will not be detrimental to the child.

(d) **Parties Excluded.** The court may exclude the child during particular testimony if the effect of that testimony would psychologically harm the child. The court also may exclude a parent, guardian or Indian custodian during the child's testimony in order to protect the child from material psychological harm, provided that the parent, guardian or Indian custodian may listen to a recording of the testimony to prepare for further examination and rebuttal.

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

(f) **General Public Excluded.** Hearings are not open to the public. However, the court may, after due consideration for the welfare of the child and the family, admit specific individuals to a hearing.

(g) **Telephonic Participation.**

(1) The court may conduct any hearing with telephonic participation by one or more parties, counsel, witnesses, foster parents or out-of-home care providers, or the judge.

(2) In any proceeding in which the court is authorized to proceed ex parte, the court may contact the non-appearing party or counsel by telephone, and in the interests of justice receive evidence or argument without stipulation of the parties.

(3) Procedures for telephonic hearings are governed by Civil Rule 99(b). Payment of telephone costs is governed by Administrative Rule 48.

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

(i) **Representation by Non-Attorney.** Unless the court for good cause requires representation by an attorney, an Indian tribe may be represented by a non-attorney tribal member or tribal employee. A written authorization for representation by the non-attorney must be filed in the case before the non-

attorney tribal member or tribal employee may represent the tribe. A guardian ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

**Cross References**

**CROSS REFERENCES:** AS 47.10.030(b); AS 47.10.070.

## PART II. MASTERS, MAGISTRATES, DISTRICT COURT JUDGES

### Rule 4. Appointment and Authority of Masters.

(a) **Appointment.** The presiding judge may appoint a standing master to conduct any or all of the CINA proceedings listed in subparagraph (b)(2). 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 and is listed in subparagraph (b)(2).

(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) The following proceedings may be referred to a master:

- (A) emergency or temporary custody hearings;
- (B) interim hearings, including temporary custody review hearings and pre-trial conferences;
- (C) adjudication and disposition hearings;
- (D) post-disposition review and extension of custody hearings.

(3) 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:

(A) a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and by paragraph (d) of this rule; and

(B) a master's order of removal from the home is effective pending superior court review.

(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 the order of reference.

(2) *Grounds for Objection.* An objection to the assignment of a master to hear an adjudication hearing, a disposition hearing following a contested adjudication or an extension of custody hearing will be granted as a matter of right. Any other objection 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 a 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) order emergency custody under CINA Rule 6(b);
- (2) appoint counsel and guardians ad litem;
- (3) order home studies, predisposition reports, and psychological or psychiatric evaluations;
- (4) set hearings and order continuances of the master's hearings;
- (5) issue orders on motions requesting expedited review pursuant to Civil Rule 77(i);
- (6) accept and approve stipulations, except that stipulated adjudications or dispositions must be reviewed by a superior court judge;
- (7) review and approve uncontested orders on annual review;
- (8) accept voluntary relinquishments of parental rights, and in the case of an Indian child, make the requisite judicial certification of voluntary consent required by federal law;
- (9) order mediation and other forms of alternative dispute resolution under Civil Rule 100, but only if the affected parties have agreed to participate.

(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 decision pursuant to paragraph (f) of this rule.

(f) **Objections to Master's Report, Recommendations.**

(1) *Objections, Reply, Oral Argument.* Objections to a master's report or recommendation must be filed within 10 days of service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on the record where a party requests a cassette tape of the recommendation, the time period for objection runs from receipt of the tape. 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.

(2) *Request for Stay, Immediate Review.* A party may request that a superior court judge stay the master's order issued under paragraph (d) pending review of the order.

(3) *Review of Order Removing the Child from the Home.* A master's order removing a child from the home which is not stayed must be reviewed by the superior court by the end of the next working day if a party so requests.



**Rule 5. Authority of District Court Judges and Magistrates.**

(a) **Emergency Situations.** When a child is in a condition or surrounding dangerous to the welfare of the child which requires immediate action, and no superior court judge or authorized master is available, a district court judge or magistrate may take the least restrictive action necessary to protect the minor which a superior court judge is authorized by law to take. The district court judge or magistrate must immediately notify the superior court of the facts concerning the child and expeditiously transfer the case file to the superior court.

(b) **Review.** A party may request a hearing before the superior court or master to review any action taken by a district court judge or magistrate under this rule.

**Cross References**

**CROSS REFERENCE:** AS 22.15.100.

### PART III. COMMENCEMENT OF PROCEEDINGS

#### Rule 6. Emergency Custody.

(a) **Emergency Custody Without Court Order.** The Department may take emergency custody of a child pursuant to AS 47.10.142 without a court order. If the Department determines that continued custody is necessary to protect the child, the Department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, a petition alleging that the child is a child in need of aid. If the Department releases the child within 24 hours after taking the child into custody and does not file a petition, the Department shall, within 24 hours after releasing the child, file with the court a report explaining why the child was taken into custody, why the child was released, and to whom the child was released.

