## ADJUDICATION

La. Ch. C. arts. 659-667

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION



## INTRODUCTION

#### A. GENERAL CONSIDERATIONS

The Adjudication Hearing is a trial under the rules of evidence applicable to civil proceedings. At its conclusion, the court will determine whether the State has proven the allegations in the Child in Need of Care (CINC) Petition by a preponderance of evidence. Adjudication provides the basis for State intervention if the child is proven to be a child in need of care.

The manner in which the Adjudication is conducted has important long-term implications for the child and family: ensuring an Adjudication is held as soon as possible can reduce the length of time a child spends in foster care or out of their home. The time in which Adjudication is completed may control the timing of later judicial proceedings.<sup>1</sup>

If the State proves its burden, the Adjudication Order should set forth the precise grounds for finding the child in need of care so that Disposition, case planning, and later court review can be focused on the need for State intervention. A clear record of the facts established at Adjudication may be useful in later legal proceedings as it may foreclose factual disputes or may provide important evidence that would otherwise be unavailable.<sup>2</sup>

## B. TIMING, NOTICE, PARTIES, AND INQUIRIES

The Adjudication Hearing shall commence within 45 days of the filing of the CINC Petition if the child is in the custody of the Department of Children and Family Services (DCFS) (i.e., foster care). If the child is not in DCFS custody, the Adjudication Hearing shall commence within 105 days of the filing of the Petition. A continuance may be granted but only for up to an additional 5 days and in extraordinary circumstances after notice to opposing parties and a showing of good cause. For more information about computation of time, please see Article 114.

The legal rights of interested parties are affected by the Adjudication; therefore, parties are entitled to notice as a matter of constitutional rights and Federal and State law. As in all CINC hearings, the parents<sup>3</sup> and children have a right to be present, as do foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child and Court Appointed Special Advocates (CASA) (if appointed). The court shall confirm that proper notice was given. Written notice of the date, time, and place of the Adjudication Hearing shall be served and return made in the same manner as the Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. DCFS is required to give notice of the Adjudication to parents as well as to foster caregivers.

It is important to determine all biological and legal parents of the child as soon as possible. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Children before the court may be affected for their entire life if this information remains unknown.

The court should ask DCFS about the steps taken to locate and involve all legal and putative parents and whether paternity and maternity of all children is legally determined. If a parent has not been located, the judge should question the parent who is present about the identity and/or whereabouts of the other parent and emphasize the importance of this information. Finding the child's parents is also critical to identifying other potential relative caregivers for the child; thus, the court may want to also direct the parents under oath to identify relatives of the child.

<sup>1</sup> Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 179 [hereinafter Gatowski].

<sup>2</sup> Gatowski, supra note 1, at 180.

<sup>3</sup> The plural form of "parent" is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

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Before the case is called, the judge should inquire whether counsel for the parents and children had sufficient opportunity to consult with their clients. This ensures due process for the family. Effective Adjudication Hearings require adequate court time and properly trained and prepared lawyers. Lawyers must be expected to do their job and come to court with a clear position on the case after consulting with their client.<sup>4</sup>

Once the case is called, it is the judge's duty, pursuant to the Children's Code and Federal law, to make sufficient inquiries and findings regarding the Indian Child Welfare Act (ICWA). The court shall ask whether any person knows or has reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe. If not, the court may proceed after instructing each person before the court to inform the court if he/she subsequently discovers information indicating the child is an Indian child or subject to the Act. However, if the court finds that there is reason to know that the child is an Indian child, the court shall immediately proceed pursuant to ICWA. See Articles 624. 624.1, and 661.1 and the Indian Child Welfare Act (ICWA) Bench Card in Appendices Benchbook Section 12.5 If a Tribe fails to respond to multiple requests for verification that the child is an Indian child and the court or DCFS has sought the assistance of the Bureau of Indian Affairs in contacting the Tribe, the court may make the determination that the child is not an Indian child based on the information it has available and proceed to Adjudication pursuant to Title VI of the Children's Code.

#### C. PREHEARING CONFERENCES

One practice in the Children's Code that is sometimes underutilized is the Prehearing Conference held in advance of the Adjudication. This conference can be used to discuss alternatives to an Adjudication, such as an Informal Adjustment Agreement (IAA). At the conference, the parties may also determine stipulations, simplify issues, review exhibits, and negotiate the allegations. The State may also amend the Petition. The conference can be a time to discuss whether the child should be present in the courtroom when certain witnesses testify.

If a parent wants to stipulate that the child is in need of care, a Prehearing Conference shall be held prior to the stipulation. This prerequisite helps guarantee that a parent's stipulation and consent to the judgment are both voluntary and intelligent and in the best interest of the child. The court is required to render a separate Order of the actions taken at the Prehearing Conference.

#### D. EVIDENCE

The Adjudication Hearing shall be conducted according to the rules of evidence applicable to civil proceedings unless the Children's Code provides otherwise. The State has the burden of proving the allegations of the Petition by a preponderance of evidence. The order of presenting evidence at the hearing is set by the court, which is a departure from the standard rules of procedure whereby the parties to an action control the order of presentation of the evidence. This judicial oversight ensures that the hearing is conducted efficiently considering the State, parents, and child are all represented by counsel. Hearsay evidence is not admissible at the Adjudication Hearing unless it fits within one of the established exceptions to the hearsay rule or is otherwise allowed by the Children's Code.

Testifying in court is stressful for many parents given the high stakes in CINC cases. Parents may have been traumatized themselves. On the other hand, it can be helpful for some parents to feel that their voice is heard. Engaging with parents in a non-judgmental and non-blaming manner is a helpful approach in CINC cases.

The child may choose to testify as to his/her wishes, and the court shall consider that testimony in rendering its decision. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television (see Title III, Chapter 8); an in-chambers conference attended only by the judge and court reporter and by counsel for the child, petitioner, and parents; or an "in chambers, on or off the record, and with or without parents and/or counsel being present" if no party objects and the parties agree as to the procedure. 6

<sup>4</sup> Gatowski, supra note 1, at 259.

For more information on ICWA, please see <a href="https://clarola.org/index.php?option=com\_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116">https://clarola.org/index.php?option=com\_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116</a>; see also Murphy, Bob. (2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children's Rights Litigation, <a href="https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm\_medium=email&utm\_source=salesforce\_353772&sc\_sid=00265681&utm\_campaign=MK20CNTT&promo=MKCONTENT1&utm\_content=&additional4=&additional5=&sfmc\_j=353772&sfmc\_s=52961351&sfmc\_l=2198&sfmc\_jb=4007&sfmc\_mid=100027443&sfmc\_u=10232975.

