

## HYPOTHETICAL CHILD WELFARE CASE SCENARIO

Olivia – 12 years old, receives special education services

Mark – 4 years old, attends preschool

Yolanda – 13 months old, may have developmental delays

Maggie – mother of all 3 children, 28 years old, unemployed

Franco – father of Yolanda, 39 years old, employed in food preparation industry

Olivia's father – deceased

Mark's father (Brad) – formerly in military, whereabouts unknown

### Protective Services Report

The Office of Children's Services received a protective services report from the school that the oldest child, Olivia, age 12, came to school dirty, tired, and hungry. Olivia reported she had witnessed a physical fight between her mother and her mother's boyfriend in her house the night before. She said at one point she saw Franco pull a knife and threaten to slide Maggie's throat. Olivia explained she was up all night, trying to comfort her younger siblings, Mark, age 4, and Yolanda, age 13 months. This morning she left the house while her mother and mother's boyfriend (Franco, who is Yolanda's father) were still asleep. Before going to school, she stopped at a neighbor's to ask if the neighbor had some food her brother and sister could have for breakfast. Olivia also told her teacher that Maggie and Franco fight and drink all the time. She also described what sounded like a meth pipe and used syringes on the coffee table.

At 2:00 p.m. the same day, an OCS Initial Assessment worker went to the home and knocked on the door. After about 10 minutes, Maggie opened the door; she was disheveled, and had bruises on her cheek and arm. The home was filthy and in complete disarray, with chairs turned over, food spilled on the floor and empty beer cans scattered in the kitchen and living room. There was no fresh food in the refrigerator or kitchen cabinets. Olivia's brother and sister both appeared frightened, dirty and hungry. Yolanda's diaper was in bad need of changing. Mark had an open sore on his leg that looked infected.

Franco came out of the bedroom, also looking disheveled, and demanded to know what the workers were doing in his home. Although he calmed down somewhat, he was fairly belligerent during the entire interview. Maggie and Franco downplayed the incident. They said there had been a party and others brought in the beer and then left without cleaning up. They adamantly denied the children were in any danger. They both refused to sign a safety plan.

The children were removed from the home and placed together in a non-Native foster home.

### Prior OCS Involvement

The file indicates that OCS became involved informally with Maggie four years ago, after Mark was born positive for cocaine. Mark's father, Brad, was in the military and left Alaska shortly after Mark was born. According to Maggie, Brad has made no effort to contact Mark, but he does pay child support. Maggie successfully completed an outpatient drug treatment program, and OCS closed its case.

Over the past three years, OCS received four reports regarding Maggie, all involving neglect and possible drug use. Two of the reports were not investigated because Maggie and the children could not be located. The other two reports were not substantiated as the children were not forthcoming with information, the home was adequate, and Maggie provided clean UAs each time.

#### Other Background Information

Maggie is a member of a northern remote Tribe and has a large group of extended family members who live in the village, which is only accessible by air or water. Maggie was raised in the village and became pregnant with Olivia when she was still in high school. Olivia's father died in a fishing accident when Olivia was an infant; Maggie receives Social Security survivor's benefits for Olivia. Maggie and Olivia moved to the city so Maggie could attend college, though she has not received a degree. She is active in her church and is currently unemployed.

Franco was born in southern California where his parents were involved in migrant work. His parents are citizens of Mexico but have lived in California since he was born and are working on US citizenship.

Franco originally came to Alaska as a seasonal firefighter and has no local family. Franco moved in with Maggie two years ago because he needed a place to live after fire season and Maggie needed help with the rent. They became involved as a couple after a few months of sharing the home, and Yolanda was born a year later. Franco currently works in the food preparation industry.

Six months ago, Franco was arrested for domestic violence assault after punching Maggie in the face during an altercation at a bar. Franco pled to a misdemeanor assault and received no jail time. This incident was not reported to OCS.

Olivia receives special education services in her Middle School. Her teachers have been concerned about her due to her violent outbursts followed by silences and her poor school attendance. Mark shows no identifiable delays; he attends preschool in Maggie's church. Yolanda may have some developmental delays, as she doesn't crawl and rarely even babbles.

Both Maggie and Franco deny any current drug use and deny that there is any violence in their home. Franco reports that the child Olivia "hates me and tells me she doesn't have to do anything I tell her," but that Mark calls him "daddy." He describes Yolanda as the "light of my life" and tells the worker he can take care of both Mark and Yolanda. He insists there is nothing wrong with Yolanda and that "kids in my family were always a little behind the curve."

#### **The Temporary Custody Hearing**

At the temporary custody hearing Maggie appears but Franco does not. A guardian ad litem is appointed for the children and Maggie has counsel appointed to represent her.

The OCS Initial Assessment worker, Irene, is very experienced, having worked for the department for seven years. She has a BA in psychology and has completed the coursework for her MSW. Irene will ask that the children remain in foster care. There are currently no relatives available to care for the children and Irene believes that the children would not be safe in Maggie's and Franco's home.

