

Navajo Children's Code Rules of Procedure

Cite as N.N.C.C.R.P.

These rules were adopted by Order of the Navajo Nation Supreme Court (No. SC-SP-01-95) on October 4, 1995, and became effective on November 1, 1995. These rules should be interpreted with the Navajo Nation Children's Code at 9 N.N.C. §§ 1001, *et seq.*

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I. GENERAL PROVISIONS

RULE 1 Scope of Rules

- 1(a) **Construction Citing.** These Rules govern the procedure in all actions arising under the Navajo Nation Children's Code. They shall be construed to effectuate the purposes of the Children's Code in a just, speedy and economical manner. These Rules shall be cited as N.N.C.C.R.P. Any provisions within these rules pertaining to adoption or guardianship shall apply only to those matters arising under the Children's Code.
- 1(b) **Rules of Civil Procedure.** Matters not covered by these Rules shall proceed according to Navajo Nation Rules of Civil Procedure.
- 1(c) **Children's Code.** These Rules supplement the Children's Code and are secondary to it.

RULE 2 Definitions and Terms

The following terms and phrases, as used in these Rules, shall have the indicated meanings.

- 2(a) **Adjudication.** The decision of the court, which determines the status of a child as a result of a petition being filed.
- 2(b) **Adjustment.** The handling of a complaint in a manner, which eliminates the need for filing a petition.
- 2(c) **Code.** The Navajo Nation Children's Code.
- 2(d) **Complaint.** Information and/or allegations regarding a child prior to the filing of a petition.
- 2(e) **Counsel.** A member of the Navajo Nation Bar Association or associated counsel.
- 2(f) **Disposition.** The order entered following adjud-

ication on the petition.

- 2(g) **Entry of Judgment.** Occurs on the date the judge signs the order, which disposes of the matter.
- 2(h) **Guardian Ad Litem.** Any person appointed by the court to speak for the child. A guardian ad litem is not the legal guardian of the person and/or the estate of a child. The guardian ad litem is not the legal counsel.
- 2(i) **Navajo Nation.** All lands making up Navajo Indian Country as defined in the Navajo Tribal Code. The Navajo Nation is the government of the Navajo Tribe.
- 2(j) **Order.** Every document signed by the judge as part of a proceeding including orders prepared by the parties, their representatives, or the court.
- 2(k) **Petition.** The pleading, which initiates a case or seeks new or additional relief from the court.
- 2(l) **Pleadings.** All papers filed or required to be filed with the court by a party. Pleadings shall include petitions, motions and responses.
- 2(m) **Necessary Party.** Any person who is required under the Children's Code or under these rules to receive notice of the filing of a petition.
- 2(n) **Party.** The child, necessary parties or any other person whose presence in the action is required in the interests of justice or designated by the court as a party.
- 2(o) **Review Hearing.** Any hearing before or after adjudication and/or disposition, for the purpose of informing the court of the status of the child and/or of the action.
- 2(p) **Ward of the Court.** A child under the continuing jurisdiction of the court.

- 2(q) **Emancipation.** This term is used with reference to the emancipation of a minor child from its parents, which involves an entire surrender of the right to the care, custody and earnings of such child as well as a renunciation of parental duties and obligations.

RULE 3 Commencement of Action

An action under the Children's Code is commenced by the filing of a petition with the court. The petition shall be filed in the name of the child and shall be signed by a member of the Navajo Nation Bar Association or by a part pro se. Petitions to adjudicate a child delinquent, in need of supervision, or dependent and in termination of parental rights shall be signed by the presenting officer, and in term of parental rights when petitioner is a government agency.

RULE 4 Parties

- 4(a) **Child.** The child who is the subject of the action is the named party in all pleadings under the Children's Code.
- 4(b) **Parent(s), Guardian or Custodian.** The parents, guardian and/or custodian are necessary parties in action to adjudicate a child delinquent, in need of supervision or dependent, to terminate parental rights, and all other matters arising under the Children's Code.
- 4(c) **Others.** The court on its own motion or upon a petition may designate as a necessary party and other person whose presence is required in the interests of justice.
- 4(d) **Participation of a Necessary Party.** A necessary party may file pleadings in an action upon leave of the court and may request relief of the court.
- 4(e) **Purpose of Necessary Parties.** The purpose of

designating necessary parties is to permit the court to make a full and complete adjudication of the matters before it, to advise the necessary parties of the pending matters, and to enable the court to enforce and carry out its orders.

