

TERMINATION OF PARENTAL RIGHTS HEARINGS

CINA RULE 18

PRELIMINARY MATTERS

Check for Proof of Service. A petition for termination of parental rights must be served pursuant to CINA R. 7(d), (e) and Civil Rule 4. The tribe, **whether or not it has intervened**, must be served with the termination petition. 25 U.S.C. § 1912(a), CINA R. 7(f).

Appoint Counsel for Absent Parent. The court shall appoint counsel for an absent parent at any hearing in which the termination of parental rights is or may be in issue if the parent has failed to appear after service of notice, and the court concludes that a continuance is not likely to result in the attendance of the non-appearing parent. CINA R. 12(d); *see also* Admin R. 12(e). The court is not required to appoint counsel for a parent if the court is satisfied that the identity of the parent is unknown. CINA R. 12(d).

One parent termination. The rights of one parent may be terminated without affecting the rights of the other parent. AS 47.10.088(h).

Open or closed hearing. Determine whether the hearing will be **open or closed**. Hearing is open without written findings pursuant to AS 47.10.070(a), (c). *See also* CINA R. 3(f). The court must order members of the public not to disclose information that would readily lead to the identification of a child who is the subject of the proceedings. AS 47.10.070(f).

PERSONS ENTITLED TO NOTICE AND PARTICIPATION - CINA R. 2(f), 3, 7(d) & 18

- ✓ Parents whose rights have not been terminated. Under ICWA, “parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. 25 U.S.C. § 1903(9). *See also* **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

Trial Date & Continuance. The **trial** must be held **within six months** after the petition to terminate the parents’ rights is filed, absent good cause. AS 47.10.088(j), CINA R. 18(e). The court **may not** grant a **continuance** setting the trial beyond six months from the filing date without a **written** good cause finding. A good cause finding must take into account the child’s age and potential adverse effect of delay on the child. *Id.*

For an **Indian child**, the court may not hold the termination of parental rights trial until at least ten days after the parent, Indian custodian, and tribe receive notice. The parent, Indian custodian, and tribe are entitled to a postponement for up to 20 additional days to prepare for the trial. 25 U.S.C. § 1912(a).

EVIDENTIARY CONSIDERATIONS

Admissibility of Hearsay. Hearsay is not admissible for proving a child is CINA under AS 47.10.011 unless the hearsay falls under one of the recognized exceptions under Evid. R. 803 or 804. For other elements, hearsay may be admissible at the trial if it is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it. CINA R. 18(f).

ICWA – Qualified Expert Witnesses. To support termination of parental rights in an ICWA case, OCS must always 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 CFR § 23.122(a); *see also State, Dep’t of Health & Soc. Serv. Off. of Child. Serv. v. Cissy A.*, 513 P.3d 999, 1009-1019 (Alaska 2022).

FINDINGS REQUIRED FOR TERMINATION - AS 47.10.080(c)(3), AS 47.10.088, CINA R. 18(c)

Except as provided by AS 47.10.080(o)(incarcerated parent), before the court can order the termination of a parent’s rights, the court must find that OCS has proved:

- **CINA Finding.** By clear and convincing evidence, the child was subjected to conduct or conditions making the child a child in need of aid under one or more subsections under AS 47.10.011. *See* AS 47.10.088(a)(1), CINA R. 18(c)(1)(A).
- **Failure to Remedy Finding.** By clear and convincing evidence,
 - the parent failed to remedy the conduct or conditions in the home that place the child at a substantial risk of harm; **OR**
 - the parent has failed within a reasonable time to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury.

Under AS 47.10.088(b), in making the failure to remedy finding, the court may consider any fact relating to best interests of child including:

- the likelihood of returning the child to the parent within a reasonable time based on the child’s age or needs;
- the amount of effort by the parent to remedy the conduct or the conditions in the home;
- the harm caused to the child;
- the likelihood that the harmful conduct will continue; and
- the history of conduct by or conditions created by the parent.

See AS 47.10.088(a), (b); CINA R. 18(c)(1)(A).

- **Reasonable Efforts Finding.** By clear and convincing evidence that OCS made timely, **reasonable efforts** to provide family support services to the child and the parents to enable the safe return of the child to the family home. *See* AS 47.10.088(a)(3); AS 47.10.086(a); CINA R. 18(c)(2)(A).
- **ICWA – Active Efforts Finding.** For an Indian child, by clear and convincing evidence that OCS provided **active efforts** to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and those efforts have proved unsuccessful. 25 U.S.C. § 1912(d); CINA R. 18(c)(2)(A) and (B).
- **Best Interests of the Child Finding.** By a preponderance of the evidence, that termination of parental rights is in the child’s best interests. AS 47.10.082; AS 47.10.088(c); CINA R. 18(c)(3).

- **ICWA – Serious Emotional or Physical Damage Finding.** For an Indian child, OCS proved beyond a reasonable doubt, including the testimony of qualified expert witness(es), that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *See* 25 U.S.C. § 1912(f); CINA R. 18(c)(4).

Incarcerated Parent Findings – AS 47.10.080(o) & CINA R. 18(c)(1)(B)

The incarcerated parent findings may be made instead of separate CINA and failure to remedy findings. The court **must** still make efforts, best interests, and ICWA related findings, if applicable. *See* CINA R. 18(c)(1)(B).

Incarceration of a parent may be grounds for terminating a parent’s rights if OCS proves by clear and convincing evidence that:

- The period of the parent’s incarceration during the child’s minority is significant considering the child’s age and need for adult care and supervision;
- There is not another parent willing and able to care for the child; and
- The incarcerated parent failed to make adequate provisions for child’s care during the period of incarceration.

See AS 47.10.080(o); CINA R. 18(c)(1)(B).

ORDER TERMINATING PARENTAL RIGHTS

Deadline. The court **shall** issue an order on the petition to terminate parental rights within **90 days after the last day of trial**. AS 47.10.088(k); CINA R. 18(g).

Custody. If the court orders the termination of parental rights and responsibilities, the court must commit the child to the custody of the department. AS 47.10.080(c)(3); CINA R. 18(g).

PERMANENT PLACEMENT FOR THE CHILD

Reports to the Court Post-TPR. If the court did not approve a permanent placement at the termination of parental rights trial, OCS shall report to the court within 30 days on its efforts to find a permanent placement. Thereafter, OCS must report quarterly to the court and must demonstrate in its reports that the department is making reasonable efforts to find a permanent placement for the child. AS 47.10.088(i); AS 47.10.080(c)(3); CINA R. 18(h).

FUTURE DATES

Adoption Considerations. OCS shall attempt to locate all living adult family members before identifying an adoptive home. An adult family member who requests adoption shall be approved by OCS absent good cause. AS 47.10.088(i). Under AS 25.23.127, an adoption preference applies to an adult family member who has had physical custody of the child for at least 12 consecutive months prior to the termination of the parents’ rights.

Permanency Hearing. The court must hold a first permanency hearing no later than 12 months after the date the child entered foster care. AS 47.10.080(l). “Date child entered foster care” is defined in 47.10.088(f). Subsequent hearings to review the permanency plan are required every 12 months thereafter. AS 47.10.080(l)(5); CINA R. 17.2(i).

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). Reports are not served on parents’ whose rights have been terminated. CINA R. 2(k), (l); CINA R. 18(h).