Maggie's lawyer, Peter, has worked with the Public Defender Agency for several years. Peter explains to Maggie that the best way to get the children back is to cooperate. Maggie is suspicious and doesn't trust either him or the process. She doesn't think there is really any justification for state involvement. After consulting with Peter, Maggie says she is willing to live separate from Franco, although since he is the only one with a job, she can't exactly ask him to leave. At Peter's urging she reluctantly agrees to have a drug and alcohol evaluation and do random UA's. She has friends at her church that will help her clean up the home. Maggie and her lawyer will argue that the department should return the children to her.

The children's guardian ad litem, Greg, is also very experienced. He has been working as a GAL with the Office of Public Advocacy for 6 years. Cathy, the assigned CASA volunteer, has just completed her training and this is her first case.

The Assistant Attorney General, Amy, has been with the state for 15 years.

The ICWA worker, Ida, has been a part-time employee with the Tribe for six months, and will participate in the temporary custody hearing by telephone. She knows Maggie and Maggie's extended family members and is well-versed in the support systems available in the village.

Magistrate Judge James has handled Child in Need of Aid cases for three years and views the work as very important.



## CHILD IN NEED OF AID (CINA)

A child will be declared a Child in Need of Aid if the child has been subjected to one or more of the following:

- (1) A parent has **abandoned** the child and the other parent is absent or also caused the child to be a CINA;
- (2) A parent is **incarcerated** and the other parent is absent or also caused the child to be a CINA, and the incarcerated parent failed to make adequate arrangements for child.
- (3) A **custodian** with whom the parent left the child is unwilling or unable to care for the child, and the whereabouts of the parent are unknown.
- (4) **Medical neglect** - a parent has knowingly failed to provide medical treatment for the child's physical or mental injury.
- (5) The child is a **runaway** and the child's conduct places the child at risk of physical or mental injury.
- (6) The child has suffered, or is at risk of suffering, substantial **physical harm** based on a parent's conduct or conditions created by a parent or from lack of supervision.
- (7) The child has suffered, or is at risk of suffering, **sexual abuse** based on a parent's conduct or conditions created by a parent or from lack of supervision; knowingly leaving the child with a sex offender is prima facie evidence of risk of sexual abuse.
- (8) The child has suffered, or is at risk of suffering, **mental injury**, including exposure to domestic violence.
- (9) A parent has **neglected** the child or another child in the household.
- (10) A parent's **substance abuse** substantially impairs the ability to parent and results in substantial risk of harm; relapse within one year after a CINA case is closed is prima facie evidence of risk of harm.
- (11) A parent's **mental illness**, serious emotional disturbance, or mental deficiency is of a nature and duration that places the child at substantial risk of physical harm or mental injury.
- (12) The child has committed **delinquent acts** as a result of pressure, guidance, or approval from a parent.

A child will not be declared a CINA **solely** on the basis that the child's family is poor, lacks adequate housing, or has a lifestyle different from the generally accepted lifestyle standard of the community.

## **CINA DEFINITIONS**

### **Abandonment –**

A parent or guardian has shown a conscious disregard of parental responsibilities toward a child by failing to provide reasonable support, maintain regular contact, or provide normal supervision, considering the child's age and need for care by an adult. Abandonment of a child also includes instances when the parent or guardian, without justifiable cause,

1. left the child with another person without provision for the child's support and without meaningful communication with the child for a period of three months;
2. has made only minimal efforts to support and communicate with the child;
3. failed for a period of at least six months to maintain regular visitation with the child;
4. failed to participate in a suitable plan or program designed to reunite the parent or guardian with the child;
5. left the child without affording any means of identifying the child and the child's parent or guardian;
6. was absent from the home for a period of time that created a substantial risk of serious harm to a child left in the home;
7. failed to respond to notice of child protective proceedings; or
8. was unwilling to provide care, support, or supervision for the child.

### **Neglect –**

The parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.

### **Physical Harm –**

1. The child was a victim of an act, such as homicide, assault, kidnapping, sexual assault, incest, unlawful exploitation or endangering the welfare of a minor, and the physical harm occurred as a result of conduct by or conditions created by a parent, guardian or custodian; or
2. A negligent act or omission by a parent, guardian, or custodian creates a substantial risk of injury to the child.