RULE 5 Guardian Ad Litem

- 5(a) **Appointment for Child.** The court shall appoint a guardian ad litem to speak on behalf of the child when such appointment is authorized by the Children’s Code or when the court determines it is in the best interests of the child. The guardian ad litem shall not be the legal counsel for the child.
- 5(b) **Qualifications.** A guardian ad litem may be a member of the Navajo Nation Bar Association or a member of the community who has received training to be a guardian ad litem or whom the court finds can reasonably present the interests of the child or person for whom the appointment is made.
- 5(c) **Duties.** The duties of a guardian ad litem are to inform the court on matters regarding the background, environment and needs and wishes of the person for whom appointed, to appear at all proceedings and to speak on behalf of such person.
- 5(d) **Access to Reports and Records.** Upon appointment the guardian ad litem shall have access and be provided reports, records and other documents filed or made available to the court in the matter.
- 5(e) **Discharge.** The guardian ad litem may be discharged only by order of the court or by the completion of the proceedings. Cases, which remain under the continuing jurisdiction of the court, shall require the guardian ad litem to continue active participation in the proceeding and to attend review hearings.

- 5(f) Upon discharge the guardian ad litem shall return to the court all records pertaining to the case.
- 5(g) **Disclosure.** The guardian ad litem shall be subject to the privacy provisions of the Code and other laws and shall not disclose any information obtained pursuant to the duties of guardians ad litem except pursuant to the orders and directives of the court.

RULE 6 Sealing of Records

Records sealed shall be the entire record of the case. When sealed records are placed on microfilm. They shall be placed on a microfilm cassette set aside for sealed records.

RULE 7 Fees

- 7(a) **Navajo Nation.** Filing fees for petitions filed by the Navajo Nation shall be waived.

II. DELINQUENCY AND CHILD IN NEED OF SUPERVISION PROCEEDINGS

RULE 8 Petition

In addition to the requirements of the Children's Code the petition shall set forth the date and time the complaint was received by the presenting officer.

RULE 9 Order of Proceedings

The following shall be the order in which a delinquency or child in need of supervision proceeding is handled:

- 9(1) Complaint.
- 9(2) Detention Hearing.
- 9(3) Preliminary Hearing. At the preliminary hearing the following shall occur:

- (a) Inform parties as to contents of petition.
 - (b) Advise child and parties of rights of the child.
 - (c) To determine probable cause that this delinquent or child in need of supervision act.
 - (d) In delinquency proceedings determine whether transfer to District Court is warranted.
 - (e) Appoint guardian ad litem if appropriate.
 - (f) Appoint counsel for child if appropriate.
- 9(4) Provisional Hearing.
- 9(5) Adjudicatory Hearing.
- 9(6) Care and Rehabilitation Determination.
- 9(7) Pre-dispositional Study and Report.
- 9(8) Dispositional Hearing.
- 9(9) Review Hearing.
- 9(10) Hearing Consolidation. At any time other than a transfer hearing, the court may handle all matters at one time or in phases provided that any consolidation is consistent with time requirements.

RULE 10 Evidence

- 10(a) Denial of Allegations. If the allegations of the petition are denied, the court shall receive evidence on the allegations.
- 10(b) Evidence. The Court shall receive relevant and material evidence according to the law and in substantial conformity to the Rules of Evidence.
- 10(c) Admission. If the allegations of the petition are admitted, the court may hear evidence to corroborate the admissions.

III. DEPENDENCY PROCEEDINGS

RULE 11 Petition

In addition to the requirements of the Children's Code the petition shall set forth the date the complaint was received by the presenting officer.

