

DISPOSITION HEARINGS – CINA RULES 16 & 17

PRE-HEARING PREPARATION

Timing. Disposition hearings must be held “without unreasonable delay,” CINA R. 15(f)(3), but disposition may not be held without adequate information upon which to enter an informed disposition. CINA R. 17(c). If the court concludes that OCS has failed to make required reasonable or active efforts (ICWA), the court must postpone entry of a disposition order. *Id.*

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

Predisposition Reports. OCS’s report must be filed and served 15 days before the hearing, and the GAL’s report must be filed and served 10 days before the hearing. Parties may not waive reports without approval of the court and only if the parties present adequate information to the court. CINA R. 16(a); AS 47.10.081.

OCS’s report must include:

Under AS 47.10.081(b):	Under CINA Rule 16(a)(1):
A statement of changes in the child’s or parent’s behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary.	The current case plan
If removal is recommended, a description of the reasons the child cannot be protected in the home, including a description of previous efforts to work with the parents and the child in the home and the parents’ attitude toward placement of the child.	The child’s family background and educational history.
A description of the potential harm to the child that may result from removal from the home and any efforts that can be made to minimize such harm.	Past contacts by OCS with the child and the child’s family.
Any further information that the court requests.	The child’s medical, psychological, and psychiatric history.
	Recommendations regarding the disposition.
	Efforts made to comply with placement preferences under state law or ICWA.

GAL’s report must be **child-focused, fact-based**, and include **the GAL’s position regarding:**

- ✓ Legal custody
- ✓ Placement
- ✓ Visitation
- ✓ The child’s case plan
- ✓ The parent’s case plan
- ✓ Any differences between the child’s preferences and the GAL’s positions. *See* CINA R. 16(a)(2).

PERSONS ENTITLED TO NOTICE AND PARTICIPATION - CINA R. 2(l), 3 & 7(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

EVIDENTIARY CONSIDERATIONS

Statements. Out-of-home care providers or grandparents are entitled to be heard. CINA R. 17(b).

Hearsay. Otherwise inadmissible hearsay evidence is admissible if probative of a material fact, has circumstantial guarantees of trustworthiness, and the parties are given a fair opportunity to meet it. CINA R. 17(e).

Burden of Proof. No party bears the burden of proof at disposition. *In re S.D.*, 549 P.2d 1190, 1200 (Alaska 1976); *but see Miranda T. v. State, Dep’t of Health & Soc. Serv. Off. of Child. Serv.*, 524 P.3d 1105, 1108-09 & 1118-19 (Alaska 2023) (discussing findings required at disposition).

Adequate Information. A disposition hearing may not be held before adequate information is available. The court **cannot enter a disposition order** if the court finds OCS has not provided required reasonable or active efforts (ICWA). CINA R. 17(c). Disposition must be continued until the court finds that required efforts have been made. *Id.*

Stipulations. Parties may stipulate if the court determines that the parties understand their rights and have had sufficient opportunity to consult with counsel. CINA R. 14.

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).

FINDINGS AND ORDERS

Dispositional Finding. Determine whether to commit the child to OCS for placement for up to 2 years or to release the child to a parent, adult family member, guardian, Indian custodian, or other suitable person with OCS supervision for up to 2 years. AS 47.10.080(c)(1), (2). The court may dispense with supervision if the court finds that the adult to whom the child is released will adequately care for the child without supervision. AS 47.10.080(c)(2).

Removal Findings.

Contrary to the Welfare: The court may approve the removal of the child from the home if the court finds that continued placement in the home is contrary to the welfare of the child. CINA R. 17(d)(2).

ICWA – Serious Emotional or Physical Damage: For an Indian child, the court may order foster placement only if there is clear and convincing evidence, including the testimony of qualified expert witnesses, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. CINA R. 17(d)(2); 25 U.S.C. § 1912(e).

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 permit the safe return of the child. CINA R. 17(c); 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. CINA R. 17(c).

Failure by OCS to provide reasonable or active efforts is not itself a ground for returning a child to the home; however, as noted above, the court cannot enter a disposition order until the required efforts have been made. CINA R. 17(c).

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. *Id.*; CINA R. 10.1(b)(1). 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. *Id.*

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).

SCHEDULE FUTURE HEARINGS AND ORDER REPORTS

Continued Disposition Hearing. If the court cannot enter disposition findings due to a lack of active/reasonable efforts or insufficient information, reschedule the hearing without unreasonable delay. CINA R. 15(f)(3).

Permanency Hearing. If the child is committed to OCS for placement, the disposition order must set a permanency hearing within 12 months after the child entered foster care. AS 47.10.080(f), (l); CINA R. 17(f); *see also* AS 47.10.088(f) (calculation of date child entered foster care).

Permanency Report. OCS should be ordered to file and serve a permanency report no later than 10 days before the permanency hearing, unless waived by the parties with the court’s approval. CINA R. 17.2(c).

Annual Review for Supervision Orders. If the court placed the child in the home under a supervision order under AS 47.10.080(c)(2), the court must review the case in 12 months to determine if continued supervision is in the best interests of the child. AS 47.10.080(f); CINA R. 19(a). OCS should be ordered to file a report at least 20 days before the anniversary date of the disposition order. The review will take place without a hearing unless requested by a party or ordered by the court on its own motion. CINA R. 17(f), 19(a), (b).