(b) **Emergency Custody With Court Order.**

(1) *Who May Request.* The Department or any other person or agency may petition the court for an order granting emergency custody of the child to the Department.

(2) *Form, Contents of Motion.* The petition must be supported by a statement of facts sufficient to show that the child is a child in need of aid and is in a condition which requires the immediate assumption of custody pursuant to AS 47.10.142. If a child is believed to be an Indian child, the statement of facts must show the tribal affiliation of the child, if known, and must be sufficient to show that removal of the child from the home is necessary to prevent imminent physical damage or harm to the child. The statement of facts must be made under oath, either in a petition, by affidavit, or orally on the record.

(3) *Order.* If the court determines that there is probable cause to believe that the child is a child in need of aid and is in such condition or surroundings that the child's welfare requires the immediate assumption of custody, the court may immediately issue an emergency custody order. In a case involving an Indian child, the court may not order emergency removal unless it finds that removal is necessary to prevent imminent physical damage or harm to the child. The order must be directed to a peace officer or other person specifically designated by the court, and shall require that the child be taken into custody immediately.

(4) *Notification to Department.* If the emergency custody order was not requested by the Department, the court shall, if possible, notify the Department of the motion immediately, and in any event no later than 12 hours after the motion is filed.

(5) *Service.* At the time of executing the order, or as soon thereafter as practicable, the peace officer or other person specifically designated by the court shall serve the child, parents, Indian custodian, guardian, and Department with a copy of the emergency custody order, a summons to the temporary custody hearing if one has been issued, and any available pleadings filed in support of the order. The person charged with service shall prepare and retain a return of service.

#### Cross References

**CROSS REFERENCES:** AS 22.15.100(8); AS 47.10.141; AS 47.10.142.

**Rule 7. Petition for Adjudication — Summons.**

(a) **Petition.** Formal proceedings may be commenced by the filing of a petition for adjudication of a child as a child in need of aid. The petition must be verified and must contain a statement of facts that would support a finding that the child is a child in need of aid under AS 47.10.011. If the child is believed to be an Indian child, the petition must so state and must state, if known, the Indian child's tribe. The petition may include a request for temporary custody under CINA Rule 10.

(b) **Notice of Hearing.** The Department shall provide a copy of the petition, as well as actual notice of the time and place of the initial hearing and of the parties' right to counsel, to the parents, guardian and Indian custodian if these parties can be found after diligent efforts. In addition, actual notice of the proceedings must be given to any foster parent or other out-of-home care provider within a reasonable time before the hearing. If an Indian child is taken into emergency custody, the Department shall make reasonable efforts to ascertain and provide actual notice to the child's tribe before the temporary custody hearing.

(c) **Summons.** The court shall issue a summons to be served with the petition on the child, parents, guardian and guardian ad litem. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons. The summons must contain a statement advising the parties of their right to counsel.

(d) **Service of Petition and Summons.** The petition and summons must be served pursuant to Civil Rule 4 or as directed by the court. The child's summons must be served on the child's guardian ad litem, attorney or social worker. This person must deliver the summons to the child if the child is of an appropriate age. The court may appoint employees of the Department or any other competent person to serve the summons and petition. Inability to obtain service on any party does not deprive the court of jurisdiction.

(e) **Notice in Cases Involving an Indian Child.**

(1) If there is reason to believe that the child is an Indian child, the Department shall give notice to the child's parents, Indian custodian, and to any tribe that may be the child's tribe, of their rights under the Indian Child Welfare Act. This notice must be personally served or sent by certified mail with return receipt requested. If the identity or location of the parents or Indian custodian or tribe cannot be determined, notice that would otherwise have been sent to the missing persons or tribe must be given to the appropriate area office of the Bureau of Indian Affairs.

(2) The notice of rights under the Indian Child Welfare Act must contain the following information:

(A) The name of the Indian child.

(B) The child's tribal affiliation, if known. If notice is being sent to more than one tribe, a statement of all tribes being notified must be included.

(C) A copy of the petition.

(D) The location, mailing address, and telephone number of the court, and the time and place of the next hearing, if known.

- (E) A statement of the right of the Indian custodian and the tribe to intervene in the proceeding.
- (F) A statement that if the parents or Indian custodian are unable to afford counsel, counsel will be appointed to represent them.\*
- (G) A statement of the rights of the parents, Indian custodian or the tribe to have, on request, up to 30 days to prepare for the adjudication hearing.
- (H) A statement of the potential legal consequences of an adjudication on the rights of the parents or Indian custodian.
- (I) A statement that child custody proceedings are conducted on a confidential basis and that tribal officials are required to keep confidential the information contained in the notice and not reveal it to anyone who does not need the information in order to exercise the tribe's rights.
- (f) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the child and the family.
- (g) **Amendment.** A petition may be amended by leave of the court and with reasonable notice on all parties at any time before the adjudication order. Amendment with appropriate continuances will be permitted to promote the interests of justice and the welfare of the child and the family.

