

ANSWER HEARING

La. Ch. C. arts. 646-649

BENCH
CARD



PURPOSE

Parents appear before the court to answer the CINC Petition. While largely a legal formality, the Answer Hearing allows the court to ensure that parents and children have proper notice and counsel. It is an opportunity to schedule critical meetings and future hearings to ensure case meets statutory timelines.

Timing and Continuances

ARTICLES 625, 646, 646.1, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** Shall be held no later than 15 days after Petition filed and prior to Adjudication, or may be immediately held after Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH) if Petition has been filed (See Article 114). See [Petition for Non-Custodial Child in Need of Care and Order Template](#) and [Petition for Custodial Child in Need of Care and Order Template](#).
- (2) **CONTINUANCES:** Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

PRACTICE TIP | Prehearing Conference: May be immediately convened at Answer Hearing: (1) demonstrate effectiveness in reducing decision-making delays, discouraging procrastination by counsel, and providing opportunities to discuss alternatives to formal court proceedings and/or early resolution of issues that might otherwise result in continuances/other delays; and (2) required for parents to stipulate that child is in need of care. See Articles 646(C) and 646.1.

PRACTICE TIP | CINC with/without Removal: Petition may be filed when child still in custody of parents or when child removed and in provisional custody of a relative/individual/DCFS. Referred by some jurisdictions as “non-custodial” and “custodial” cases or “CINC without removal” and “CINC with removal.”

Appearances and Appointments

ARTICLES 421.1, 575, 607-8, 623, 635.1-645

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA (if appointed), and foster caregivers.
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child’s attorney; include in Order if waived or not. Under age 12, shall be present upon request of child’s attorney or court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if it appears from record parent has been served per Article 640 or 641 and summoned. If absentee, see Articles 575, 608, and 643 for appointment of curator ad hoc. If incarcerated, verify writ/motion to guarantee parent’s attendance filed and Order issued/served timely on facility.
- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by parent per Article 608.

ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties. Interpreters must be familiar with case-related details to provide accurate, meaningful, and effective interpretation.

PRACTICE TIP | Appointments: If not previously appointed, order program approved to represent child be appointed and refer parents to local Public Defender Office to represent parents; order notice of appointments and service of copy of pleadings. Finding of indigency may be needed for parents. Court can also appoint CASA if not appointed.

PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, And Relatives): Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given or diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. Article 623, 42 U.S.C. § 675(5)(G), and 45 C.F.R. § 1356.21(o).

PRACTICE TIP | Confidentiality: If court allows other persons to be present, stress confidentiality of case information.

Notice and Summons

ARTICLES 575, 623, 635.1-645, 42 U.S.C. § 675(5)(G), 45 § C.F.R. 1356.21(o)

- Court shall determine if proper notices were made to all parties, counsel, and foster caregivers; enter required findings in the Order; ensure parties and counsel received copy of Petition before hearing.

Advisements

ARTICLES 625, 646, 648

- (1) **RIGHTS AND RESPONSIBILITIES:** Unless previously advised, court shall advise parents and persons before court of their rights and responsibilities pursuant to Article 625; including that all persons before court shall identify name, address, and whereabouts of each parent and any relative or other individual willing and able to offer wholesome and stable home for child.
- (2) **ELECTRONIC EMAIL:** At hearing, parents shall be asked to provide electronic mail address that they are willing to receive service and notice of future proceedings; court shall advise once so provided that all service and notice of future hearings may be sent electronically until notice provided in writing to court and all parties or in open court that no longer able to receive at such address.

Paternity/Maternity

Court should make a finding as to whether has/has not been established per Louisiana law.

PRACTICE TIP | Determining Paternity/Maternity: If a parent has not been located, direct parent present under oath to provide name, address, and whereabouts for that parent. If identity and whereabouts known, but filiation not legally determined, court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, certificate of results from Clerk of Court showing whether an acknowledgement was filed in the parish of the child's birth, etc.). Court can also direct parent under oath to provide name, address, and whereabouts of any relatives of the child.