<sup>6</sup> Watermeier v. Watermeier, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

#### **E. STIPULATION**

When the parent stipulates that the child is in need of care and consents to the judgment at the Adjudication Hearing, a contradictory hearing is not needed if all of the requirements for a stipulation are met. The Petition must clearly and completely state the facts that are the basis for court intervention. If there is a stipulation with admission to the allegations, the judge will then have the information needed to determine whether a stipulation is appropriately representative of the circumstances of the case. The court must determine whether there is a factual basis for the Adjudication, even if the parent stipulated. If there is not, the matter must be set for an Adjudication Hearing.

#### F. ORDERS

If the court finds that the State did not prove the allegations set forth in the Petition by a preponderance of evidence, the court shall dismiss the Petition. On the other hand, if the court finds the State proved the allegations, the child shall be adjudicated in need of care. The court should include the specific provision(s) in Article 606(A) (1-8) that form the basis for the Adjudication (for example, 606(A)(2) for neglect). In exceptional circumstances, the court may take the matter under advisement for a maximum of 10 days.

The Children's Code allows the court to find that the evidence demonstrates that the child is not a child in need of care, but instead that the child's family is in need of services. While this is an option in the law, best practice may be to dismiss the case, and a Family in Need of Services (FINS) Petition could be filed to allow proper alignment of the parties. FINS proceedings bear similarities to the CINC proceedings with some minor differences. For example, the Children's Code does not directly address the parents' right to appointment of counsel, CASA is not usually involved, and the parties may be aligned differently.

As stated above, the court shall order the child adjudicated in need of care if it finds the Articles 646.1 and 647 stipulation requirements were met and there is a factual basis for Adjudication. Again, the Order should clearly include which provision(s) in Article 606(A) is the basis of the Adjudication. Otherwise, a stipulation will not have been knowing and voluntary. In addition, the grounds help guide the development of the case plan or safety plan if either is needed. All parties should understand the parental behavior and safety issues that must be remedied for DCFS involvement to end.

The foster caregivers have a right to be heard at any CINC hearing regarding a child in their care. They may have valuable information to share with the court at Adjudication about the needs of the child and, if present, should be heard.

The court may make additional orders at the Adjudication Hearing that are in the best interest of the child. Article 309 gives the court continued jurisdiction over visitation in all CINC proceedings. Visitation planning and scheduling should occur for the child and parents, grandparents, siblings, relatives, and other important individuals to the child. The court retains authority to make other orders as needed, such as those related to the child's education, paternity or maternity, necessary services, and/or to promote the child's well-being.<sup>8</sup>

The court may order that physical and/or mental health evaluations<sup>9</sup> be conducted on the parent and/or the child in advance of the Disposition Hearing. If the court so orders, these evaluations should be provided to counsel in advance of the Disposition Hearing.

The Children's Code also allows for a Predisposition Investigation to be conducted by DCFS at this juncture of the CINC case. Although not widely used, they can be helpful in informing the decisions that must be made at the Disposition Hearing. For example, a Predisposition Investigation would provide the court with a thorough assessment of relatives and other significant individuals who may be available to accept custody and/or guardianship of the child, which could assist when choosing the most appropriate dispositional alternative. While the court report that is submitted by DCFS in advance of the hearing should include some of this information, a report from a Predisposition Investigation may be more comprehensive.

<sup>7</sup> See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

<sup>8</sup> La. Ch. C. art. 318.

<sup>9</sup> La. Ch. C. art. 669.

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Any relatives and/or individuals who may be willing and able to take custody and/or guardianship of the child need to be assessed at the earliest juncture possible in CINC cases and by the time of the Disposition Hearing. The court may have ordered DCFS to conduct a child welfare background clearance, criminal background check, and/or assessment on the home or home study on a relative or other individual at a previous hearing, for example. If not, the court may want to consider doing so in the Adjudication Order.

In addition, if there are out-of-State relatives or other individuals who may be potential placements for the child, DCFS should have initiated the Interstate Compact on the Placement of Children (ICPC) process. There are certain circumstances where the court can order DCFS to request expedited placement of a child from Louisiana into another State, although the receiving State may not honor this request.

An attorney or the court is responsible for the completion of the Adjudication Order. All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing.

#### G. ENGAGING THE PARTIES

It is important to make sure the parents and children present are engaged and understand what is happening at the Adjudication. The CINC process is complicated and confusing to all who have never been involved in case. Judges should ask if the parties understand what the hearing is about and the consequences of the ruling. While judges are sometimes concerned about engaging with parties, the truth is that families who are engaged in the CINC process fare much better than those who are not.<sup>10</sup> Engaging parties can be hard to do and requires patience. But parents and children are more likely to respond to encouragement, positive feedback, and being heard.<sup>11</sup>

The court should consider giving the attorneys a little time to meet with their clients at the conclusion of the Adjudication Hearing. Parents and children may have questions and concerns after the hearing. It is best for the family if immediate issues can be addressed while they are still at court.

#### H. NEXT STEPS

The Disposition Hearing may be conducted immediately after the Adjudication, but must conducted no later than 30 days after the Adjudication. Upon setting the matter for Disposition, the court should order that the case plan be filed with the court 10 days prior to the Disposition Hearing and copies of the case plan be provided to counsel by mail or email and unrepresented parties by certified mail or email per Article 674. In addition, per DCFS Policy, the court report for the Disposition should also be filed 10 days prior to Disposition and copies provided to counsel, unrepresented parties, and CASA. As with all CINC hearings, incarcerated parents have a right to be present at the Disposition Hearing. Arrangements for incarcerated parents to attend the Disposition Hearing must be made prior to the hearing, either in person or remotely.

<sup>10</sup> Parent advocates" (sometimes called "parent mentors" or "parent partners") are parents who have successfully gone through the CINC process and regained custody of their children and can also help engage parents who have an open CINC case. There is credibility and an understanding that comes with having personal experience with a CINC case. This is one reason why a multidisciplinary representation model, a model that provides peer support to parents and children (i.e., parent advocate or former foster youth) in addition to an attorney and/or social worker, has proven to be beneficial in Orleans Parish and in other States. For more information about the multidisciplinary representation model, please see <a href="https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/january----december-2019/providing-parents-multidisciplinary-legal-representation-signifi/.">https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/january---december-2019/providing-parents-multidisciplinary-legal-representation-signifi/. The Extra Mile in Lafayette has a stand-alone Parent Partner program: <a href="https://theextramileregioniv.com/ftc/">https://theextramileregioniv.com/ftc/</a>.