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

#### **Cross References**

**CROSS REFERENCES:** AS 47.10.020(b); AS 47.10.030; AS 47.10.070; AS 47.10.142(a); 25 U.S.C. § 1912.

**PART IV. DISCOVERY, EVIDENCE, PROOF**

**Rule 8. Depositions and Discovery.**

(a) **By the Parties.** The Civil Rules govern depositions and discovery in child in need of aid proceedings with the following exceptions:

- (1) the court may shorten time periods for discovery;
- (2) no minor under 16 years of age may be deposed except upon court order; and
- (3) the presence of parties or others at depositions is governed by CINA Rule 3.

(b) **By the Court.** The court may order further discovery, and grant a continuance to accomplish the discovery, at any phase of the proceeding if it believes that the evidence has not been fully developed.

**Rule 9. Evidence.**

(a) **Applicability of Evidence Rules.** The Alaska Rules of Evidence apply to child in need of aid proceedings to the same extent as they govern civil proceedings, except as otherwise provided by these rules.

(b) **Privileges Inapplicable.** The physician and psychotherapist-patient privilege, Evidence Rule 504, and the husband-wife privileges, Evidence Rule 505, do not apply in child in need of aid proceedings.

**Cross References**

**CROSS REFERENCE:** AS 47.17.060.

**PART V. PRELIMINARY PROCEEDINGS**

**Rule 10. Temporary Custody Hearing.**

(a) **Time of Hearing.** At the request of the petitioner, the court shall schedule a temporary custody hearing:

(1) within 48 hours, including weekends and holidays, of when the court is notified by the filing of a petition that emergency custody was taken pursuant to CINA Rule 6(a) or (b); or

(2) within a reasonable time following the filing of a petition when emergency custody has not been taken.

(b) **Conduct of Hearing.**

(1) *Opening Address.* The court shall first determine whether the persons specified in CINA Rule 7(b) have received notice of the hearing. The court shall then determine whether all parties have received copies of the petition and understand its contents and shall advise the parties of the nature of the proceedings and possible disposition. In addition, the court shall advise the parties of the possibility of a temporary custody or supervision order pending adjudication and final disposition, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

(2) *Advice of Rights.* The court shall advise the parties of their right to counsel, including the right to court-appointed counsel if applicable; the child's right to a guardian ad litem; their right to a hearing at which the state is required to present evidence to prove the allegations in its petition; their right to confront and cross-examine witnesses at such a hearing, to present witnesses on their own behalf, and to compulsory process to compel these witnesses to attend; and their privilege against self-incrimination. In cases involving an Indian child, the court shall also advise the parties of an Indian custodian's or tribe's right to intervene.

(3) The court may admit hearsay evidence which would be otherwise inadmissible under the Evidence Rules if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(c) **Findings of Fact and Order.**

(1) The court shall order the child returned to the home and dismiss the petition if the court does not find probable cause to believe that the child is a child in need of aid under AS 47.10.011.

(2) The court shall order the child placed in the temporary custody of the Department or order the child returned to the home with supervision by the Department if the court finds probable cause to believe that the child is a child in need of aid under AS 47.10.011.

(3) The court may approve the removal of the child from the child's home only if the court finds that continued placement in the home is contrary to the welfare of the child; and, in cases involving an Indian child, either: (A) that removal from the child's parent or Indian custodian is necessary to prevent imminent physical damage or harm to the child; or (B) that there is clear and convincing

evidence, including testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if left in the custody of the parent or Indian custodian.

(4) In any case in which the court has approved the removal of the child pursuant to the preceding subparagraph, the court shall make the inquiry and findings required by CINA Rule 10.1.

(d) **Subsequent Proceedings.** If the court orders the child placed in the temporary custody of the Department or orders the child returned to the home with supervision by the Department, the court must set the time for the adjudication hearing and for the pretrial conference and meeting of parties required by CINA Rule 13. The court may also set the time to file motions, complete discovery, exchange witness and exhibit lists, and file pretrial briefs. The court may schedule a disposition hearing in conjunction with the adjudication hearing. In such cases, the order setting the time for adjudication and disposition must also set the time to submit reports in aid of disposition.

(e) **Review.**

(1) If circumstances relating to the child's placement change pending adjudication or disposition, any party may request that the court review the temporary custody or supervision order.

(2) When a party seeks the return of a child to the child's home pending adjudication or disposition, if the party makes a prima facie showing that removal is no longer necessary, the burden of proof shifts to the Department as described below:

(A) in cases involving a non-Indian child, the court shall return the child to the home unless the Department proves by a preponderance of the evidence that return to the home is contrary to the welfare of the child;

(B) in cases involving an Indian child, the court shall restore the child to the child's parent or Indian custodian unless the Department proves (i) by a preponderance of the evidence that removal from the parent or Indian custodian is still necessary to prevent imminent physical damage or harm to the child; or (ii) by clear and convincing evidence, including the testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if returned to the custody of the parent or Indian custodian.

(3) A party may seek review of other issues related to temporary custody or supervision under CINA Rule 19.1(d).

#### **Cross References**

**CROSS REFERENCES:** AS 47.10.142(d) and (e); 25 U.S.C. § 1912(a); 25 U.S.C. § 1913(a); 25 U.S.C. § 1922; 42 U.S.C. § 672(a)(1).