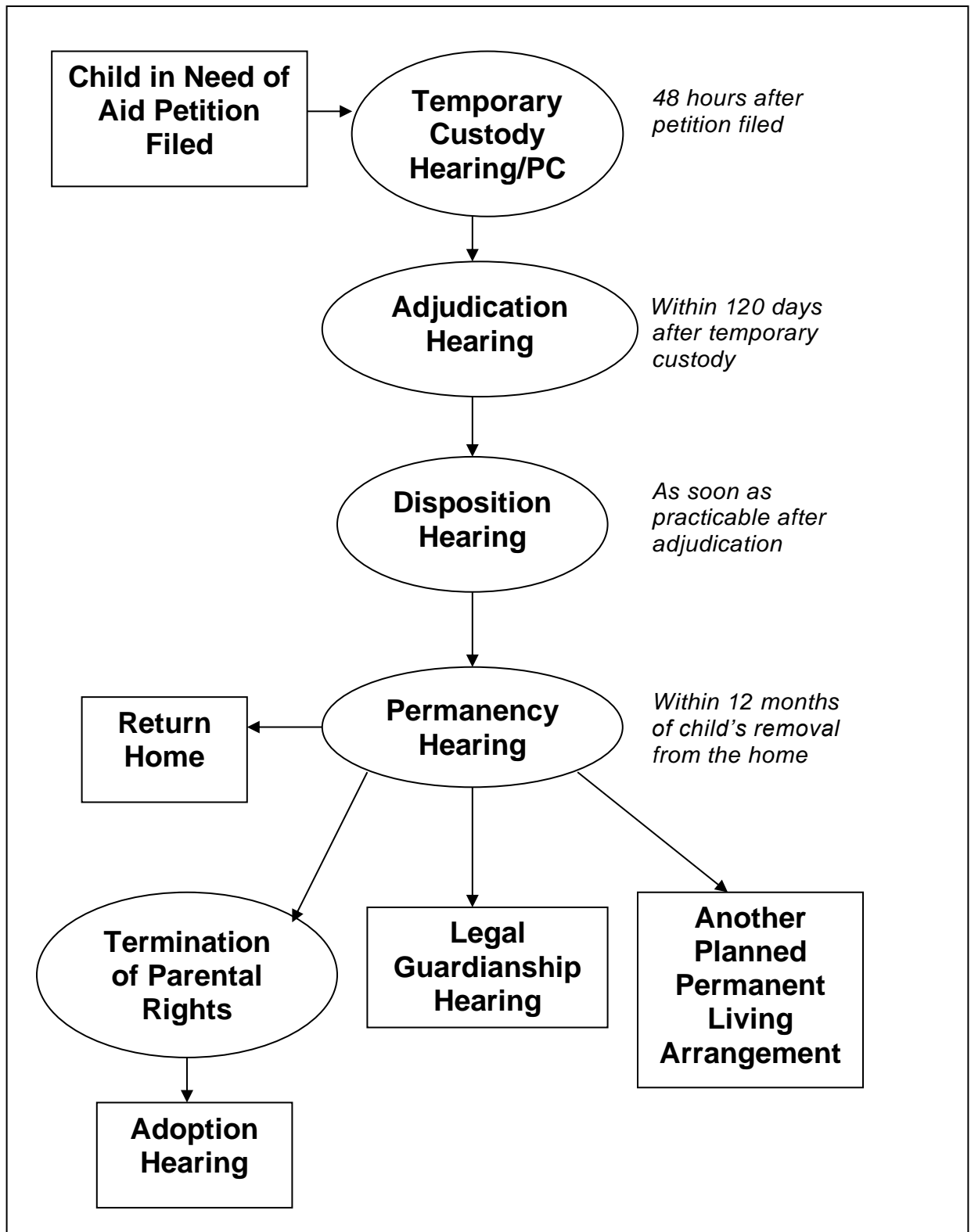
### **Sexual Abuse –**

1. The child was a victim of an act, such as sexual assault, incest, unlawful exploitation, indecent exposure or promoting prostitution, based on the conduct by, conditions created by, or lack of supervision by a parent, guardian or custodian; or
2. A parent, guardian, or custodian creates a substantial risk of sexual abuse to the child, by knowingly leaving a child with a convicted sex offender or a person under investigation for a sex offense against a minor.

### **Mental Injury –**

Serious injury to the child as evidenced by an observable and substantial impairment in the child's ability to function in a developmentally appropriate manner. The existence of such an impairment must be supported by the opinion of a qualified expert witness.

Substantial risk of mental injury as a result of a pattern of rejecting, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury.



- Pre-Adjudication**
- Initial Case Conference (ICC)
  - Pretrial Conference (PTC)

- Other Hearings/Meetings**
- Admin Review (every 6 months)
  - TDM (as needed)
  - Status Hearing (as needed)
  - Placement Review Hearing (if requested)

# Temporary Custody Hearing Checklist (CINA Rule 10)

## PRE-HEARING PREPARATION

Determine whether hearing will be open or closed. See AS 47.10.070(c)(1), (2) & (3). Note: Initial hearing after filing of petition is **closed**.

## PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING CINA R. 7(b) and 2(l)

- Parents whose rights have not been terminated. "Parent" includes Indian child's putative father who has acknowledged paternity, even if paternity not established. 25 USC § 1903(9)
- Legal guardian
- Indian custodian
- Indian child's tribe
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care provider and grandparents (but court can limit presence pursuant to AS 47.10.070(e))
- Intervenor
- Parties' attorneys

## CONTINUANCE FINDING

Court may grant **continuance** on showing of "good cause" why parent/guardian/Indian custodian is not prepared to respond. AS 47.10.142(d).

Court shall determine whether placement in home during continuance would be "**contrary to the welfare**" of the child. AS 47.10.142(d).

## REQUIRED INQUIRIES AND ADVISEMENTS CINA R. 10(b)(1) & (2)

**Public.** If hearing is open, order public not to disclose identity of child. AS 47.10.070(f).

**Notice Inquiry.** Determine whether CINA R. 7(b) notice was made to parties, including absent parent(s), and Indian child's tribe. CINA R. 10(b)(1).

**Petition.** Ensure all parties have copy of petition. CINA R. 10(b)(1).

**Indian Child Inquiry.** If court knows or has reason to know that case involves Indian child, OCS must notify child's tribe. 25 U.S.C. § 1912(a), *see also* CINA R 7(e)(1).