<sup>11</sup> See Sankaran, Vivek. "My Name Is Not 'Respondent Mother': The Need for Procedural Justice in Child Welfare Cases." ABA Child L. Prac. Today. 2018, <a href="https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2992&context=articles: see also https://www.ncifci.org/child-welfare-and-iuvenile-law/trauma-informed-courts/">https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2992&context=articles: see also https://www.ncifci.org/child-welfare-and-iuvenile-law/trauma-informed-courts/</a>.

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## **OVERVIEW**

#### A. PRIOR TO HEARING

ARTICLES 646, 646.1, 647, 659-67

Timeliness of the Adjudication Hearing is critical. The Children's Code only allows for continuances in extraordinary circumstances and for a maximum of 5 days. For this reason, it is important for the court to take steps in advance of the Adjudication Hearing to ensure that the hearing will go forward in a timely fashion.

#### (1) Prehearing Conference:

A Prehearing Conference must be convened for a parent to stipulate to Adjudication. In addition, the court may want to consider convening a Prehearing Conference before the hearing commences to address any of the following:<sup>12</sup>

- · Alternatives to formal court proceedings and/or other prevention mechanisms such as an IAA;
- Efforts to identify and locate an absent parent;
- · Paternity or maternity;
- Whether interpreters or special accommodations are needed;
- Simplification of the issues, including the elimination of frivolous claims or defenses;
- · Amendments to the Petition;
- Child's presence at hearings;
- Material facts and issues without controversy and controverted;
- · Proof, stipulations regarding the authenticity of documents, admissibility;
- Expert testimony;
- · Discovery;
- · Identification of witnesses, documents, exhibits; AND
- Other such matters as may aid in the disposition of the action.
- The Prehearing Conference may be attended by the district attorney (DA), DCFS, counsel for all parties, unrepresented parties, and such other persons as the court deems proper.
- The court shall render a <u>separate Order</u> reciting the action(s) taken at the Prehearing Conference. It is not sufficient to merely state that the Prehearing Conference occurred. See Article 646.1(C).

#### PRACTICE TIPS:

- o **Stipulation:** One of the requirements for a parent to stipulate that the child is in need of care is that a Prehearing Conference is held in accordance with Articles 646.1 and 647.
- o **Purpose:** Best practice is to hold a Prehearing Conference, even if it is not required by a stipulation. Such conferences have demonstrated effectiveness in reducing decision-making delays, discouraging procrastination by counsel, and providing opportunities to discuss alternatives to formal court proceedings and/or the early resolution of issues that might otherwise result in continuances or other delays.
- o **Before Adjudication Hearing:** If a Prehearing Conference was held at the Answer Hearing or subsequent thereto, the court will have rendered a separate Order of the actions that have or will be taken. Prior to the Adjudication Hearing, the court should confirm that any steps outlined in that Order have been completed.

<sup>12</sup> Gatowski, supra note 1, at 61 (Many jurisdictions use pre-adjudicatory settlement conferences to facilitate non-trial resolutions of contested matters)

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- **(2) SUBPOENAS:** If witnesses have been subpoenaed for the Adjudication Hearing, the court should determine in advance whether the subpoenas have been properly served. Otherwise, the Adjudication Hearing may be delayed.
- (3) PROPER NOTICE AND LOCATION OF PARENTS: The court must ensure that the parties receive proper notice of the Adjudication. It is the responsibility of DCFS to provide updated information to the court and counsel regarding the location of all known parents. If a parent is incarcerated and DCFS does not so advise the court and parties, then the proper orders may not be in place in advance of the hearing to ensure the parents attendance.

#### **B. TIMING AND CONTINUANCES**

ARTICLES 635, 659, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

#### (1) TIMING:

- **In Custody:** If the child is in continued custody pursuant to Article 627, the Adjudication Hearing shall commence within 45 days of the filing of the CINC Petition (See Article 114).
- **Not in Custody:** If the child is not in custody pursuant to Article 627, the Adjudication Hearing shall commence within 105 days of the filing of the CINC Petition.<sup>13</sup>
- **Not Timely Commenced:** If the hearing has not been commenced timely, upon motion of the child, the court shall release a child continued in custody and may dismiss the CINC Petition.

#### **HELPFUL GUIDANCE:**

- o Timing: Because of these time constraints, it is important that all discovery be completed, and all motions are timely filed.
- o **Scheduling:** Courts retain the ability to schedule hearings to occur earlier than maximum allowable timeframes and should do so whenever practicable and in the child's best interest.

#### (2) CONTINUANCES:

- **Requirements:** The court may grant, deny, or condition a requested continuance of the Adjudication Hearing for up to an additional 5 days:
  - After notice to the opposing party;
  - · Upon showing of good cause; AND
  - In extraordinary circumstances.
- If a continuance is granted, the court shall:
  - Issue a written Order:
  - · Identifying the mover; AND
  - Reciting the particular facts justifying the continuance.
- Report to Louisiana Supreme Court (LASC): If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children's Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See <a href="https://www.lasc.org/children\_families/timelinessreport.pdf">https://www.lasc.org/children\_families/timelinessreport.pdf</a> for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

<sup>13</sup> In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

#### **PRACTICE TIPS:**

- Amendment of Petition: If the court allows the CINC Petition to be amended per Article 635, the child or parent may request a continuance of the Adjudication Hearing. A continuance may be granted for such period as is required in the interest of justice.
- o **Contempt:** The contempt articles are always available to the court, if for example, delays are due to individual or agency action or inaction (Articles 1503 et seq.).

#### **HELPFUL GUIDANCE:**

- Extraordinary Circumstances: The standard of "extraordinary circumstances" is used to underscore the importance of expeditious decision-making.
- Adoption and Safe Families Act of 1997 (ASFA): One of the major reform goals of ASFA is to expediate court
  proceedings so that earlier determinations affecting the child's health and welfare occur. Thus, Article 659 only
  authorizes a single continuance of 5 days. See Article 114 for more information about computation of time.