**Rule 10.1. Out-of-Home Placement — Required Findings.**

**(a) Findings in Cases Involving Non-Indian Child.**

**(1) Findings.**

(A) If the Department has taken emergency custody of a non-Indian child under AS 47.10.142, the court shall inquire into and determine at the temporary custody hearing whether the Department has made reasonable efforts as required by AS 47.10.086(a) to prevent out-of-home placement, or whether it was not possible under the circumstances to make efforts that would have prevented removal of the child.

(B) At any other hearing at which the court is ordering a non-Indian child's removal from the home, the court shall inquire into and determine whether the Department has made reasonable efforts as required by AS 47.10.086(a) to prevent out-of-home placement, unless the court has previously determined under Rule 17.1 that reasonable efforts are not required.

(C) At each hearing at which the court is continuing a previous order authorizing removal of a non-Indian child, the court shall inquire into and determine whether the Department has made reasonable efforts since the last hearing as required by AS 47.10.086(a) to permit the child's return to the home, unless the court has previously determined under Rule 17.1 that reasonable efforts are not required.

(2) *Effect of a Finding that Department Failed to Make Reasonable Efforts.* A finding that the Department has failed to make reasonable efforts is not in itself a ground for returning the child to the home or dismissing a petition and does not affect the court's ability to proceed to adjudication. However, the court cannot enter a disposition order if the court finds that the Department has failed to make reasonable efforts, unless the court has determined under Rule 17.1 that reasonable efforts are not required. If the Department has failed to make required reasonable efforts, the court must postpone disposition until the court finds that reasonable efforts have been made. On motion of a party or on its own motion, the court may order the Department to comply with AS 47.10.086(a) within a reasonable time. If the Department fails to comply with the order, the court may impose appropriate sanctions.

**(b) Findings in Cases Involving Indian Child.**

(1) *Findings.* At each hearing at which the court is authorizing an Indian child's removal from the child's parent or Indian custodian or continuing a previous order authorizing removal, the court shall inquire into and determine:

(A) whether the Department has complied with the placement requirements of 25 U.S.C. § 1915(b) and

(B) whether active efforts have been made to provide remedial services and rehabilitative programs as required by 25 U.S.C. § 1912(d).\*

(2) *Effect of a Finding that Requirements Have Not Been Met.* A finding that the requirements of 25 U.S.C. §§ 1912(d) or 1915(b) have not been met is not in itself a ground for restoring the child to the parent or Indian custodian or dismissing a petition and does not affect the court's ability to proceed to adjudication. However, the court cannot enter a disposition order if the court finds that the

requirements of 25 U.S.C. § 1912(d) (active efforts) have not been met.\* In those circumstances, the court must postpone disposition until the court finds that active efforts have been made. On motion of a party or on its own motion, the court may order the Department to comply with 25 U.S.C. §§ 1912(d) or 1915(b) within a reasonable time. If the Department fails to comply with this order, the court may impose appropriate sanctions.

**\* Note: As of June 1999, it is an open issue whether federal law permits a trial court to determine that active efforts are not required in a case or that such efforts may be discontinued.**

**Rule 11. Guardians Ad Litem.**

(a) **For Whom Appointed.** The court shall appoint a guardian ad litem to represent the best interests of a child alleged to be abused or neglected. The court may appoint a guardian ad litem for any other child subject to a CINA proceeding when necessary to promote the child's best interests.

(b) **Appointment.** The court shall appoint a guardian ad litem as soon as the court has notice that a child is entitled to one. In its order of appointment, the court shall specify the duties of the guardian ad litem and the duration of the appointment.

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

**Cross References**

**CROSS REFERENCES:** AS 25.24.310; AS 47.10.050; AS 47.17.170(1), (2) and (5).

**Rule 12. Right to Counsel.**

(a) **Notice of Right to Counsel.** The court shall inform the parties at the first hearing at which they are present of their respective rights to be represented by counsel at all stages of the proceedings.

(b) **Appointed Counsel.** The court shall appoint counsel pursuant to Administrative Rule 12:

(1) for a parent or guardian who is financially unable to employ counsel;\*

(2) for a parent on active military duty who has not appeared prior to entry of an adjudication;

(3) for a child when the court determines that the interests of justice require the appointment of an attorney to represent the child's expressed interests; and

(4) for a non-attorney guardian ad litem when legal representation of the guardian ad litem is necessary.

(c) **Waiver of Right to Counsel.** The court shall accept a valid waiver of the right to counsel by any party if the court determines that the party understands the benefits of counsel and knowingly waives those benefits.

(d) **Appointment of Counsel for Absent Parent.** The court shall appoint counsel to represent an absent parent at any hearing in which the termination of parental rights is or may be in issue if the parent has failed to appear after service of notice, including service by publication, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent.

