

PERMANENCY HEARINGS – CINA RULE 17.2

PURPOSE AND TIMING OF HEARING

The purpose of the permanency hearing is to establish a permanency plan for a child committed to state custody. The hearing must be held within 12 months after the date the child entered foster care under AS 47.10.088(f); within 30 days after the court determines that reasonable efforts are not required under CINA R. 17.1; or upon application by a party, when good cause is shown. *See* AS 47.10.080(f), (l); CINA R. 17.2.

PRE-HEARING PREPARATION

Check for Report. OCS’s permanency report must be filed 10 days before hearing. CINA R. 17.2(c). The parties can waive the report with the court’s approval but only if the parties present evidence to support the required findings. CINA R. 17.2(c).

Hearings are presumptively open to the public. *See* AS 47.10.070(c); CINA R. 3(f). Order members of the public not to disclose identity of the child. AS 47.10.070(f).

PERSONS ENTITLED TO NOTICE AND PARTICIPATION - CINA R. 2(l), 3, 7(b) & 17.2(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

EVIDENCE

Persons Entitled to be Heard. The parties (**including child**), foster parents, other out-of-home care providers, and grandparents are entitled to be heard. AS 47.10.080(f).

Hearsay. Otherwise inadmissible hearsay 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. 17.2(d).

Concurrent Planning. OCS may develop and implement an alternative permanency plan for the child while OCS is also making efforts to return the child to the home. AS 47.10.086(e). Under ICWA, even if OCS seeks to terminate a parent’s rights, OCS must continue to provide **active efforts** to achieve reunification up until the parents’ rights are terminated. 25 U.S.C. § 1912(d); *see, e.g., Ronan F. v. State, Dep’t of Health & Soc. Serv., Off. of Child. Serv.*, 539 P.3d 507, 514-16 (Alaska 2023). *Cf.* AS 47.10.086(c) (listing circumstances under which court may determine that **reasonable efforts** are not required).

REQUIRED FINDINGS

CINA Finding. Determine if the child continues to be in need of aid, and specify which subsections of AS 47.10.011 apply. CINA R. 17.2(e)(1).

Permanent Plan Findings - CINA R. 17.2(e)(2)-(5). Establish a written permanent plan for the child, *see* AS 47.10.080(l), including written findings related to:

- ✓ Whether and when the child should return to a parent, guardian, or Indian custodian. CINA R. 17.2(e)(2).
- ✓ Whether the child should be placed for adoption or legal guardianship. CINA R. 17.2(e)(3).
- ✓ Whether OCS is in compliance with AS 47.10.088(d) (listing circumstances requiring OCS to file for TPR). *See* AS 47.10.088(e)(exceptions to TPR filing requirement); CINA R. 17.2(e)(3); *see below* **Petition for Termination of Parental Rights Finding**.
- ✓ Whether there is a compelling reason that the most appropriate placement is another planned, permanent living arrangement (APPLA) and, if so, whether OCS recommended the arrangement and the child's position on permanency. 42 U.S.C. § 675a.
- ✓ **Note:** OCS may recommend **APPLA only if the child is 16 or older**, OCS has unsuccessfully made “**intensive efforts**” to find a permanent placement, and OCS documents a “**compelling reason**” for this plan. AS 47.14.100(o). “Compelling reason” may include circumstances in which the child requests emancipation or the parent and child have a “significant bond” and the foster parents have committed to raising the child and facilitating visitation with the parent. AS 47.14.100(s); CINA R. 17.2(e)(4).
- ✓ The findings associated with APPLA must include what steps are necessary to achieve the new arrangement. CINA R. 17.2(e)(4).
- ✓ For all children age 16 or older, what services are needed to assist the child to make the transition from foster care to independent living or adult protective services. CINA R. 17.2(e)(5).

Note: If the court is unable to make a finding under CINA R. 17.2(e), the court must schedule another permanency hearing within a reasonable period of time, defined as: “a period of time that serves the best interests of the child, taking into account the affected child's age, emotional and developmental needs, and ability to form and maintain lasting attachment.” AS 47.10.990(30).

Efforts Findings.

- ✓ **Reasonable Efforts.** 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. 17.2(f)(1); AS 47.10.086(a).
- ✓ **ICWA – Active Efforts.** For an Indian child, the court must determine whether **active efforts** 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. 17.2(f)(1); 25 U.S.C. § 1912(d).

Substantial Progress Finding. Determine whether the parent or guardian has made substantial progress to remedy the conduct or conditions in the home that made the child in need of aid. CINA R. 17.2(f)(2), AS 47.10.080(l)(4)(B).

Custody/Placement Finding. If the child will remain out of the home, determine whether the child's placement is appropriate and in the child's best interests and whether OCS is making reasonable efforts to find a permanent placement for the child. AS 47.10.080(l)(4)(C)(i),(ii); CINA R. 17.2(f)(3).

ICWA Placement Preference Findings. If the court approves removal of an Indian child from the home, the court must determine whether OCS complied with ICWA placement preferences or whether there is good cause to deviate from those preferences. 25 U.S.C. § 1915(b).

Reasonable Efforts to Finalize Permanency Plan Finding. Determine whether OCS has made reasonable efforts to finalize the permanent plan for the child. AS 47.10.080(l)(4)(D); CINA R. 17.2(f)(4).

Petition for Termination of Parental Rights Finding - AS 47.10.080(l)(2)(B), AS 47.10.088(d), CINA R. 17.2(e)(3)

Under AS 47.10.088(d)(1)-(5), OCS must file a petition to terminate parental rights if:

- the child has been in foster care for at least 15 of the most recent 22 months;
- the child is younger than six and the court has determined that the child is abandoned under AS 47.10.013;
- the court found that the best interests of the child do not require further reasonable efforts;
- a parent has made three or more unsuccessful attempts to remedy their conduct within a 15-month period; **OR**
- a parent made no effort to remedy the offending conduct or home conditions by the time of the hearing.

Exceptions to the termination petition filing requirement are listed at AS 47.10.088(e):

- OCS has documented a compelling reason that filing would not be in the child’s best interest, **including care by a relative**; or
- OCS is required to make reasonable efforts under AS 47.10.086 but has not done so.

SCHEDULING & ADDITIONAL ORDERS

Schedule Next Permanency Hearing. Permanency hearings must occur at least annually until the permanent plan is successfully implemented. AS 47.10.080(l)(5); CINA R. 17.2(i).

Order OCS to File Permanency Report. The Department is required to file a permanency report at least 10 days prior to the permanency hearing unless waived by the parties with the approval of the court. CINA R. 17.2(c).

Implementation Orders. The court may enter orders to ensure timely implementation of the permanency plan. CINA R. 17.2(g). For example, the court can set a deadline for filing a termination petition if OCS has indicated its intent to file; set a deadline for conducting a relative search; set a deadline for filing a guardianship petition; or schedule additional status hearings to review case progress.

Change in Permanency Plan. If the permanency plan approved by the court changes after the permanency hearing, OCS shall “promptly” apply for another permanency hearing, and the court shall conduct the hearing within 30 days after the application. AS 47.10.080(l)(5); CINA R. 17.2(h).

If the permanent plan is adoption: When OCS files a termination petition, it “shall concurrently identify, recruit, process, and approve a qualified person or family for an adoption.” AS 47.10.088(i). Before identifying a placement in an adoptive home, OCS “shall attempt to locate all living adult family members” and screen their willingness and ability to care for the child. *Id.*