An Indian child is (1) a child who is a member of a tribe, or (2) a child who is eligible to be a

member and is the biological child of a member. 25 U.S.C. § 1903(5).

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

Identity of the Indian child's tribe (*See* 25 USC §1903(5), CINA R. 6(b)(2)),

Whether the child is a ward of a tribal court (*See* 25 USC § 1911), and

Whether the child has an Indian custodian (*See* 25 USC §1903(6)).

If court cannot make these determinations, set deadline for OCS or other party to provide necessary information.

**Advice of Rights.** CINA R. 10(b)(2). Parents, guardian, and Indian Custodian have right to attorney (court-appointed if indigent), hearing at which OCS is required to prove allegations in petition, confront and cross-examine witnesses, present witnesses on own behalf, privilege against self incrimination, and to request a continuance. Child has right to GAL. Tribe and Indian Custodian have right to intervene.

**Child Support Notice.** Advise that parents may be liable for child support if child is placed outside the home. CINA R. 10(b)(1); *see* AS 47.10.084(c).

## HEARSAY EVIDENCE CINA R. 10(b)(3)

Otherwise inadmissible hearsay is admissible if probative, reliable, trustworthy, and parties have fair opportunity to meet it.

## REQUIRED FINDINGS AND ORDERS CINA R. 10(c); AS 47.10.142(e)

- **CINA Determination.** Determine whether probable cause exists to believe that child is in need of aid, and specify which subsection(s) of AS 47.10.011 apply.

**If no probable cause:** Order child released from state custody and returned to parent, adult family member, guardian or Indian custodian. AS 47.10.080(c);

**If probable cause:** Explain reasons to child, parent, or Indian custodian. AS 47.10.142(e).

## Temporary Custody Hearing Checklist (CINA Rule 10) continued

Legal standard for probable cause: Considering all circumstances, is there a "fair probability or substantial chance" that the child is in need of aid? See *Matter of J.A.*, 962 P.2d 173 (Alaska 1998).

- **Custody Finding.** Determine whether to commit child to OCS for "temporary placement," or to parent/Indian custodian with OCS supervision. See AS 47.10.142(e).

▶ **If custody not to OCS:** Specify terms and conditions to be required of parent(s) or Indian custodian, and child. AS 47.10.142(f).

▶ **If custody to OCS:** Specify terms, conditions and duration of placement. AS 47.10.142(f).

- **Contrary to Welfare/Imminent Harm Findings.** To approve removal from child's home, court must determine that continued placement in the home is "contrary to the welfare" of the child. CINA R. 10(c)(3); see AS 47.10.142(e).

▶ Court must inform child and parents or Indian custodian of its reasons for the contrary to the welfare finding. AS 47.10.142(e).

Also, court may **remove Indian child** only if removal is necessary to prevent imminent physical damage or harm *or* there is clear and convincing evidence, including testimony of qualified expert witnesses, that child is likely to suffer serious emotional or physical damage if left in home. CINA R. 10(c)(3), see also 25 USC § 1912(e).

- **Reasonable/Active Efforts Findings.** If court authorizes removal from home, court must determine:

▶ Whether OCS made reasonable efforts to prevent removal, or that it was not possible under the circumstances to make efforts to prevent removal [AS 47.10.086(a); CINA R. 10.1]; **and**

▶ If child is **Indian child**, were active efforts required by 25 USC §1912(d) made to provide remedial services and rehabilitative programs to prevent the breakup of the family, and were they successful?

Note: A finding that OCS failed to make reasonable/active efforts is not in itself grounds for returning the child. CINA R. 10.1(b)(1)(B)(2).

- **ICWA Placement Preference Findings.** If court authorizes removal of Indian child, court must determine whether OCS complied with ICWA placement preferences, or whether there is good cause to deviate from those preferences. CINA R. 10.1(b)(A); 25 U.S.C. § 1915(b).

### ADDITIONAL ORDERS & CONSIDERATIONS

Consider **paternity** and make orders re: paternity. (see Paternity Checklist)

If child committed to OCS, order parents to disclose information about **relatives** willing to care for child. AS 47.10.080(r)(5). Ask tribe for information about relatives.

Inquire whether OCS has identified preliminary elements of **case plan**.

OCS shall provide **reasonable visitation**. Court may order OCS to file visitation plan. See AS 47.10.080(p) and (t); AS 47.10.084(c).

Entertain requests for needed **examinations**, evaluations, or immediate services.

Evaluate case for referral to **mediation**, **family group conference**, or **settlement conference**.

**Advice to Child.** Court may order child to remain in placement [see AS 47.10.142(f)]. If so, court shall advise child of consequences of running away: Child could be detained.

Court may order alleged **perpetrator** to leave home and to have no contact with child. See AS 47.17.069.

If applicable, order alleged **perpetrator** to leave home and to have no contact with child. See AS 47.17.069.

**Psychiatric Treatment Center.** To place child in a secure residential psychiatric treatment center, court must make findings required by AS 47.10.087(a).

### SET FUTURE HEARING DATES

Set **adjudication trial** to be *completed* within **120 days**. CINA R. 15(a),

Set **pretrial conference** per CINA R. 13, and

Set **meeting of parties** at least 30 days before pretrial conference. CINA R. 13(a).