#### C. APPEARANCES AND APPOINTMENTS

ARTICLES 575, 607-8, 623, 635.1-645, 661

(1) PROPER INTEREST OR NECESSARY: At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

#### **HELPFUL GUIDANCE:**

o **Privacy and Confidentiality:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

#### (2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS:

Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case. There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding. Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.

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<sup>14</sup> See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also <a href="https://www.lasc.org/language\_access">https://www.lasc.org/language\_access</a> and <a href="https://www.lasc.org/District\_Court\_Rules?p=Title1">https://www.lasc.org/District\_Court\_Rules?p=Title1</a>

<sup>15</sup> See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <a href="https://www.interpretereducation.org">https://www.interpretereducation.org</a>

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- (3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.
  - **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
  - Below 12: If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
  - Waive: The court shall state in the Order whether or not the court waived the presence of the child at the hearing.

#### **HELPFUL GUIDANCE:**

- o Waiving Presence at the Hearing: The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- o Importance of Presence at the Hearing: Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about the case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child's school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.
- o Remaining in the Courtroom: Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child's presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone he/she trusts. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering. To Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court. Some courts provide a therapy dog to help emotionally support children in court. The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

<sup>17</sup> Gatowski, supra note 1, at 72.

This article provides more information about the Calming Studio: https://www.shreveporttimes.com/story/news/2019/07/24/caddo-parish-juvenile-court-calm-room-studio/1804662001/; see also this video: https://www.youtube.com/watch?v=URA4WtXqu1M.

<sup>19</sup> These articles provide more information about how therapy dogs have been used in courts: <a href="https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article-%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html">https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article-%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html</a> See also LA. Rev. Stat. § 15:285, which allows for witnesses who are either under 18 years of age or who have a developmental disability as defined by LA. Rev. Stat. § 28:451.2 to have a facility dog, if available, accompany them while testifying in court.

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#### **PRACTICE TIPS:**

- o **Effect of Nonappearance by a Parent:** If it appears from the record that a parent has been served in accordance with Article 640 or 641 and summoned to any hearing, and that parent fails to appear at the hearing, the court shall permit the hearing to be held in that parent's absence.
- o **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the Adjudication Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Adjudication Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).

#### (5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
  - **Right to Counsel:** The parents of a child who is the subject of a CINC proceeding shall be entitled to qualified, independent counsel at the CCH and at all stages of the proceedings thereafter.
  - **Found to Be Indigent:** The court should determine whether it needs to make a finding of indigency for one or both parents. If a parent is found to be indigent (financially unable to afford counsel) and the parent has not previously been appointed counsel, the court shall order that the parent be referred to the Indigent Parents' Representation Program (best practice is to refer the parents to the local Public Defender Office, see Article 575) and that the program or office shall provide representation and be given notice of appointment and served with notice and a copy of the pleadings.
  - **Waiver of Right to Counsel:** A parent may waive his/her right to qualified, independent counsel. However, before accepting a waiver of counsel, the court shall ensure that the parent was informed of his/her rights enumerated under Article 608 and the possible consequences of this waiver. The court should exercise caution in any request to waive the right to counsel.

#### HELPFUL GUIDANCE:

- o **Appointment:** Generally, attorneys for the parents should have been previously appointed. However, there may be instances where an attorney still needs to be appointed for a parent at the Adjudication Hearing. For example, a parent found to be indigent may have previously waived his/her right to an indigent defense attorney but was unable to retain a private attorney. Also, a parent may have been recently identified, in which case, he/she would have a right to an appointed attorney if indigent.
- o **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the parents prior to the hearing.
- o **Due Process:** Protecting the interest of the parent is an important role of the parent's attorney and ensures due process for the parent. The parent's attorney should zealously advocate for the parent whether the parent is present or not.
- o **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in representation of parents at all junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.

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- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607)<sup>20</sup>
  - **Appointments:** The program for child representation should have already been appointed. If it was not, the court shall order that the program approved to represent the child in that jurisdiction be appointed to represent children in all CINC proceedings and be given notice of appointment and served with notice and a copy of the pleadings.

#### **HELPFUL GUIDANCE:**

- o **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the child prior to the hearing.
- o **Due Process:** Protecting the legal interest of the child is an important role of the child's attorney and ensures due process for the child. The child's attorney should zealously advocate for the child's wishes whether the child is present or not.
- o **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children at all junctures in the case. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child's attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings' wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.
- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) representing the State should be present at the hearing.
- (6) **DCFS:** A DCFS staff member or representative(s) should be present at the hearing.
- (7) **CASA:** For confidentiality reasons, CASA should only be present at the hearing if the court appointed them.
  - **Appointments:** : If CASA was not previously appointed, the court should order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).
- (8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or preadoptive parents) providing care for the child have a legal right to receive notice of and be present at the Adjudication hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. See Continued Custody Hearing (CCH) Benchbook Section 5 G(5) for more information.<sup>21</sup>
- (9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:
  - Authorized officers of the court: As designated by the judge may be present at the hearing.
  - Witnesses: Under examination may be present at the hearing.

#### D. NOTICE AND SUMMONS

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

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL OF RECORD: Written notice of the date, time, and place of the Adjudication Hearing shall be served and return made in the same manner as the Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. See <u>Answer Hearing Benchbook Section 6 D</u> and Articles 635.1-645 for more information.

<sup>20</sup> LA. SUP. CT. RULE XXXIII, PART III.

<sup>21</sup> See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

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#### (2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- Notice and Right to Be Heard: The court shall determine whether DCFS:
  - · Gave notice of the date, time, and place of the Adjudication Hearing to any foster caregiver providing care for the child; AND
  - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

## E. ESSENTIAL JUDICIAL FINDING: INDIAN CHILD WELFARE ACT (ICWA)

ARTICLES 624-624.1, 661.1, 25 U.S.C. § 1902

- (1) INQUIRY: The court shall ask each person before the court and make a record of the answer in the Adjudication Order for each child:
  - As to whether they know or have reason to know that the child is a member of a Federally recognized Indian Tribe or eligible
    for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian
    Tribe; AND
  - To inform the court if they subsequently discover information indicating that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe.
- (2) **REASON TO KNOW:** If the court has reason to know that a child is an Indian child or is eligible for membership in a Federally recognized Indian tribe, the court shall immediately proceed pursuant to the Federal ICWA and the regulations promulgated thereunder. See the <u>Indian Child Welfare Act (ICWA) Bench Card</u> in <u>Appendices Benchbook Section 12</u>.
- (3) **FAILURE TO VERIFY:** If a Tribe fails to respond to multiple requests for verification that the child is an Indian child and the court or DCFS has sought the assistance of the Bureau of Indian Affairs in contacting the Tribe, the court may make the determination that the child is not an Indian child based on the information it has available and proceed to Adjudication in accordance with the Louisiana Children's Code.
- **(4) INVALIDATION OF PROCEEDINGS:** Noncompliance with the provisions of ICWA may result in invalidation of the proceedings, including any subsequent adoption.

