

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

ADOPTION REPORT

**Adoption of Pa.R.J.C.P. 1203 and Amendment of Pa.R.J.C.P. 1120, 1210,
1240, 1242, 1320, 1321, 1330, 1408, and 1409**

On December 23, 2024, the Supreme Court adopted Pennsylvania Rule of Juvenile Court Procedure 1203 and amended Pennsylvania Rules of Juvenile Court Procedure 1120, 1210, 1240, 1242, 1320, 1321, 1330, 1408, and 1409 to implement the Bureau of Indian Affairs regulation, 25 C.F.R. § 23.107, promulgated pursuant to the Indian Child Welfare Act (“Act”), 25 U.S.C. §§ 1901 *et seq.* The Juvenile Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

Effective December 12, 2016, the Bureau of Indian Affairs amended regulations to, *inter alia*, add a new Subpart I regarding Indian Child Welfare Act proceedings. See 25 C.F.R. §§ 23.101-.144. The new Subpart is in a question-and-answer format and one of the questions under “pretrial requirements” is “how should a state court determine if there is a reason to know the child is an Indian child?” 25 C.F.R. § 23.107. To which, the regulation states:

State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

Id. § 23.107(a).

Currently, the Pennsylvania Rules of Juvenile Court Procedure require dependency petitions to set forth “if a child is Native American, the child’s Native American history or affiliation with a tribe.” See, *e.g.*, Pa.R.J.C.P. 1330(B)(4). The rules are otherwise silent on whether such an inquiry is made on the record. Further, there is no Indian child requirement in the shelter care application. After reviewing the regulations, the Committee concluded that rulemaking was warranted.

The Committee published a proposal at 47 Pa.B. 3962 (July 22, 2017). The proposal would replace “Native American,” with “Indian” to be consistent with the federal

regulations. Further, “Indian child” would be included in the definitions under Pa.R.J.C.P. 1120 and the Comment would include the source of the definition.

The petitioner would be required to indicate whether it is known if the child is an Indian child in both the shelter care and dependency petitions. There would be a continuing requirement in other proceedings until it has been established that the child is not Indian.

The court would also be required to make a finding whether there is reason to know if the child is Indian until such time as it is determined that the child is not Indian. Additionally, the court would inquire about the reasonable efforts made by the county agency to determine whether the child is an Indian child. If there was a reason to believe that a child is Indian, then the rules would refer the reader to the federal regulations for additional requirements.

A commenter suggested revising the proposed definition of “Indian child” in Rule 1120 to include “citizen/citizenship,” to reflect the definition in 25 C.F.R. § 23.2. The Committee noted that the federal statute does not include “citizen/citizenship.” See 25 U.S.C. § 1903(4). The Committee favored retaining a definition that more closely tracked the statute rather than the regulation, believing that the statutory definition is more static relative to the regulatory definition. Further, the Committee believed that membership and citizenship are synonymous. See 81 F.R. 38778, 38795 (June 14, 2016) (Bureau of Indian Affairs concluding that “citizen” and “citizenship” are synonymous with “member” and “membership” in the context of Tribal government).

Another suggestion was to change “reason to believe,” as it relates to whether the proceeding involves an Indian child, to “reason to know” to reflect the Bureau’s regulations. This suggestion was accepted, and the proposal was revised accordingly.

It was also suggested that the proposal be expanded to include requirements if more than one tribe is involved; to specify the burden of proof required for emergency placement; to include the level of proof needed to deny transfer of jurisdiction to a tribe; and to add references to placement preferences when the Act applies to a proceeding. Instead of attempting to replicate regulatory requirements, the Comment to Pa.R.J.C.P. 1203 would refer readers to federal legal authority. Additional citations to the Act and the Bureau’s regulations were added to the Comment.

Post-publication, the Committee reconsidered the originally proposed requirement of continuous judicial inquiry beyond the initial inquiry and advisement of participants to inform the court if they subsequently receive information that provides a reason to know the child is an Indian child. The Committee did not believe that continuous inquiry would be necessary given the advisement of the participants. See *also* 25 C.F.R. § 23.107(a); 81 F.R. 38778, 38805 (June 14, 2016) (“The final rule does not require an inquiry at each

hearing. Instead, it requires that the State court should instruct parties to inform it if they later discover information that provides reason to know the child is an Indian child.”).

Accordingly, the proposal was revised to require inquiry and advisement at the commencement of five initial proceedings: 1) emergency custody; 2) shelter care; 3) application to file a private petition; 4) dependency adjudication; and 5) acceptance of jurisdiction or supervision from another state. Correlatively, amendments related to an inquiry requirement in subsequent proceedings were removed.

During the course of rulemaking, litigation arose concerning the constitutionality of the Act and validity of the BIA’s regulations. See *Brackeen v. Zinke*, 338 F.Supp.3d 514 (N.D. Tx. 2018). That litigation has since been resolved. See *Haaland v. Brackeen*, 599 U.S. 255 (2023).

Aside from stylistic revisions, the following commentary has been removed:

Pa.R.J.C.P. 1210

Official Note: Rule 1210 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.

Committee Explanatory Reports: Final Report explaining the provisions of Rule 1210 published with the Court’s Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1210 published with the Court’s Order at 45 Pa.B. 3987 (July 25, 2015).

Pa.R.J.C.P. 1240

Official Note: Rule 1240 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015.

Committee Explanatory Reports: Final Report explaining the provisions of Rule 1240 published with the Court’s Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1240 published with the Court’s Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 1240 published with the Court’s Order at 45 Pa.B. 3987 (July 25, 2015).

Pa.R.J.C.P. 1320

Official Note: Rule 1320 adopted August 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended May 16, 2017, effective July 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1320 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1320 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 1320 published with the Court's Order at 47 Pa.B. 3079 (June 3, 2017).

Pa.R.J.C.P. 1321

Official Note: Rule 1321 adopted August 21, 2006, effective February 1, 2007. Amended May 16, 2017, effective July 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1321 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1321 published with the Court's Order at 47 Pa.B. 3079 (June 3, 2017).

Pa.R.J.C.P. 1408

Official Note: Rule 1408 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.

Committee Explanatory Reports: Final Report explaining the provisions of Rule 1408 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1408 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Pa.R.J.C.P. 1203 and the amendments become effective July 1, 2025.