# Adjudication Hearing Checklist (CINA Rule 15)

## PRE-HEARING PREPARATION

Determine whether hearing will be open or closed.

Note: Hearing is open without written findings pursuant to AS 47.10.070(c).

## PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING

### CINA R. 2(l) and 15(b)

- Parents whose rights have not been terminated.  
“Parent” includes Indian child’s putative father who has acknowledged paternity, even if paternity not established. 25 USC § 1903(9)
- Legal guardian
- Indian custodian
- Indian child’s tribe, if it has intervened
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care provider and grandparents (unless presence limited 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).

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

If case involves **Indian child**, court may not hold adjudication hearing until at least ten days after parent, Indian custodian and tribe receive notice. Court must grant request of parent, 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” at right.

## PROCEDURAL ORDERS & DETERMINATIONS

**Public.** Order members of the public not to disclose identity of child. AS 47.10.070(f).

**Evidentiary Standard.** Decide applicable 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 termination petition, OCS’ burden is clear and convincing. CINA R. 18(c)(1)(a). If OCS has filed a termination petition but it is not consolidated with the adjudication, any party may ask the court to apply the clear and convincing standard. *See D.M v State*. 995 P.2d 205 (Ak 2000).

**Indian Child Inquiry.** If the court knows or has reason to know that the case involves Indian child, OCS must notify child’s tribe. 25 U.S.C. § 1912(a), *see also* CINA R 7(e)(1).

An Indian child is (1) a child who is a member of a tribe, or (2) a child who is eligible to be a member and is the biological child of a member. 25 U.S.C. § 1903(5).

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

- Identity of the Indian child’s tribe (*See* 25 USC §1903(5),
- Whether the child is a ward of a tribal court (*See* 25 USC § 1911), and
- Whether the child has an Indian custodian (*See* 25 USC §1903(6)).

If court cannot make these determinations, it should set a deadline for OCS or other party to provide the necessary information.

## REQUIRED SUBSTANTIVE FINDINGS AND ORDERS CINA R. 15(d) and (f) and 16

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

**If not CINA:** Order child released from state custody and returned to parents or Indian custodian.

**If CINA:** Schedule disposition hearing “without unreasonable delay.” CINA R. 15(f)(3). To make disposition findings now, see DISPOSITION CHECKLIST.

- **Findings and Orders Pending Disposition.** Pending disposition, court shall enter orders and findings [CINA R. 15(f)]:

## Adjudication Hearing Checklist (CINA Rule 15) continued...

**(1) Custody Finding.** Order child placed in temporary custody of OCS, *or* release child to parent/guardian/Indian custodian, with or without OCS supervision. *See* AS 47.10.142(e).

If temporary custody ordered, specify terms, conditions and duration. *See* AS 47.10.142(f).

**(2) Contrary to Welfare/Imminent Harm Findings.** To approve removal from child's home, court must determine that continued placement in the home is "contrary to the welfare" of the child. CINA R. 10(c)(3);

Also, court may **remove Indian child** only if removal is necessary to prevent imminent physical damage or harm *or* there is clear and convincing evidence, including testimony of qualified expert witnesses, that child is likely to suffer serious emotional or physical damage if left in home. *See* 25 USC §1912(e) and CINA R. 10(c)(3).

**(3) Reasonable/Active Efforts Findings.** If the court authorizes removal from home, court must determine whether OCS made timely, reasonable efforts since the last hearing to provide family support services to enable the safe return of the child [CINA R. 15(f)(2); AS 47.10.086(a)], *and*

For Indian child, were the active efforts required by 25 USC §1912(d) made to provide remedial services and rehabilitative programs to prevent the breakup of the family, and were they successful?

Note: Court may order OCS to make reasonable/active efforts "within a reasonable time." CINA R. 10.1(a)(2). If OCS fails to comply with the order, court may impose appropriate sanctions. CINA R. 10.1(a)(2).

**(4) ICWA Placement Preference Findings** If the court approves removal of Indian child from home, 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).

Note: 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, court may impose appropriate sanctions. CINA R. 10.1(b)(2).

### Case Management Considerations

**Unknown/Absent Parent.** Direct OCS to identify and locate parents, including unwed fathers, and to establish paternity if appropriate.

**Relative Caretakers.** Direct OCS to locate and evaluate relatives as possible caretakers. Court shall order parents to disclose relative information. AS 47.10.080(r)(5).

**Perpetrators.** Court may order alleged perpetrator out of house and prohibit perpetrator's contact with child. AS 47.10.142(f). *See* AS 47.17.069 for standard of proof.

**Visitation.** Court may order OCS to file visitation plan. *See* AS 47.10.080(p).

**Advice to Child.** Court may order child to remain in placement [*see* AS 47.10.142(f)]. If so, court shall advise child of consequences for running away (child could be detained).

**Mediation.** Evaluate case for referral to mediation, family group conferencing, or settlement conference.

### SET FUTURE HEARING DATES AND ORDER REPORTS

Court must schedule **disposition hearing** "without unreasonable delay." CINA R. 15(f)(3).

Court must order OCS to file and serve its **disposition report** 10 days before disposition hearing. CINA R. 16(a)(2).