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

**Cross References**

**CROSS REFERENCES:** AS 25.24.310; AS 47.10.050.

**Rule 13. Pretrial Conference and Meeting of Parties.**

(a) **Pretrial Conference and Meeting of Parties.** The court shall conduct a pretrial conference to discuss the topics specified in paragraph (b). Before the pretrial conference, the parties shall meet, either telephonically or in person, to ensure that an appropriate case plan is in place for the child and the family and to address the topics that will be discussed at the conference. The meeting will be held at the time specified by the court or, if no time is specified, at least 30 days before the pretrial conference. The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for arranging and being present at the meeting and for submitting to the court within 10 days after the meeting a written summary of the meeting.

(b) **Purpose of Pretrial Conference.** At the pretrial conference, the court and parties may:

- (1) consider efforts to locate and serve all parties;
- (2) simplify the issues;
- (3) consider amendments to the pleadings;
- (4) conclude any unresolved discovery matters;
- (5) resolve pending motions;
- (6) discuss settlement and the use of special procedures to assist in resolving the case;
- (7) consider the possibility of obtaining admissions and stipulations of fact and documents which will avoid the introduction of unnecessary evidence;
- (8) identify unnecessary proof and cumulative evidence, and limitations or restrictions on the use of expert testimony;
- (9) determine whether the child will be present and testify at adjudication and, if so, under what conditions;
- (10) establish a reasonable limit on the time allowed for presenting evidence; and
- (11) consider such other matters as may aid in the resolution of the proceeding.

(c) **Duty to Update.** Parties have a continuing obligation to update information provided during the pretrial conference.

**Rule 14. Stipulations.**

Subject to approval by the court, parties may stipulate to any matter, including adjudication and disposition. However, stipulations to adjudication and disposition may be accepted only if the court determines that the parties understand their rights and have had a sufficient opportunity to consult with counsel. In the case of an Indian child, a stipulation to adjudication or disposition is not binding on a parent or Indian custodian unless it is in writing, agreed to in court (whether in person or telephonically), and signed by the parent or Indian custodian.

**Note:** See CINA Rule 16(a)(3) concerning stipulations to waive preparation of a predisposition report.

**Cross Reference**

**CROSS REFERENCE:** 25 U.S.C. § 1913(a).

**Rule 15. Adjudication Hearing.**

(a) **Nature and Timing of Proceeding.** The adjudication hearing is a trial to the court on the merits of the petition for adjudication. The adjudication must be completed within 120 days after a finding of probable cause is entered, unless the court finds good cause to continue the hearing. In determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child.

(b) **Notice.** The Department must provide notice of the adjudication hearing to the persons specified in CINA Rule 7(b) within a reasonable time prior to the hearing. In cases involving an Indian child, notice of the hearing must be received at least ten days before the hearing pursuant to CINA Rule 7(e)(1). Upon request, the court shall postpone the hearing to ensure that the Indian child's parents, Indian custodian or tribe have had thirty days from receipt of the notice to prepare for the hearing.

(c) **Burden of Proof.** The Department has the burden of proving by a preponderance of the evidence that the child is a child in need of aid.

(d) **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.

(e) **Failure of Proof.** If the court finds that the child is not a child in need of aid, it shall immediately order the child released from the Department's custody and returned to the child's parents, guardian, or custodian.

(f) **Orders Pending Disposition.** If the court finds that the child is a child in need of aid and the disposition is not held immediately following the adjudication, the court shall enter the following orders:

(1) The court shall order the child placed in the temporary custody of the Department or order the child returned to the home with supervision by the Department pending disposition. The court may approve the removal of the child from the child's home only if the court makes the findings required by CINA Rule 10(c)(3).

(2) If the court approves the child's removal, the court shall make the inquiry and findings required by CINA Rule 10.1. A finding that the Department has failed to make reasonable efforts, or, in cases involving an Indian child, that the requirements of 25 U.S.C. §§ 1912(d) or 1915(b) have not been met, is not in itself a ground for returning the child to the home and does not affect the court's ability to enter an adjudication order and extend temporary custody pending adjudication.

(3) The court shall set a time for the disposition hearing, which will be held without unreasonable delay. The court shall order a predisposition report, unless waived by stipulation under CINA Rule 16(a)(3), and other studies, examinations, or reports under CINA Rule 16 that are necessary for an informed disposition.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080(a); AS 47.10.081; AS 47.10.141(g); 25 U.S.C. § 1912.

**Rule 16. Reports in Aid of Disposition.****(a) Predisposition Report.**

(1) Unless waived by the parties with the approval of the court, the Department shall submit a predisposition report pursuant to AS 47.10.081(b). The report must include the current case plan and should also include the following information: the child's family background and educational history; past contacts by the Department with the child and the child's family; the child's medical, psychological and psychiatric history; and recommendations regarding the disposition which would be in the best interests of the child. In cases concerning an Indian child, the report must describe the proposed placement of the child, the placement preference under the Indian Child Welfare Act which is recommended and the rationale for the use of that level of placement preference.

(2) The predisposition report must be made available to the persons entitled to receive it ten days before the disposition hearing, unless all parties, with the approval of the court, agree upon a different time period. If the predisposition report is submitted to the court prior to the adjudication hearing, it must be kept sealed until the adjudication hearing is completed.

