

# 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).