

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**

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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).