RULE 12 Service

12(a) Duty of Presenting Officer. In proceedings to adjudicate a child dependent, it shall be the duty of the presenting officer to make all reasonable and diligent efforts to obtain service on the parent(s), guardian, custodian or spouse of the alleged dependent child.

12(b) Affidavit. The Court may require the presenting officer to submit an affidavit as to the efforts made to obtain service.

RULE 13 Order of Proceedings

13(a) Order of Proceedings. The following shall be the order of proceedings upon a petition to adjudicate a child dependent.

- (1) Petition filed.
- (2) Summons issued; service
- (3) Notice of Custody Hearing and motion for immediate temporary custody.
- (4) Custody/Detention Hearing, if required.
- (5) Provisional Hearing, if required.
- (6) Adjudicatory Hearing.
- (7) Pre-dispositional Study and Report.
- (8) Care and Rehabilitation Determination.
- (9) Disposition.

(10) Review Hearing.

13(b) Hearing Consolidation. At any time the court may consolidate matters for hearing or hear them in phases provided that any consolidation is consistent with time requirements.

RULE 14 Detention Hearing

14(a) Motion. If a child is taken into custody a motion for temporary custody shall be filed concurrently with the petition.

14(b) Notice. Notice of detention hearing shall be issued and served.

14(c) Hearing. A detention hearing will be scheduled according to the provisions of the Code.

14(d) Change of Placement. After the initial placement, the presenting officer shall provide written notification of any modification in placement to the court.

RULE 15 Plan of Care

15(a) Alternative Planning. If it appears unlikely the unity of the family cannot be restored, the plan of care shall set forth alternative permanency planning.

IV. TERMINATION OF PARENT-CHILD RELATIONSHIP

RULE 16 Petition; Who May File

16(a) Involuntary. A petition for a court order to terminate the parent-child relationship may be filed by any person or agency with a legitimate interest in the welfare of the child, or the presenting officer.

16(b) Involuntary. A petition for a court order to terminate parent-child relationship rights shall be filed by the Navajo Nation, an agency or a person seeking custody of the child if the parent(s) has

voluntarily relinquished rights to the child.

- 16(c) Termination of Parental Rights. Proceedings shall be maintained as separate proceedings from those for adoption. Adoption shall not be granted until all appeal rights pertaining to the termination of parental rights have run. There shall be a termination of parental rights proceeding prior to any adoption proceeding, even where consent is given.

RULE 17 Order of Proceedings

The following shall be the order in which a termination of parent-child relationship shall proceed:

- 17(1) Petition filed.
- 17(2) Summons issued; service.
- 17(3) Initial Hearing. The court shall conduct an initial hearing within ten (10) days of service of the petition. At the initial hearing, the court shall:
- (a) Advise the parents of their rights;
 - (b) Appoint counsel for the parents and/or child, if appropriate;
 - (c) Appoint a guardian ad litem for the child;
 - (d) Determine the status of the child;
 - (e) Order necessary studies, examination and reports;
 - (f) Set a status hearing or final hearing within sixty (60) days;
 - (g) Make temporary orders pending the next hearing.
- 17(4) Final Hearing.

- 17(5) Final Order. The final order shall terminate the parent-child relationship or deny termination. If the parent-child relationship is terminated the court shall make additional orders for temporary custody.

V. INDIAN CHILD WELFARE ACT

RULE 18 Commentary

The I.C.W.A. applies to State Court proceedings. Under the Act, the Navajo Nation may intervene to transfer jurisdiction or dismiss the State Court proceeding. If the case is dismissed at the State Court level, the Navajo Nation may initiate any appropriate action in the Family Court pursuant to the Code. If the case is transferred, the Navajo Nation shall petition the Family Court to accept jurisdiction.