**Other reports.** Court may order parties to file other reports, studies or examinations to aid disposition decision. CINA R. 15(f)(3), CINA R. 16(b).

**Psychiatric Treatment Center.** If child is placed in a secure residential psychiatric treatment center, court must review placement order and make new findings every 90 days. AS 47.10.087(b).

# Disposition Hearing Checklist (CINA Rule 17)

## PRE-HEARING PREPARATION

**Check Predisposition Report.** OCS report must be available 10 days before hearing. Parties may not waive report without approval of court, and only if parties present adequate information to court. CINA R. 16(a); AS 47.10.081.

Determine whether hearing will be **open or closed**. See AS 47.10.070(c)(1), (2) & (3).

**Review Predisposition Report.** Predisposition report must include:

Current case plan and for Indian children description of proposed placement, ICWA placement preference and rationale for placement [CINA R. 16(a)(1)];

Information about child's family, education, medical, psychological and psychiatric history [CINA R. 16(a)(1)];

History of OCS' contacts with child and family, and disposition recommendations [CINA R. 16(a)(1)];

Statement of relevant changes in child's or parent's behavior, description of reasons child cannot remain at home (if applicable), and previous efforts to work with parents and child in home, including parents' attitude toward child's placement, and description of potential harm to child that may result from removal, and ways to minimize such harm. AS 47.10.081(b).

## PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING CINA R. 7(b) & 2(l)

- Parents whose rights have not been terminated. "Parent" includes Indian child's putative father who has acknowledged paternity, even if paternity not established. 25 USC § 1903(9)
- Legal guardian
- Indian custodian
- Indian child's tribe, if it has intervened
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care provider and grandparents (unless presence limited 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, reliable, trustworthy and parties have fair opportunity to meet it. CINA R. 17(e).

**Burden of Proof.** No party bears the burden of proof at disposition. *Matter of S.D.*, 549 P.2d 1190 (Alaska 1976).

## PROCEDURAL DECISIONS & ORDERS

**Continuance Decision:** Disposition hearing must be held at adjudication or "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)].

**Order to Public.** Order members of the public not to disclose identity of child. AS 47.10.070(f).

## REQUIRED SUBSTANTIVE FINDINGS AND ORDERS

**Findings Required.** A disposition order must be accompanied by findings of fact. CINA R. 17(d)(1).

▪ **Paramount Concern.** In making its disposition order, the court shall keep the health and safety of the child as the court's paramount concern and consider:

- (1) Best interests of child;
- (2) Ability of state to take custody, care for child, and protect child's best interests;
- (3) Potential harm to child caused by removal from home and family environment. AS47.10.082.

▪ **Custody Finding.** Determine whether to commit child to OCS for placement for up to 2 years or to return child to parent, guardian, or Indian Custodian with OCS supervision for up to 2 years. AS 47.10.080(c)(1) and (2).

# Disposition Hearing, cont'd (CINA Rule 17)

**Contrary to Welfare/Imminent Harm Findings.** Court may approve removal only if continued placement in home is “contrary to welfare” of child. CINA R. 17(d)(2);

*and*

for **Indian child**, there is clear and convincing evidence (including expert testimony) that custody of child by parent or Indian custodian is likely to cause serious emotional or physical damage to child. CINA R. 17(d)(2), 25 U.S.C. § 1912(e).

▪ **Reasonable/Active Efforts Findings.** If child is outside of home, court may **not** enter a disposition unless it determines that:

➤ OCS made reasonable efforts to permit the child safely to return home [AS 47.10.086(a)], *and*

➤ If child is an **Indian child**, that the active efforts required by 25 USC §1912(d) to prevent the breakup of the family were met, and they were unsuccessful. CINA R. 17(c).

Child remains in temporary custody until OCS makes required active/reasonable efforts. CINA R. 17(c).

Note: Court may order OCS to make reasonable/active efforts “within a reasonable time.” CINA R. 10.1(a)(2). If OCS fails to comply with the order, court may impose appropriate sanctions. CINA R. 10.1(a)(2).

▪ **ICWA Placement Preference.** If the court approves removal of Indian child, 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. 10.1(b).

Note: The court may order OCS to comply with ICWA placement preferences “within a reasonable time.” CINA R. 10.1(b)(2). Court may impose appropriate sanctions if OCS fails to comply. CINA R. 10.1(b)(2).

## CASE MANAGEMENT CONSIDERATIONS

**Case Plan Disputes.** Refer to **mediation or family group counseling** if parties disagree about whether case plan reasonably addresses needs of child and parent, or goal for the child (goals are reunification with parent or relative, permanent placement of child with relative, or other permanent placement).

**Visitation.** Court can order OCS to file visitation plan. AS 47.10.080(p).

**Advice to Child.** Court may order child to remain in placement [see AS 47.10.142(f)]. If so, court shall advise child of consequences for running away (child could be detained).

## FUTURE HEARINGS AND ONGOING RESPONSIBILITIES

**Continued Disposition Hearing.** If court could not enter disposition findings due to lack of active/reasonable efforts or insufficient information, reschedule hearing without unreasonable delay.

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

**Annual Review for Supervision Orders.** If court placed child in home under a supervision order under AS 47.10.080(c)(2), court must review case in 12 months, and OCS must file report on annual review at least 20 days before annual review. CINA R. 17(f), 19(a) and 19(b). (See CINA R. 19 for annual review procedures.)