#### **HELPFUL GUIDANCE:**

- o **Federally Recognized Tribes:** Not all Indian Tribes are Federally recognized. For example, only 4 of Louisiana's Indian Tribes are currently Federally recognized tribes: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and the Tunica-Biloxi Indian Tribe of Louisiana. But ICWA will apply if the child belongs to any "Federally recognized" tribe (even outside of Louisiana).
- o **Eligibility:** Be cognizant that there are specific membership qualifications that make one a member or eligible to be a member of a Federally recognized Indian Tribe. For example, sometimes, a parent may not realize that a marriage in their family made their child eligible for such membership. Self-identification as an Indian, race, and/or the child's features are not sufficient to meet the membership criteria.
- o **Active Efforts:** Efforts involved in ICWA are very different from the reasonable efforts required by ASFA. Active efforts are required, and they are affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with his/her family. This is yet another reason why courts must proceed pursuant to ICWA and the regulations promulgated thereunder if the court finds that there is reason to know that the child is an Indian child.<sup>22</sup>

For more information on ICWA, please see <a href="https://clarola.org/index.php?option=com\_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116;">https://clarola.org/index.php?option=com\_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116;</a> see also Murphy, Bob.

(2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children's Rights Litigation, <a href="https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm\_medium=email&utm\_source=salesforce\_353772&sc\_sid=00265681&utm\_campaign=MK20CNTT&promo=MKCONTENT1&utm\_content=&additional4=&additional5=&sfmc\_j=353772&sfmc\_s=52961351&sfmc\_l=2198&sfmc\_jb=4007&sfmc\_mid=100027443&sfmc\_u=10232975.

#### F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- · Americans with Disabilities Act (ADA);
- Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR
- Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.
  - PICPC Generally: ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See <u>Disposition Hearing Benchbook Section 8 E</u> for more information on ICPC.

#### G. EVIDENCE AND TESTIMONY

ARTICLES 660-665, LA. SUP. CT. RULE XXXIII, PART II, SUBPART II

#### (1) EVIDENCE

- a. Order: The order of presenting evidence at the hearing is set by the court.
- b. **No Jury:** The Adjudication Hearing shall be held before the court without a jury.
- c. **Rules of Evidence:** Unless otherwise provided in the Children's Code, the Adjudication Hearing shall be conducted according to the rules of evidence applicable to civil proceedings.
- d. **Hearsay:** Hearsay evidence is not admissible at the Adjudication Hearing unless it fits within one of the established exceptions to the hearsay rule or otherwise allowed in the Children's Code.
- e. **Videotape:** The court may consider as evidence any videotape which is prepared in compliance with Chapter 8 of Title III of the Children's Code and relevant to the proceeding.
- f. **Criminal Convictions:** Evidence of a prior criminal conviction shall be admissible in proceedings brought under Title VI of the Children's Code to prove allegations made under Article 606. Such proof shall be by certified copy of the judgment of conviction or certified copy of the minute entry of conviction in accordance with the Louisiana Code of Evidence.
- g. **Evidence of Child Abuse and Neglect:** Testimony or other evidence relevant to the abuse or neglect of a child or the cause of such condition may not be excluded on any ground of privilege, except in the cases of confessions or communications between an attorney and his client or confidential communications between a priest, rabbi, duly ordained minister, or Christian Science practitioner and his confidential communicant.

#### **PRACTICE TIPS:**

- o **Presentation of Evidence:** This Article is a departure from the normal rules of procedure whereby the parties to the action control the order of presentation of the evidence. The reason for placing the responsibility for the order of trial with the court is to ensure that the hearing is conducted efficiently and fairly in light of the fact that the State, the parents, and the child may each be represented by counsel. The lawyer for the child may be aligned with the State or the parents or neither, depending on the particular facts in the case. Thus, a pre-set order of the trial may be unworkable.
- o **Attorney-Client and Clergymen Privilege:** The only testimonial privilege that may be claimed in a CINC proceeding is the attorney-client privilege and the communicant to clergymen privilege.

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- (2) **STATE:** The State has the burden of proving the allegations of the CINC Petition by a preponderance of evidence.
- (3) PARENTS: Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- (4) CHILDREN: Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
  - **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.<sup>23</sup>
  - Methods of Testimony: Any testimony given by a child may be taken by:
    - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
    - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
    - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present." <sup>24</sup>
  - **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

#### **PRACTICE TIPS:**

- o Child Present or Not: Whether present or not, the child's attorney shall make sure the court hears the child's wishes.
- Methods of Communication: If the child wishes to be heard but is not able to present or does not want to be present
  in the courtroom, the court should consider the use of other methods of communication, such as audio or visual
  conferencing.
- o **Well-Being:** Although this is the Adjudication, the court should still inquire about the child's physical, emotional, and mental health and educational needs and identify any gaps in services needed by the child.

(5) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment<sup>25</sup> of the child from any foster caregiver providing care for the child who appears for the Adjudication Hearing.<sup>26</sup>

#### **PRACTICE TIPS:**

- o Valuable Information that Must be Considered: The court should value the role of the child's daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child's well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- o **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver progress form to DCFS prior to the hearing or (2) attend and speak at the hearing, or both.

<sup>23</sup> LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

<sup>24</sup> Watermeier v. Watermeier, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

<sup>25</sup> Neither State nor Federal law provides a definition for "care and treatment of the child," but DCFS policy states that it "includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child."

<sup>26</sup> See La. Ch. C. art 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

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- o **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the <u>Foster Caregiver Progress Form Template</u> in the <u>Appendices Benchbook Section 12</u>.
- o **Speak at the Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties and evidence is presented, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.<sup>27</sup>
- **(6) OTHER WITNESSES:** On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

#### **PRACTICE TIPS:**

- o **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. (ARTICLE 661(E)).
- o **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff member or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).
- o **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding the child in their care, they may be excluded and asked to be present only when they speak. The caregiver's presence at the hearing may also better situate them to support the child during and after the hearing.<sup>28</sup>
- o **Exemption:** In the interest of justice, the court may exempt any witness from its order.

