

ADJUDICATION HEARINGS – CINA RULE 15

PRE-HEARING PREPARATION

Determine whether the hearing will be open or closed. The hearing is presumptively open without written findings pursuant to AS 47.10.070(c); CINA R. 3(f). Order members of the public not to disclose the identity of the child. AS 47.10.070(f).

PERSONS ENTITLED TO NOTICE AND PARTICIPATION - CINA R. 2(l), 3 & 15(b)

- ✓ Parents whose rights have not been terminated. *See also* 25 U.S.C. § 1903(9) (defining “parent” under ICWA) and **Paternity** within **TEMPORARY CUSTODY HEARINGS** card.
- ✓ Child – At each hearing the court **shall determine** if the child has received notice of the hearing and may continue the hearing if notice was not provided. CINA R. 3(a).
 - For a child 10 years of age or older, the child must be directly notified of the hearing by the child’s attorney or GAL. The right to be present may be waived by the child through the child’s attorney or GAL. CINA R. 3(a), (b).
 - For a child under 10, notice must be provided by OCS to the child’s placement, and the child’s presence may be waived by the GAL. CINA R. 3(a), (b).
- ✓ Legal guardian
- ✓ Indian custodian
- ✓ Indian child’s tribe
- ✓ OCS case worker
- ✓ Guardian ad Litem (GAL)/Court Appointed Special Advocate (CASA)
- ✓ Out-of-home care provider and grandparents (but court can limit presence pursuant to AS 47.10.070(e))
- ✓ Intervenor
- ✓ Parties’ attorneys

SCHEDULING AND CONTINUANCE DECISION

Scheduling. The court must complete the adjudication within **120** days after entering the probable cause finding. AS 47.10.080(a); CINA R. 15(a).

Continuance. The court may not grant a continuance beyond 120 days absent **good cause**. The court must consider the child’s age and potential adverse effect of delay on the child. CINA R. 15(a).

If a case involves an **Indian child**, the court may not hold the adjudication hearing until at least ten days after the parent, Indian custodian, and tribe receive notice. The court must grant a request of the parent, Indian custodian, or tribe for postponement for up to 20 additional days to prepare for the hearing. 25 U.S.C. § 1912(a); *see also* CINA R. 15(b). *See Indian Child Inquiry*, below.

PROCEDURAL ORDERS & DETERMINATIONS

Evidentiary Standard. OCS must prove by a preponderance of the evidence that the child is in need of aid. CINA R. 15(c). If the adjudication is consolidated with a termination petition, OCS’s burden is clear and convincing. CINA R. 18(c)(1)(A). In the absence of consolidation, OCS could, with advance notice, ask the court to adjudicate the case under the clear and convincing standard. *See D.M., v. State, Div. of Family & Youth Serv.*, 995 P.2d 205, 208 (Alaska 2000).

Indian Child Inquiry. The court must ask whether any participant “knows or has reason to know that the child is an Indian child.” *Jimmy E. v. State, Dep’t of Health & Soc. Serv. Off. of Child. Serv.*, 529 P.3d 504, 513 (Alaska 2023) (*quoting* 25 C.F.R § 23.107(a)). An “Indian child” is any unmarried person who is under the age of eighteen and is either (1) a child who is a member of an Indian tribe, or (2) a child who is eligible to be a member of an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. § 1903(4).

If the child is an Indian child, the court should further determine:

- The identity of the Indian child’s tribe (*See* 25 U.S.C. § 1903(5), CINA R. 6(b)(2));
- Whether the child is a ward of a tribal court (*See* 25 U.S.C. § 1911(a)); and
- Whether the child has an Indian custodian (*See* 25 U.S.C. § 1903(6)).

If the court cannot determine whether the child is an Indian child, the court must consider whether it has *reason to know*. *See* 25 C.F.R. § 23.107(c) (outlining six circumstances giving the court “reason to know” that a child is an Indian child); *see also Jimmy E.*, 529 P.3d at 513-520.

If there is reason to know and the court does not have sufficient information to make an Indian child determination, the court must treat the child as an Indian child. Where there is reason to know, OCS must investigate and exercise due diligence to identify and notify the relevant tribes. If the court cannot make determinations related to the Indian child inquiry, the court should set deadlines for OCS or other parties to provide the necessary information. *See Jimmy E.*, 529 P.3d at 513-520; 25 C.F.R. § 23.107.

Stipulations to Adjudication - CINA R. 14

- The court must determine that parties understand their rights and have had sufficient time to consult with counsel. CINA R. 14(b).
- **ICWA:** A stipulation to adjudication under ICWA must be in writing and certified by a judge that the terms and consequences were fully explained in detail and fully understood by the parent or Indian custodian. The court must also certify that the stipulating party understood the explanation in English or it was interpreted into a language understood by the party. *See* 25 U.S.C. § 1913(a); CINA R. 14(b).