(3) The court will accept a stipulation to waive preparation of a predisposition report only if the parties have agreed to present adequate information upon which to enter an informed disposition order, including the current case plan.

**(b) Supplementary Material.** The court may order mental and physical examinations of the child and the child's parents, guardian and Indian custodian. The court may order studies of the home of any person with whom the child might be placed, and may order any other reports to aid disposition. A party may submit the party's own report in aid of disposition. All such materials must be made available to the persons entitled to receive them at a reasonable time prior to disposition, as determined by the court.

**(c) Disclosure of Reports.** Unless otherwise ordered, copies of predisposition reports and supplementary materials must be given to all parties. The court may enter an order prohibiting release of all or part of a report to the child only if disclosure would be likely to cause serious psychological harm to the child. The court shall inspect the reports in camera prior to entering a limitation on disclosure, and such a limitation does not bar the child's attorney or guardian ad litem from access to the material withheld from the child. The court may enter orders prohibiting release of the material by the attorney or guardian ad litem to the child.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080; AS 47.10.081; AS 47.10.082; AS 47.10.230; 25 U.S.C. § 1912(c); 25 U.S.C. § 1922.



**Rule 17. Disposition.**

(a) **Purpose of Hearing.** The purpose of a disposition hearing is to determine the appropriate disposition of a child who has been adjudicated a child in need of aid. A disposition hearing concerning the termination of parental rights is governed by CINA Rule 18.

(b) **Statements.** The parties may offer evidence in aid of disposition at the hearing. The court shall also afford the parties and any foster parents or other out-of-home care providers an opportunity to be heard.

(c) **Requirements for Disposition.** A disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the child has been placed outside the home, the court cannot enter a disposition order if the court finds (1) in cases involving a non-Indian child, that the Department has failed to make reasonable efforts as required by AS 47.10.086(a) to permit the child's return to the home, unless the court has determined under Rule 17.1 that reasonable efforts are not required; or (2) in cases involving an Indian child, that the requirements of 25 U.S.C. § 1912(d) (active efforts) have not been met.\* If the court finds that the Department has failed to make required reasonable efforts or that the requirements of 25 U.S.C. § 1912(d) have not been met, the court must postpone entering a disposition order until the court finds that reasonable efforts or active efforts have been made. The child should remain in temporary custody pending disposition.

(d) **Findings.**

(1) A disposition order must be accompanied by findings of fact.

(2) The court may approve the removal of the child from the child's home only if the court finds that continued placement in the home is contrary to the welfare of the child; and, in cases involving an Indian child, that there is clear and convincing evidence, including the testimony of qualified expert witnesses, that custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(e) **Evidence.** Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at the disposition hearing and in review of a disposition order if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(f) **Disposition Order - Subsequent Proceedings.** If the court orders the child committed to the Department under AS 47.10.080(c)(1), the disposition order must set the date for the permanency hearing required by AS 47.10.080(l). If the court releases the child under AS 47.10.080(c)(2), the disposition order must set the date for filing the report on annual review.

\* **Note:** As of June 1999, it is an open issue whether federal law permits a trial court to determine that active efforts are not required in a case or that such efforts may be discontinued.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080(c) and (r); AS 47.10.081; AS 47.10.082; AS 47.10.083; AS 47.10.141(g); 25 U.S.C. §§ 1912, 1915(b) and (c), 1922.

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

(a) **Proceeding to Determine that Reasonable Efforts Not Required.** At any stage of a proceeding under these rules, a party may file a motion for a determination that reasonable efforts of the type described in AS 47.10.086(a) are not required, specifying the basis for the motion under AS 47.10.086(c). If the party intends that any evidentiary hearing on the motion be combined with a scheduled trial or other hearing, the motion must be filed and served at least 30 days prior to that proceeding.

(b) **Proceeding to Determine that Reasonable Efforts May Be Discontinued.** At the permanency hearing required under AS 47.10.080(d), the court may find that a continuation of reasonable efforts is not in the best interests of the child under AS 47.10.086(b). Any party recommending such a finding must include that recommendation, specifying the factual basis for it, in its report for permanency hearing required by CINA Rule 17.2(c) or in a separate motion.

(c) **Permanency Hearing Required.** If the court determines that reasonable efforts are not required under AS 47.10.086(b) or (c) in a proceeding other than a permanency hearing, the court shall hold a permanency hearing under AS 47.10.080(e) within 30 days after the determination.

(d) **Conduct of Proceeding.**

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

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

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

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

**Cross Reference**

**CROSS REFERENCE:** AS 47.10.086.

**Rule 17.2. Permanency Hearing.**

(a) **Purpose and Timing of the Hearing.** The purpose of the permanency hearing is to establish a permanent plan for a child committed to state custody under AS 47.10.080(c)(1) and to determine the future direction of the case. The permanency hearing must be held: (1) within 12 months after the date the child entered foster care as calculated under AS 47.10.088(f); (2) within 30 days after the court determines pursuant to CINA Rule 17.1 that reasonable efforts are not required; or (3) upon application by a party, when good cause is shown.