#### OVERALL GUIDANCE:

• **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings. <sup>29</sup> Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parent and children that their testimony is being given due consideration in the court's ruling. Positive engagement is critical to successful outcomes in the case.<sup>30</sup> Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.<sup>31</sup>

<sup>27</sup> Id.

<sup>28</sup> Id

<sup>29</sup> Gatowski, supra note 1, at 68.

<sup>30</sup> Id.

<sup>31</sup> Gatowski, supra note 1, at 16.

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#### H. PATERNITY OR MATERNITY

#### The court should make a finding as to whether or not:

Paternity or maternity has or has not been established pursuant to Louisiana law as to each child in the case.

#### **PRACTICE TIPS:**

- o **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- o **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- o **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

#### **HELPFUL GUIDANCE:**

- o **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- o **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

#### I. FINDINGS AND ORDERS

ARTICLES 646.1, 647, 649, 666

• ESSENTIAL JUDICIAL FINDING AND ORDERS – ADJUDICATION: Following the Adjudication Hearing, unless taken under advisement, the court shall immediately declare whether the evidence warrants a child in need of care Adjudication based upon one or more grounds codified in Article 606(A). The court shall make the following written, separate, and individualized findings and orders for each child:

#### (1) **DISMISS PETITION:** If the court finds that the evidence demonstrates that the:

- Child is neither a child in need of care NOR the child's family in need of services;
- The court should order that the Petition be dismissed.

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#### **PRACTICE TIPS:**

- o **Custody:** If the court dismisses the Petition, the child's custody arrangement generally reverts to the status prior to DCFS involvement.
- o **Allegations as to One Parent:** Petition makes allegations regarding one parent and not the other (although the Petition should address all parents). Still, the court shall make a determination as to whether the State proved the child should be adjudicated in need of care by a preponderance of evidence. The court should consider the other parent's circumstances and relationship with the child in its determination. If the court adjudicates the child in need of care based on the evidence presented, the matter of custody to the other parent would then be determined at Disposition. There is considerable case law in this area. See, for example, In Re State in Interest of Thoman, 253 La. 496, 218 So. 2d 571 (1969), Wood v. Beard, 290 So. 2d 675 (La. 1974), and State ex rel. P.D.J., 200 So.3d 916 (La. App. 2016).<sup>32</sup>

#### (2) ADJUDICATE CHILD IN NEED OF CARE:

#### a. STIPULATION:

- **Prehearing Conference:** Per Articles 646.1 and 647, the parents may stipulate that the child is in need of care according to Article 606(A), with or without admitting the allegations of the Petition if:
  - The Petitioner and DCFS approve the stipulation;
  - A Prehearing Conference was convened in accordance with Article 646.1;
  - The parent stipulating personally appears;
  - The court fully informed the parent of his/her rights according to Article 625;
  - The court fully informed the parent of the consequences of the stipulation, including his/her responsibility to comply with the case plan and correct the conditions requiring the child to be in care;
  - The parent knowingly and voluntarily consents to the judgment.<sup>33</sup>

#### Findings:

- **Allegations of the Petition:** After the requirements for Articles 646.1 and 647 have been met, the court may find and enter into the Order that:
  - The parent stipulates that the child is in need of care according to Article 606 and knowingly and voluntarily consents to Adjudication;
  - · With OR without admitting the allegations of the Petition; AND
  - After being advised of his/her rights by the court and his/her attorney.
- **For Factual Basis and Admission:** If the parent stipulates, the court shall determine and enter into the Order whether the allegations form a factual basis for finding the child in need of care and whether the parent denies or admits the allegations.
- **Order:** If the court finds the stipulation requirements per Articles 646.1 and 647 were met and there is a factual basis for the Adjudication; the court shall adjudicate the child in need of care and include the specific provision(s) in Article 606(A) (1-8) that form the basis for Adjudication.

#### **PRACTICE TIP:**

o Include in Adjudication Order: Best practice is to include in the Order the date the Prehearing Conference was convened.

<sup>32</sup> See also State ex rel. P.D.J., 200 So.3d 916 (La. App. 2016), where the court states: "La. Ch. C. art. 627 states that, following a hearing, the court may return the child to the parents or, in accordance with La. Ch. C. art. 622 dealing with placement of children pending a continued custody hearing, may place the child in the custody of a suitable relative, other suitable individual, or DCFS." In this case, the juvenile court determined that the children should not be returned to the mother at that point, but that placement with the father was suitable. Contrary to the arguments made by the mother, the placement of custody with the father did not end the CINC proceedings. It was merely a step in the process.

Parents' attorneys are guided in their practice by the Louisiana Public Defender Board "Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases," <a href="http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/2011%20CINC%20Standards.pdf">http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/2011%20CINC%20Standards.pdf</a>. Those standards state: "The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his/her client at all stages of the process." Judges play an important role in helping to ensure due process for all parents in their courts.

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#### **HELPFUL GUIDANCE:**

- o **Purpose of Stipulation:** The purpose of the stipulation is to provide an alternative to parents who wish to stipulate that the child is in need of care rather than defend themselves at a trial.
- o Requirements of Stipulation: The requirements of ARTICLES 646.1 AND 647 uphold the due process rights of parents. The advisements are similar to the instruction that must precede the acceptance of a guilty plea in a criminal prosecution to ensure that it is knowingly and voluntarily made. The prerequisite of consultation at a Prehearing Conference seeks to ensure that a parent's stipulation is both voluntary and intelligent and in the best interest of the child. The prerequisite of court instruction about continuing parental responsibilities is parallel to ARTICLE 682, which imposes similar requirements upon the court when entering or confirming an order removing the child from parental custody following a formal hearing and Adjudication.

#### b. ALLEGATIONS PROVED BY STATE:

- **Findings and Order:** If the court finds that the State proved the allegations set forth in the Petition by a preponderance of evidence, the court shall order that the child be adjudicated in need of care and include the specific provision(s) in Article 606(A) (1-8) that form the basis for Adjudication.
- **(3) DISMISS CERTAIN ALLEGATIONS IN PETITION:** If the court finds that the State did not prove allegations of the Petition by a preponderance of evidence, the court shall include in the Order:
  - Which grounds in Article 606(A) were not proven by the State.

