

**SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

REPORT

**Proposed Adoption of Pa.R.J.C.P. 1205;
Proposed Amendment of Pa.R.J.C.P. 1120, 1210, 1240, 1242, 1330, 1408, 1409,
1512, 1514, 1515, 1608, and 1609**

The Juvenile Court Procedural Rules Committee proposes a package to improve the Rules of Juvenile Court Procedure as they relate to the federal Indian Child Welfare Act and Bureau of Indian Affairs regulations. The package contains two components: 1) a new Rule 1205 to implement the Indian Child Welfare Act (“Act”), 25 U.S.C. § 1901 *et seq.* and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.107; and 2) amendments of Rules 1120, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, and 1609 to incorporate and reference the new Rule 1205. These changes are intended to reflect the requirements of the Act and federal regulations.

Indian Child Welfare Act

Briefly, the Act creates a policy for the United States “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimal Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.” 25 U.S.C. § 1902. The Act provides “[a]n Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child....” *Id.* § 1911.

In 2016, the Bureau of Indian Affairs promulgated regulations relating to the Act. The regulations require state courts to determine on the record, at the initial proceeding, whether a child subject to a “child custody proceeding” is an Indian child. *See also* 25 U.S.C. §1903; 25 C.F.R § 23.2 (defining “child custody proceeding”); 25 C.F.R. § 23.103 (identifying proceedings in which the Act applies). The courts must also advise the participants of an ongoing obligation to inform the court if any of them subsequently learns the child is an Indian child. 25 C.F.R. § 23.107. If there is reason to believe the child is an Indian child, several protections outlined in the Act and regulations must be afforded to the child.

The Committee believes it is important to update the Rules to reflect these procedural requirements. Accordingly, the Committee proposes a new Rule 1205 and amendments to Rules 1120, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, and 1609 to require juvenile courts at the initial proceeding and thereafter to

inquire as to the efforts made by the county agency to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child. The court would be required to advise the participants of an ongoing obligation to inform the court if any of them subsequently learn the child is an Indian child.

Reader may observe that federal requirements include only “determination” and “advisement” components; whereas, the proposed state procedures include “inquiry,” “determination,” and “advisement” components. The addition of the “inquiry” aspect in the Juvenile Court Procedural Rules for Indian children was intended to be consistent with the court’s responsibility to inquire as to the efforts made by the county agency to comply with family finding requirements. See Pa.R.J.C.P. 1149(A).

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.