(b) **Notice.** The court or the party requesting the permanency hearing shall notify the parties of the time set for the hearing, the right to counsel, and the right to submit statements, affidavits or other evidence to the court. The Department shall notify the foster parent or other out-of-home care provider of the time set for the hearing and the right to participate in the hearing. In cases involving an Indian child, the Department shall also provide notice to the child's tribe if the child's tribe has not intervened.

(c) **Report.** The Department shall file and serve a permanency report no later than ten days prior to the permanency hearing. In the report, the Department shall specify its proposed permanent plan for the child with a detailed statement of the facts and circumstances supporting the proposed permanent plan.

(d) **Evidence.** Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at the permanency hearing if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(e) **Findings.** The court shall make written findings, including findings related to

(1) whether the child continues to be a child in need of aid;

(2) whether the child should be returned to the parent or guardian, and when;

(3) whether the child should be placed for adoption or legal guardianship and whether the Department is in compliance with AS 47.10.088(d) relating to the filing of a petition for termination of parental rights;

(4) whether the child should be placed in another planned, permanent living arrangement and what steps are necessary to achieve the new arrangement; and

(5) in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living or adult protective services.

If the court is unable to make a finding required under this paragraph, the court shall schedule and hold another permanency hearing within a reasonable period of time as defined in AS 47.10.990(23).

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid; and

(3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child.

(g) **Implementation.** The court may make appropriate orders to ensure timely implementation of the permanent plan.

(h) **Change in Permanent Plan.** If the permanent plan established by the court changes after the permanency hearing, the Department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the Department.

(i) **Subsequent Review.** The court shall hold a hearing to review the permanent plan at least annually until successful implementation of the plan.

#### **Cross References**

**CROSS REFERENCES:** AS 47.10.080(c), (f), (l); AS 47.10.088(f); AS 47.10.086(d).

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

(a) **Petition.** The Department may file a petition seeking termination of parental rights combined with or after the filing of a petition for adjudication of that child as a child in need of aid. The title of the petition must clearly state that termination of parental rights is sought. A petition for termination of parental rights must be served as provided by CINA Rule 7(d) and (e).

(b) **Purpose of Hearing.** The termination hearing is a disposition hearing to the court on the question of whether the parental rights to an adjudicated child in need of aid should be terminated. Upon a showing of good cause and with adequate notice to the parties, an adjudication hearing and a termination hearing may be consolidated.

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

(1) by clear and convincing evidence that

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

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

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

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

(2) by a preponderance of the evidence that

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

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

(C) termination of parental rights is in the best interests of the child; and

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

(d) **Relinquishment.**

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 25.23.180. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. § 1913(c).

(e) **Trial.** A trial on the petition to terminate parental rights shall be held within six months after the date on which the petition to terminate parental rights is filed, unless the court finds that good cause

is shown for a continuance. When determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child. The court shall make written findings when granting a continuance.

(f) **Evidence.** Hearsay that is not admissible under a recognized exception to the hearsay rule is not admissible at a trial on a petition to terminate parental rights to prove that the child has been subjected to conduct or conditions described in AS 47.10.011. Otherwise, hearsay may be admissible at the trial if it is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(g) **Judgment.** The court shall make findings of fact and enter an order within 90 days after the last day of trial on the petition to terminate parental rights. The court shall commit the child to the custody of the Department if parental rights are terminated.

(h) **Post-Termination Reports.** If a permanent placement for the child was not approved at the termination hearing, the Department shall report to the court within 30 days on the efforts being made to recruit a permanent placement. Thereafter, the Department shall report quarterly on efforts being made to find a permanent placement for the child. Copies of the Department's reports shall not be served on a parent whose rights have been terminated.

#### Cross References

**CROSS REFERENCES:** AS 25.23.180; AS 47.10.080(c)(3); AS 47.10.088; 25 U.S.C. § 1912(d) and (f).

**Rule 19. Annual Review.**

(a) **Purpose and Timing of Review.** The court shall conduct an annual review for a child under the supervision of the Department pursuant to AS 47.10.080(c)(2) to determine if continued supervision, as it is being provided, is in the best interest of the child.

(b) **Report.** The Department shall file a written report at least twenty days before the anniversary date of a disposition order made under AS 47.10.080(c)(2). The Department shall serve the parties with copies of the report together with notice of the right to counsel, notice of the right to submit statements, affidavits or other evidence to the court and notice of the right to request an evidentiary hearing. The report must include the current case plan and must describe both the services offered by the Department and the services utilized by the parents or guardian to make it possible for the child to remain in the home.

(c) **Conduct of Review.** The review will take place without a hearing on the basis of written reports, statements and affidavits, unless an evidentiary hearing is requested by a party or ordered by the court on its own motion.

(d) **Notice - Indian Child.** In cases involving an Indian child whose tribe has not intervened, a party requesting an evidentiary hearing shall provide notice of the hearing to the tribe.