#### **PRACTICE TIP:**

- o **Adjudicate if One or More Grounds Proven:** If the court finds the State proved one or more of the grounds in 606(A), the child shall be adjudicated in need of care.
- **(4) TAKE UNDER ADVISEMENT:** If the court finds that there are exceptional circumstances warranting the court's advisement, the court shall include in the Order that:
  - · Considering the exceptional circumstances, the court will take the matter under advisement for a maximum of 10 days.
- (5) ADJUDICATE THE CHILD'S FAMILY IN NEED OF SERVICES: If the court finds that the evidence demonstrates that the child is not a child in need of care, but that the child's family is a family in need of services, the court may order that the:
  - Child's family be adjudicated in need of services.

#### **PRACTICE TIPS:**

- Considerations: While the child's family may be adjudicated as a family in need of services at the Adjudication Hearing, best practice may be to dismiss the case, and a FINS Petition could be filed to allow for proper alignment of the parties.
   FINS proceedings bear similarities to the CINC proceedings with some minor differences. For example, the Children's Code does not directly address the parents right to appointment of counsel, CASA is not usually involved, and the parties may be aligned differently. See Title VII of Children's Code.
- Distinguishing Between DCFS Family Services and FINS: DCFS Family Services is a program provided by DCFS to support families in keeping their child safe in their home. FINS is not a program provided by DCFS and is governed by Title VII of the Children's Code.

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#### OVERALL GUIDANCE:

- **Specific Ground(s) for Adjudication:** The Adjudication Order should delineate the specific ground(s) from Article 606(A) upon which the court bases its finding for Adjudication and should, where appropriate, describe precisely the conduct of the parent the court is relying upon. For example, if finding the child in need of care under 606(A)(5), that the conduct of the parent constitutes a crime against the child, the court should articulate the conduct and which crime. This clarity on the part of the court gives the parent notice of the basis of the Adjudication, consistent with due process, and helps guide the formation and implementation of the case plan or safety plan accordingly.
- **Petition for Child's Custody:** Once a child has been found in need of care, the question of future custody to another parent or caretaker is an issue of Disposition. Thus, if a relative or other person has filed a petition for custody of the child, the resolution of that claim is properly reserved for the Disposition Hearing.
- Change in Disposition: After hearing the evidence presented at the Adjudication Hearing, the court may determine that the child could safely be returned home on the date of the hearing (See <a href="CWADM">CHILD REPORT OF THE PROPERTY O

#### J. FURTHER ORDERS

ARTICLES 102, 309, 318, 601, 627, 668-70, 674, 42 U.S.C. § 671

Upon adjudicating the child in need of care, the court may make additional orders in the best interest of the child, such as:

(1) **PREDISPOSITION INVESTIGATION AND REPORT:** Order that a Predisposition Investigation be conducted in accordance with Article 668 by DCFS and, if completed by DCFS, a written report of the investigation and findings be submitted to the court prior to the Disposition Hearing.

#### **HELPFUL GUIDANCE:**

- o **Purpose:** One of the purposes of the Predisposition Investigation is to evaluate the various possibilities for the child's placement, including the alternatives enumerated in Article 681. See <u>Disposition Hearing Benchbook Section 8 (A)(4)</u> for more information.
- (2) PHYSICAL AND/OR MENTAL HEALTH EVALUATION AND EXAMINATIONS: Order physical and/or mental health evaluations and examinations be conducted in accordance with Article 669 on the parents and/or child if they may be helpful in determining a fair and just Disposition. The court should advise that the examinations are to be filed with the court at least 10 days prior to the Disposition Hearing with a copy to counsel of record and unrepresented parties.

#### **PRACTICE TIPS:**

o **Contribution:** The court should give the parents a reasonable opportunity to be heard as to whether they have the ability to contribute to the cost of an ordered physical or mental health examination. If the court finds that the parents have the ability to contribute after being heard, the court should order the parents to do so.

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 Poverty: The court should be aware that many child neglect cases are inextricably linked to poverty. The court should be mindful that contributions to the cost of an evaluation may be a significant barrier to reunification when the family lives in poverty.<sup>34</sup>

#### (3) POTENTIAL PLACEMENTS:

- Order DCFS to explore all possible relative or individual caregivers (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented at a subsequent hearing;
- Order DCFS to initiate a child welfare background clearance, criminal background check, and/or assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at a subsequent hearing;
- Order DCFS to take necessary steps for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
- Order DCFS to initiate ICPC process for potential placement with any identified out-of-State relatives or individuals. See
   <u>Disposition Hearing Benchbook Section 8 E</u> for more information on ICPC.

#### **HELPFUL GUIDANCE:**

- o **Continued Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See <u>Appendices Benchbook Section 12</u> for the <u>Family Connection Form</u> and <u>Circle of Influence Form</u> DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees" to help identify potential caregivers.
- o Preference to Relatives Per Federal Law: For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards." Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.

 $<sup>34 \</sup>quad \text{For more information on the linkages between child welfare and poverty, see: } \underline{\text{https://www.childwelfare.gov/topics/can/factors/.}}$ 

<sup>35 42</sup> U.S.C. § 671(a)(29).

See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/reunify.pdf">https://www.childwelfare.gov/pubPDFs/reunify.pdf</a>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, <a href="https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/child\_law\_practice/vol-35/july-2016/judicial-tip-sheet--kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <a href="https://www.casey.org/kin-first-approach/">https://www.casey.org/kin-first-approach/</a>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <a href="https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx">https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx</a>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/placement.pdf">https://www.childwelfare.gov/pubPDFs/placement.pdf</a>.

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- o **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as "fictive kin," "suitable persons," or "suitable individuals"). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family or has a relationship with. It is important to consider the child's culture, heritage or customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their "auntie" even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- o Child Specific Certification: DCFS provides "child specific" foster care certification for a relative or other individual with whom the child is placed or being considered for placement. The certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board rate (monthly financial support) like a certified foster parent. If the relative or individual is interested in becoming the child's legal guardian, the certification would have to be completed (along with other DCFS requirements) to receive a subsidy after a transfer of guardianship. The child can be placed with the relative or suitable person prior to completion of the certification but they will not receive retroactive financial assistance. However, if the child receives disability or survivor benefits, this would be in place of the monthly board rate (they can choose the higher of the amount). If applicable, the court may want to request updates on status of certification to ensure timely completion.
- (4) VISITATION/FAMILY TIME: Court has authority to specify visitation/family time between the child and his/her parents, siblings,<sup>37</sup> family members, or others who matter to the child pending the Disposition. The safety and well-being of children should always be paramount in considerations of family time. Visitation planning and scheduling should be an ongoing assessment of the child's established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in the child's life. Judges should ensure the plan for family time is in the best interest of the child, individualized, and promotes permanency. If siblings (including half-siblings and those the child considers siblings) are not placed together, the court should order (when appropriate for the child and safe to do so) that the visitations/family time between the siblings take place in addition to the family visits. For more helpful guidance on visitation/family time, see Continued Custody Hearing (CCH) Benchbook Section 5 M(1).
- (5) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

#### **PRACTICE TIP:**

o **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including the tentative date in the Order helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

#### **HELPFUL GUIDANCE:**

Purpose: FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for
the family. FTMs are where parents and children and other stakeholders and supports give input on the services and
assistance needed and to be provided.

