

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).