Answer and Findings and Order

ARTICLES 606, 646.1, 647, 649, 658

- (1) **DENY/ADMIT:** Parents may deny or admit allegations in Petition in whole or part with or without consenting to Adjudication (i.e., judgment/child is in need of care per ground(s) in Article 606(A)).
 - » **Factual Basis and Consent Inquiries and Findings:**
If admit, determine whether allegations admitted form factual basis for finding child is in need of care AND whether parents consent to Adjudication.
- (2) **STIPULATE:** Parents may stipulate to Adjudication with or without admitting allegations if:
 - Petitioner and DCFS approve stipulation;
 - Prehearing Conference was convened in accordance with Article 646.1 (Include date in Order);
 - Parents stipulating personally appear;
 - Court fully informed parents of rights according to Article 625;
 - Court fully informed parents of consequences of stipulation, including their responsibility to comply with case plan and correct conditions requiring child to be in care; AND
 - Parents knowingly and voluntarily consent to judgment.
 - » **Factual Basis:** If stipulate, court shall determine whether the allegations form factual basis for finding child is in need of care AND parents deny OR admit allegations.
- (3) **CHILD MAY OBJECT:** In writing or open court, to answer of parents; objections shall be entered into minutes of court.
*Best practice is to include objection in Order and, if child objects, set matter for Adjudication Hearing.
- (4) **ORDER:**
 - a. **DISMISS PETITION:** No factual basis for Adjudication.
 - b. **SET MATTER FOR ADJUDICATION HEARING:**
 - A parent denies allegations in whole or part;
 - Find factual basis for Adjudication and a parent does not consent to Adjudication; OR
 - Child objects to a parents consent or stipulation to Adjudication.
 - c. **ADJUDICATE CHILD IN NEED OF CARE:**
 - Find factual basis for Adjudication AND stipulation requirements met (whether admit allegations or not); OR
 - Find factual basis for Adjudication AND parents consent to Adjudication.
 - * Include specific provision(s) in Article 606(A)(1-8) that forms basis for Adjudication; complete a separate Adjudication Order and include Pre-Disposition orders.

ESSENTIAL JUDICIAL FINDING AND ORDER | Answer: Court shall require parents to appear and Answer Petition. Parent may deny or admit allegations of Petition with or without consenting to Adjudication or stipulate to Adjudication with or without admitting to allegations in Petition. Stipulations must meet requirements of Articles 646.1 and 647. Depending on the parents Answer's, court's finding of factual basis for Adjudication, and whether child objects, court will either: (1) dismiss Petition; (2) set matter for Adjudication; or (3) adjudicate child in need of care and complete separate Adjudication Order.

PRACTICE TIP | Delineating Specific Ground(s): From Article 606(A), gives parents notice of basis of Adjudication, consistent with due process, and helps guide formation and implementation of case plan or safety plan accordingly.

HELPFUL GUIDANCE | Different Answers/Admissions in Part: Parents may answer differently from one another and/or for each child involved. Parents may only admit to some allegations. In such cases, there must be a legal basis for adjudicating the child in need of care per one or more Article 606(A) grounds; due process rights of parents and child must be protected. See Answer Hearing Benchbook Section 6 H(5) for related practice tips.

ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA):

At every CINC hearing, court shall ask each person, and make record of answer in Order for each child, whether they know or have reason to know child is a member of or eligible for membership in a Federally recognized Indian Tribe and/or biological child of a member of Federally recognized Indian Tribe. Advise all to inform court if any of above information is subsequently discovered. If know or have to reason to know, proceed to Articles 624, 624.1, and 661.1. Court should also inquire as to DCFS's due diligence in locating and contacting Tribe. Noncompliance with ICWA may result in invalidation of proceedings. Petition should have included statement regarding ICWA. See also 25 U.S.C. § 1901 et seq. and Indian Child Welfare (ICWA) Bench Card.

Further Orders

ARTICLES 102, 309, 318, 601, 627, 672, LA. R.S. § 17:238(C)

- Court may make additional orders in best interest of child, such as orders related to Disposition (see Adjudication Hearing Bench Card), visitation, paternity/maternity, child's education, services, Protective Orders (PO), placement of child when in DCFS custody (Article 672(A)(2)), etc.