(e) **Findings.** At the conclusion of the review, the court shall make written findings related to whether the child continues to be a child in need of aid and whether continued supervision by the Department is in the best interests of the child.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080(c), (f), (l).

**Rule 19.1. Review upon Application.**

(a) **Visitation.** At any time in a proceeding, a parent or guardian who has been denied visitation, or the child's guardian ad litem, may move the court for a review hearing at which the Department must show by clear and convincing evidence that visits are not in the child's best interests.

(b) **Placement Transfer.** At any time in a proceeding, a party who is opposed to the Department transferring a child from one placement to another may move the court for a review hearing at which the requesting party must prove by clear and convincing evidence that the transfer would be contrary to the best interests of the child. In the case of an Indian child, the court must consider the placement preferences as set forth in 25 U.S.C. § 1915.

(c) **Disposition Order.** Pursuant to AS 47.10.100(a), the court may review a disposition order upon motion of a party or on its own motion. When a party seeks the return of a child to the child's home, if the party makes a prima facie showing that removal is no longer necessary, the burden of proof shifts to the Department as described below:

(A) in cases involving a non-Indian child, the court shall return the child to the home unless the Department proves by a preponderance of the evidence that return to the home is contrary to the welfare of the child;

(B) in cases involving an Indian child, the court shall restore the child to the child's parent or Indian custodian unless the Department proves by clear and convincing evidence, including the testimony of qualified expert witnesses, that the child is likely to suffer serious emotional or physical damage if returned to the custody of the parent or Indian custodian.

(d) **Other Review.** At any time in a proceeding, the court may review matters not otherwise covered by these rules upon motion of a party or on its own motion.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080(p) and (s); AS 47.10.100(a); 25 U.S.C. § 1915.



**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 expiration of the existing disposition order. 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) **Report.** 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 report must be served and filed at least ten days prior to the extension hearing.

(d) **Status Pending Decision.** If the court is unable to decide the extension petition before expiration of the existing disposition order, the court may extend custody or supervision for a reasonable time as defined in AS 47.10.990(23) pending a decision on the extension petition.

**Cross References**

**CROSS REFERENCES:** AS 47.10.080(c)

**Rule 20. Review upon Petition under 25 U.S.C. § 1914.**

(a) **Grounds for Petition.** In cases involving an Indian child, the child, parents, Indian custodian and child's tribe may petition the court to invalidate any order in the case upon a showing that the order violated any provision of 25 U.S.C. §§ 1911, 1912 or 1913. A petition under 25 U.S.C. § 1914 may be brought as a separate action if the petitioner is unable to participate in the challenged proceeding as a party.

(b) **Petition to Invalidate.** A petition filed under 25 U.S.C. § 1914 must be served on all parties to the action sought to be invalidated, including the Indian child's tribe and Indian custodian whether or not they have intervened. The petition must include:

(1) the identities of the petitioner and the Indian child subject to the petition, and the status of the petitioner under 25 U.S.C. § 1914;

(2) a statement of the particular provisions of 25 U.S.C. §§ 1911, 1912 or 1913 alleged to have been violated and the factual basis supporting the alleged violation; and

(3) any exhibits, reports or other evidence in support of the allegations.

(c) **Disposition.** If the court determines that the challenged order violated 25 U.S.C. §§ 1911, 1912 or 1913, the court shall immediately invalidate the order and take other appropriate action which may include dismissing the case and ordering the child returned to the parents or Indian custodian.

**Cross References**

**CROSS REFERENCES:** 25 U.S.C. §§ 1911, 1912, 1913, and 1914.

**PART VIII. APPELLATE REVIEW**

**Rule 21. Appeal and Petition for Review in Appellate Courts.**

(a) **Grounds, Procedure.** An appeal of a final judgment or order, or a petition for review of an interlocutory order or decision, 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.

**Cross References**

**CROSS REFERENCES:** AS 22.07.020(a)(3); AS 47.10.080(i); Appellate Rules 218, 402 & 403; 25 U.S.C. § 1914.

**PART IX. COURT ADMINISTRATION**

**Rule 22. Confidentiality.**

(a) **Confidentiality of Records.** The records of a child in need of aid proceeding are confidential. Only parties and their attorneys may have access to the court file except as otherwise authorized by statute or court order for good cause shown. Parties and their attorneys shall maintain the confidentiality of all information in the court's file. Other persons authorized access to the file are subject to such conditions as the court may set with notice to the parties.

(b) **Foster Parent's Right to Review.** A foster parent may have access to court records relating to a child whom the Department has placed with the foster parent or whom the Department proposes for placement. When a case involves more than one child, but the foster parent does not have custody of all the children in the case, the foster parent may have access only to those portions of the court records that relate to the child whom the Department has placed or proposed for placement with the foster parent. The foster parent must maintain the confidentiality of all parts of the record. For purposes of this rule, "foster parent" includes current and proposed foster parents.

(c) **Child's Name or Picture.** The name or picture of a child who is the subject of a CINA proceeding may not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

**Cross References**

**CROSS REFERENCES:** AS 47.10.090; 25 U.S.C. § 1912(c).