**Psychiatric Treatment Center.** If child is placed in a secure residential psychiatric treatment center, court must review placement order and make new findings every 90 days. AS 47.10.087(b).

# Permanency Hearing Checklist (CINA Rule 17.2)

*Purpose of hearing:*. To establish the permanent plan for a child in state custody and to determine the future direction of the case.

## PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING CINA R. 7(b) AND 2(l)

- Parents whose rights have not been terminated. “Parent” includes Indian child’s putative father who has acknowledged paternity, even if paternity not established [25 USC § 1903(9)]
- Legal guardian
- Indian custodian
- Indian child’s tribe, whether or not it has intervened [CINA R. 17.2(b)]
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care providers and grandparents (unless presence limited pursuant to AS 47.10.070(e))
- Intervenor
- Parties’ attorneys
- Child

## PRE-HEARING PREPARATION

**Check for Report.** OCS permanency report must be filed 10 days before hearing. CINA R. 17.2(c).

**Open/Closed.** Hearing can be open or closed. See AS 47.10.070(c)(1), (2) & (3).

## 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, reliable, trustworthy and parties have fair opportunity to meet it. CINA R. 17.2(d).

## ORDER TO MEMBERS OF PUBLIC

Order members of the public not to disclose identity of child. AS 47.10.070(f).

## REQUIRED, SUBSTANTIVE FINDINGS

- **CINA Determination.** Determine if child continues to be in need of aid, and specify which subsection(s) of AS 47.10.011 apply. CINA R. 17.2(e)(1).
  - **Permanent Plan Finding.** Establish a written permanent plan for the child [AS 47.10.080(l), AS 47.14.100, and see CINA R. 17.2(a)], 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;
    - ✓ whether OCS is in compliance with AS 47.10.088(d) [requiring OCS to file a TPR or a compelling reason not to file TPR when child has been in out-of-home care for 15 of the last 22 months]. CINA R. 17.2(e)(3);
    - ✓ whether there is a compelling reason that the most appropriate placement is another planned, permanent living arrangement and, if so, whether OCS recommended the arrangement, and the child’s position on permanency. P.L. 113-183;
- 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(p). “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(t).
- ✓ What steps are necessary to achieve the new arrangement. CINA R. 17.2(e)(4); and

## Permanency Hearing Checklist (CINA Rule 17.2) continued

- **Reasonable/Active Efforts Findings.** Court must determine by preponderance of the evidence:

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 to the family home. CINA R. 17.2(f)(1); AS 47.10.086(a);

and

For an Indian child, whether active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family, and whether they were successful. CINA R. 17.2(f)(1); 25 USC §1912(d).

- **Petition for Termination of Parental Rights Finding.** Determine whether OCS is required to file a petition to terminate parental rights. AS 47.10.080(1)(2)(B).

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 has been abandoned; the court found that the best interests of the child do not require further reasonable efforts; the parent has made three or more unsuccessful attempts within a 15-month period to improve; the parent made no effort to remedy the offending conduct or home conditions by the time of the hearing. AS 47.10.088(d).

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 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 consistent with the case plan.

- **Parental Conduct Finding.** Determine whether parent or guardian made substantial progress to remedy the conduct or conditions in the home that made the child a CINA. CINA R. 17.2(f)(2), AS 47.10.080(1)(4)(B).
- **Custody/Placement Finding.** If the child will remain out of the home, determine whether child's placement is appropriate and in the child's best interests. CINA R. 17.2(f)(3), AS 47.10.080(1)(4)(C).
- **ICWA Placement Preference Findings.** For an Indian child, determine what efforts OCS made to comply with ICWA placement preferences, or whether there is good cause to deviate from those preferences. 25 U.S.C. § 1915(b).

- **Finding of Reasonable Efforts to Achieve and Finalize Permanency Plan.** Has OCS made reasonable efforts to finalize the permanent plan for the child? AS 47.10.080(1)(4)(D); CINA R. 17.2(f)(4).

### RESCHEDULE IF INFORMATION INADEQUATE

If court cannot make a finding required at this hearing, schedule and hold another permanency hearing within a "reasonable period of time." CINA R. 17.2(e)(5), AS 47.10.080(1)(3). Refer to AS 47.10.990(23) for definition of "reasonable period of time."

### ADDITIONAL ORDERS, FINDINGS, AND SCHEDULING

- **Children 14 and Older.** The court shall enter a finding regarding the services being made by OCS to assist the child in transitioning from foster care to successful adulthood.
- **Implementation Orders.** The court may enter orders to ensure timely implementation of the permanency plan. CINA R. 17.2(g). Court can set a deadline for filing a termination petition if OCS has indicated its intent to file.
- **Set Annual Permanency Review Hearing.** Before the end of this permanency hearing, set the date for the next permanency review hearing. Permanency review hearings must occur at least annually until the permanent plan is successfully implemented. AS 47.10.080(1)(5).

### ONGOING RESPONSIBILITIES

**Annual Permanency Review Hearing.** The court shall hold a hearing to review the permanent plan at least annually until the plan is successfully implemented. AS 47.10.080(1)(5); CINA R. 17.2(i). Set next permanency review hearing.