PRACTICE TIP | Potential Placements: Court can order DCFS to conduct a child protection clearance, criminal background check, and/or assessment of the home/home study on potential relative/individual caregivers so they can be considered for placement by DCFS and/or custody or guardianship at Disposition. Court can order DCFS to initiate Interstate Compact on the Placement of Children (ICPC) process for potential placement with out-of-State relatives/individuals.

HELPFUL GUIDANCE | Foster Care Certification: DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement. Requires fewer classes than general foster care certification and allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If relative/individual is interested in becoming child's legal guardian, certification must be completed (along with other DCFS requirements) to receive subsidy after a transfer of guardianship. If applicable, court may want to request updates on status of certifications to ensure timely completion.

Order of Notices and Future Hearings

ARTICLES 625, 628, 646, 646.1, 648

Unless dismiss Petition, court shall also make the following orders:

- (1) **PARTIES, DCFS, COUNSEL, AND CASA:** Be present at all future hearings;
- (2) **SET MATTER FOR ADJUDICATION AND/OR DISPOSITION HEARING:** Can also set dates for Prehearing Conference and/or discovery deadline; see [Adjudication Benchbook Section 7/Bench Card](#) for additional orders to consider before Disposition;
- (3) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA and foster caregivers; AND
- (4) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

PRACTICE TIP | Adjudication Order: If court finds factual basis for Adjudication after an admission and/or stipulation to Adjudication and child does not object, Adjudication Hearing is not needed. However, court must still adjudicate child in need of care and issue Adjudication Order. If matter goes forward to Disposition, court must issue both an Adjudication and Disposition Order.

Case Management

- Ask parents and children if they understand what occurred at the hearing; engage conversation about next steps.
- An attorney or the court is responsible for completion of Order. See [Answer Hearing Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions/concerns.
- Provide parents with copy of Order immediately following hearing.

Possible Next Steps

ARTICLES 628, 631, 635-58, 659, 668-70, 678

- (1) **INFORMAL ADJUSTMENT AGREEMENT (IAA):** After filing CINC Petition (with consent of DCFS if child in DCFS custody), court may authorize DA to effect IAA and either dismiss Petition or allow to remain pending during period of informal adjustment.
- (2) **AMENDMENT OF PETITION:** With leave of court petitioner may amend Petition: (1) at any time to cure defects of form or (2) prior to Adjudication Hearing to include new allegations of fact or requests for Adjudication. However, if granted, child/parent may request continuance, which may be granted for such period as required in interest of justice.
- (3) **SPECIAL MOTIONS AND DISCOVERY:** Articles 635 and 651-658 provide various motions and discovery available between filing of Petition and Adjudication and Disposition Hearings.
- (4) **PETITION FOR CUSTODY:** Before Adjudication, any person, including relative of child, may petition court for provisional or permanent legal custody of child.
- (5) **ADJUDICATION HEARING:** If child in custody, shall be held within 45 days of filing Petition; if not in custody, within 105 days of filing of Petition.
- (6) **DISPOSITION HEARING:** May be conducted immediately after Adjudication and shall be conducted within 30 days after Adjudication. Before Disposition, court may order Predisposition Investigation and physical and mental examinations in accordance with Articles 668-670.

PRACTICE TIP | Alternative to Removal/Adjudication: IAA may be used whether child is in DCFS custody or not. It is a viable alternative to keeping child out of foster care. For example, child could be returned to parents and IAA used similarly to a safety plan. Or IAA could be entered into while child in DCFS custody to obviate need for Adjudication. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#).

PRACTICE TIP | Holding Hearings on Same Day: While law does not prohibit court from holding Adjudication and/or Disposition Hearings (if child adjudicated) on same day as Answer Hearing, court should consider whether time is needed to ensure due process for children and parents. For example, there may be paternity/maternity issues that need to be resolved, medical, sensory, psychological, or psychiatric examinations that need to be conducted, evidence that needs to be obtained, witnesses that need to be secured, placement possibilities to further investigate, case planning to complete, etc.

CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?