RULE 19 Transfer

- 19(a) Transfer Upon Order of Navajo Court. Cases involving Navajo children which originate in a state court may be transferred to a Navajo court upon an order from the Navajo court accepting jurisdiction and the transfer of the case.
- 19(b) Initiation. A transfer is initiated by the Navajo Nation filing a petition for the court to accept jurisdiction and transfer of the case.
- 19(c) Contents of Petition. A petition to accept jurisdiction shall contain the following.
- (1) The name, birth date, residence and address of the child;
 - (2) Census number, if any, of the child;
 - (3) Name and address of the court in which the state action is pending;
 - (4) Certified copies of the petition and any

amendments, and the most recent order filed in the pending State action;

- (5) A concise statement of the jurisdiction of the Navajo courts;
- (6) The names and addresses of parents, guardians, custodians or foster parents of the child; names and addresses of persons seeking guardianship, custody, adoption or possession of the child; the name and address of any agency or department seeking either a disposition or to participate in the disposition of the child;
- (7) The name, address and relationship to the child of the person, agency or department having possession of the child;
- (8) If any matters required to be set forth by this Rule are not known, the petition shall contain the statement that they are not known.

RULE 20 Temporary Custody

Temporary custody and the appointment of a temporary custodian may be requested at the time the petition for transfer is filed.

RULE 21 Summons and Hearing

- 21(a) Hearing on Petition. Upon the filing of the petition with the court a hearing date on the petition shall be set no earlier than fifteen (15) days and no later than thirty (30) days from the date of filing.
- 21(b) A summons accompanied with a copy of the petition and the notice of hearing shall be served on all persons, agencies and departments identified in the petition in accordance with the N.R.C.P. within the time frame set forth in subsection (A) above.

RULE 22 Jurisdictional Hearing

- 22(a) At the hearing on the petition to accept jurisdiction and transfer of the case, the court shall hear evidence on the following:
- (1) The nature of the proceedings in state court;
 - (2) The jurisdiction of the Navajo courts;
 - (3) The location and circumstances of the child;
 - (4) The need for temporary custody;
 - (5) The qualifications of the proposed temporary custodian.

RULE 23 Order

The order of the court upon the petition for acceptance of jurisdiction shall deny or accept jurisdiction.

- 23(a) Denial. An order denying jurisdiction and transfer of the case shall state the reasons.
- 23(b) Acceptance. An order accepting jurisdiction and transfer of the case shall order the Navajo Nation to file notice with the court upon the state court dismissing the case and to effectuate the transfer of case documents.
- 23(c) If the pending State court action is dismissed, the Navajo Nation shall initiate an original proceeding under the Code.

RULE 24 Review Hearing

- 24(a) Review Hearing Required. Upon the court being notified of the state court order of transfer, a review hearing shall be set.
- 24(b) Notice of Hearing. Notice of the date and time of the new review hearing shall be given to all

necessary parties as identified under these Rules or as designated by the court.

24(c) Proceedings at Hearing. At the hearing the court shall:

- (1) Inform all parties that the matter will now proceed under the Navajo Nation Children's Code;
- (2) Determine the nature of the proceedings;
- (3) Identify the proper party to file a petition pursuant to the Children's Code;
- (4) Set a date no more than thirty (30) days from the date of the review hearing for the filing of the petition;
- (5) Review the temporary custody and placement of the child;
- (6) Establish a schedule for the Navajo Nation Justice Department attorneys to withdraw from the case and the presenting officer to appear as counsel for the Navajo Nation.

VI. GUARDIANSHIP

RULE 25 Continuing Jurisdiction

The court obtains wardship over a child when that child comes under the jurisdiction of the court by a petition being filed with a voluntary agreement attached. The court has continuing jurisdiction over a child as a result of a petition being filed or a voluntary placement. Such wardship continues until jurisdiction terminates pursuant to the Code.

RULE 26 Voluntary Placement Within Indian Child Welfare Act, 25 U.S.C. § 1901

26(a) **Wardship Automatic.** Any Navajo child who is domiciled or resides in Navajo Indian country

automatically becomes a ward of the court upon voluntarily being placed outside Navajo Indian country.

- 26(b) **Filing Consent.** The consent of the parents, guardian or custodian to the placement of the child shall be filed with the court.
- 26(c) **Contents of Consent.** The consent shall indicate with whom the child is being placed and the location of the child outside the Navajo Nation
- 26(d) **Annual Review.** The court shall require the parents, guardian or custodian to update the consent annually.