**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 application. CINA R. 17.2(h); AS 47.10.080(1)(5).

If the permanent plan is adoption: When OCS files a termination petition, it "shall attempt to locate all living adult family members of the child" and "shall concurrently identify, recruit, process and approve a qualified person or family for an adoption." AS 47.10.088(i).

**Psychiatric Treatment Center.** If the child is placed in a secure residential psychiatric treatment center, the court must review placement order and make new findings every 90 days. AS 47.10.087(b).

# Termination of Parental Rights Trial

## CINA Rule 18

### PRE-HEARING PREPARATION

Determine whether hearing will be **open or closed**. Note: Hearing is open without written findings pursuant to AS 47.10.070(c).

**Appoint Counsel for Absent Parent.** Court shall appoint counsel for 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 nonappearing parent. CINA R. 12(d).

**Check for Proof of Service.** A petition for termination of parental rights must be served in pursuant to Civil R. 4. CINA R. 18(a). The tribe, whether or not it has intervened, must be served with the termination petition. 25 USC §1912(a).

### PERSONS ENTITLED TO NOTICE AND PARTICIPATION CINA R. 7(B) AND 2(L)

- Parents whose rights have not been terminated. "Parent" includes Indian child's putative father who has acknowledged paternity, even if paternity not established. 25 USC § 1903(9)
- Legal guardian
- Indian custodian
- Indian child's tribe
- OCS social worker
- Guardian ad litem/Court Appointed Special Advocate
- Out-of-home care provider and grandparents (unless presence limited pursuant to AS 47.10.070(e))
- Intervenor
- Parties' attorneys

### PROCEDURAL ORDERS, CONTINUANCES AND SCHEDULING

**Scheduling.** Trial must be held **within six months** after filing the termination of parental rights petition, absent good cause. AS 47.10.088(j).

**Continuance.** Court may not grant continuance without **written** good cause finding. Good cause finding must take into account child's age and potential adverse effect of delay on child. AS 47.10.088(j).

For **Indian child**, court may not hold termination of parental rights trial until at least ten days after parent, Indian custodian and tribe receive notice. 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).

**Public.** Order members of public not to disclose identity of child. AS 47.10.070(f).

### USE OF HEARSAY

Discretionary use of hearsay in dispositive phase does not violate parents' due process rights. *Matter of JRB*, 715 P.2d 1170, 1174 (Alaska 1986).

### REQUIRED, SUBSTANTIVE FINDINGS AND ORDERS

- **Statutory Grounds for Termination of Parental Rights.** See AS 47.10.080(c)(3) and AS 47.10.088. Court must determine:

Did OCS prove by clear and convincing evidence that the child was subjected to conduct that makes the child CINA? **and**

Did the parent remedy the conduct or home conditions that placed child at substantial risk of harm *or* fail, within a reasonable time, to remedy the conduct or conditions that placed child in substantial risk of harm so that returning the child would place the child at substantial risk of physical or mental injury? CINA R. 18(c)(A)(i) and (ii). In making this finding, court may consider any fact relating to best interest of child. AS 47.10.088(b); **and**

# Termination of Parental Rights Trial, cont'd (CINA Rule 18)

For Indian child, did OCS prove beyond a reasonable doubt, including the testimony of expert witnesses, 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? 25 USC § 1912(f), CINA R. 18(c)(3).

- **Reasonable/Active Efforts Findings.** Court must determine by clear and convincing evidence:

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 to the family home; **and**

For Indian child, were active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and were the efforts successful. 25 USC § 1912(d); CINA R. 18(c)(2)(A) and (B); AS 47.10.086(a).

- **Best Interests Consideration and Finding.** Court shall consider and make a finding, by a preponderance of the evidence, regarding the child's best interests in termination of parental rights proceedings. AS 47.10.082, AS 47.10.088(c); CINA R. 18(c)(3).
- **Incarcerated Parent Findings.** Incarceration of a parent may be sufficient grounds for terminating parental rights if:

The period of 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. AS 47.10.080(o).

## DEADLINE FOR FINDINGS AND ORDER

Court must make findings and enter order within **90 days after the last day of trial.** CINA R. 18(g); AS 47.10.088(k).

## ONGOING RESPONSIBILITIES

**Approve Permanent Placement.** 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, and OCS shall report quarterly thereafter. CINA R. 18(h); AS 47.10.088(i); AS 47.10.080(c)(3).

**Calculate Date for Mandatory Permanency Hearing(s).** Court must hold 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 at 47.10.088(f), but *first permanency hearing should be scheduled 12 months after temporary custody hearing.* Subsequent hearings to review the permanency plan are required every 12 months thereafter. AS 47.10.080(l)(5); CINA R. 17.2(i).

**Adoption Considerations.** OCS shall attempt to locate all living adult family members before identifying an adoptive home. AS 47.10.088(i). 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 parent's rights to the child having been terminated. AS 25.23 127. An adult family member who is not ineligible for a foster care license and who requests adoption "shall" be approved by OCS absent good cause. AS 47.10.088(i).

**Psychiatric Treatment Center.** If child is placed in a secure residential psychiatric treatment center, court must review placement order and make new findings every 90 days. AS 47.10.087(b).