REQUIRED FINDINGS AND ORDERS: CINA R. 15(d), (f) & CINA R. 16

CINA Determination. Determine if the child is in need of aid, and specify which subsection(s) of AS 47.10.011 apply.

- **If not CINA:** Order the child released from state custody and returned to the parents, guardian, or Indian custodian.
- **If CINA:** Schedule disposition hearing “without unreasonable delay.” CINA R. 15(f)(3). To make disposition findings now, see **DISPOSITION HEARINGS** card.

Findings and Orders Pending Disposition: Pending disposition, the court shall enter orders and findings required under CINA R. 15(f):

(1) Custody Finding. Order the child placed in the temporary custody of OCS, or release the child to a parent/guardian/Indian custodian, with OCS supervision pending disposition.

(2) Removal Findings.

Contrary to the Welfare: To approve removal from the child’s home, the court must determine that continued placement in the home is “contrary to the welfare” of the child. CINA R. 10(c)(3).

ICWA – Serious Emotional or Physical Damage: The court may order the foster placement of an Indian child only if there is clear and convincing evidence, including testimony of qualified expert witnesses (QEW’s), that the child is likely to suffer serious emotional or physical damage if left in the home. *See* 25 U.S.C. §1912(e); 25 C.F.R. §§ 23.112-114, 23.121-122; *but see* CINA R. 15(f)(1) referring to the ICWA removal standards in CINA R. 10(c)(3) (court may order removal of Indian child if necessary to prevent imminent physical damage or based upon the testimony of QEW’s).

ICWA – Qualified Expert Witnesses. To support continued removal of an Indian child, OCS must present an expert witness qualified to testify about the causal relationship between parental conduct and serious damage to the child. Presentation of a cultural expert who can testify about the prevailing social and cultural standards of the child’s tribe is generally also required with very limited exceptions. The presentation of these two types of expert testimony can be accomplished through one expert or by aggregating the testimony of multiple witnesses. *See* 25 U.S.C. § 1912(f); 25 C.F.R. § 23.122(a); *see also State, Dep’t of Health & Soc. Serv. Off. of Child. Serv. v. Cissy A.*, 513 P.3d 999, 1009-19 (Alaska 2022).

(3) Efforts Findings.

Reasonable Efforts: If the court authorizes removal from the home, the court must determine whether OCS made timely, reasonable efforts to provide family support services to the child and to the parents to enable the safe return of the child. CINA R. 15(f)(2); AS 47.10.086(a).

ICWA – Active Efforts: For an Indian child, the court must determine whether active efforts required by 25 U.S.C. § 1912(d) were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and whether they were unsuccessful.

Failure by OCS to provide reasonable or active efforts is not itself a ground for returning a child to the home and does not impact the court’s ability to enter an adjudication order pending disposition. The court may order OCS to make reasonable/active efforts “within a reasonable time.” CINA R. 10.1(a)(2), (b)(2). If OCS fails to comply with the order, the court may impose appropriate sanctions. *Id.*

(4) ICWA - Placement Preference Findings. If the court approves removal of an Indian child from the home, the court must determine whether OCS complied with 25 U.S.C. § 1915(b) placement preferences, or whether there is good cause to deviate from those preferences. CINA R. 15(f)(2). The court may order OCS to comply with ICWA placement preferences “within a reasonable time.” CINA R. 10.1(b)(2). If OCS fails to comply with the order, the court may impose appropriate sanctions. CINA R. 10.1(b)(2).

Relative Caretakers Generally. In all cases, OCS must locate and evaluate relatives as possible placements, and OCS is required to comply with statutory placement preferences under AS 47.14.100(e). If the child is committed to the custody of OCS, the court must also order the parents to provide the names and locations of relatives who may be willing to have the child placed in their home. AS 47.10.080(r)(5).

SCHEDULE DISPOSITION AND ORDER REPORTS

Scheduling Hearing. The court must schedule a **disposition hearing** "without unreasonable delay," and order submission of reports in aid of disposition (unless waived by stipulation). The court may order other studies, examinations, or reports “necessary for an informed disposition.” CINA R. 15(f)(3).

Disposition Reports

- OCS shall be ordered to file and serve its disposition report 15 days before the disposition hearing. CINA R. 16(a)(1), (3).
- GAL shall be ordered to file and serve its disposition report 10 days before the hearing. CINA R. 16(a)(2), (3).
- Other parties may submit reports at least 10 days before the hearing. CINA R. 16(a)(5).