

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).