<sup>37</sup> See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, https://www.childwelfare.gov/pubPDFs/siblingissues.pdf.

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**(6) OTHER ORDERS:** The court may also make orders related to paternity or maternity, child's education, services, Protective Orders (PO), and placement of the child when he/she is in DCFS custody (Article 672(A)(2)), etc.

#### K. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 674-7

Upon adjudicating the child in need of care, the court shall also include the following in the order:

- (1) **FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA (if appointed) be present at all future hearings.
- (2) **CASE PLAN:** DCFS shall file case plan with the court at least 10 days prior to the Disposition Hearing and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met. See <u>Disposition Hearing Benchbook Section 8 A (1)</u> for more information.
- (3) **COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Disposition Hearing and provide copies to CASA, counsel, and unrepresented parties (Although Children's Code is silent on submission of the court report for the Disposition Hearing, DCFS policy requires court reports to be filed for hearings beginning at Disposition). See <u>Disposition Hearing Section 8 A(2)</u> for more information.
- (4) **COURT REPORT FILED BY CASA:** CASA file its court report prior to the Disposition Hearing and shall distribute a copy of such report prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS. See <u>Disposition Hearing Section 8 A(3)</u> for more information.
- (5) SET MATTER FOR DISPOSITION HEARING:
  - · Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
  - Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
  - DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations; AND
  - · Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
  - DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.

#### **PRACTICE TIPS:**

- o **Timing of Disposition Hearing:** The court should ask if parties have an objection to holding the Disposition Hearing immediately after the Adjudication. Time may be needed to resolve paternity or maternity issues; conduct medical, sensory, psychological, or psychiatric examinations; obtain evidence; secure witnesses; further investigate placement possibilities; file case plan and court reports; etc.
- Include Other Agencies: Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice
  (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider
  having one or more represented at the Disposition Hearing. This multi-disciplinary approach could be especially critical for
  youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated
  services and supports.
- o Notice or Schedule Hearings in Open Court: The court may schedule future hearings and serve notice in open court.

(6) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend hearing, either in person or remotely.

#### L. CASE MANAGEMENT

#### (1) ENGAGEMENT:

- Specifically, ask parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- · Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for caseworkers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet very briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

#### (2) PREPARATION FOR NEXT HEARING:

- Identify tasks to be accomplished by the various parties for the next hearing.
- · Make oral findings and orders that all participants can understand.
- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the Adjudication Order. See Adjudication Order Template.
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the
  proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

#### M. POSSIBLE NEXT STEPS

ARTICLES 330, 622(D), 631, 667-8, 681, 683, 700, 710

(1) **SPECIAL MOTIONS AND DISCOVERY:** Articles 635 and 651-658 provide various motions and discovery that can take place between the filing of the Petition and the Adjudication and Disposition Hearings.

#### (2) DISPOSITION HEARING:

- **Timing:** The Disposition Hearing may be conducted immediately after the Adjudication and shall be conducted within 30 days after the Adjudication.
- **Continuance:** After notice to the opposing party and upon a showing of good cause, the court may grant, deny, or restrict a requested continuance of the hearing in accordance with the best interests of the child. If a continuance is granted, the court shall issue a written Order identifying the mover and reciting the particular facts justifying the continuance.

#### (3) VACATION OF ADJUDICATION:

- **Motion:** On motion of the child or a parent, an Adjudication shall be vacated, and a new Adjudication Hearing ordered if, after a contradictory hearing, the court finds that:
  - The Adjudication was obtained by fraud or mistake sufficient to justify vacating the Adjudication;
  - The court making the Adjudication lacked jurisdiction; OR
  - New evidence not previously discoverable by due diligence requires vacating the Adjudication in the interest of justice. A motion based on this ground must be brought within 1 year of the Adjudication.
- Interest of Justice: In the interest of justice, the court may vacate an Adjudication prior to Disposition.
- (4) APPEAL: The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children's Code (Articles 330-338). Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure. In CINC proceedings, an appeal may be taken only after a Judgment of Disposition.



# APPENDIX

## **ADJUDICATION**

La. Ch. C. arts. 659-667

B E N C H C A R D



**PURPOSE** 

An Adjudication is governed by the rules of evidence applicable to civil proceedings; the court shall determine if allegations of the Child in Need of Care (CINC) Petition have been proven by a preponderance of evidence, which provides the basis for State intervention.

## **Prior To Hearing**

- ARTICLES 646.1, 647, 659-67
- PREHEARING CONFERENCE: Is required for parents to stipulate to Adjudication; best practice is to convene before Adjudication regardless of stipulation.
- (2) TO PREVENT DELAYS: Court should determine in advance of hearing if actions outlined in Prehearing Conference Order (if held) have been completed in time, service made on parties, witnesses subpoenaed, discovery completed, attendance arranged for any parent who is incarcerated, and motions timely filed.

## **Timing and Continuances**

- ARTICLES 635, 659, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2
- (1) TIMING: If child in custody, shall commence within 45 days of filing Petition; if not in custody, within 105 days of filing. See Article 114. If not timely commenced, upon motion of child, court shall release child from custody and may dismiss Petition.
- (2) CONTINUANCES: Allowed for up to additional 5 days upon extraordinary circumstances, good cause, and notice; if granted, issue order identifying mover and reciting facts justifying continuance; court shall report continuance that exceeds maximum allowable within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**HELPFUL GUIDANCE** | Extraordinary Circumstances Only: Major reform goal of Adoption and Safe Families Act (ASFA) is to expediate CINC hearings so earlier and more informed determinations affecting child's health and welfare occur. Thus, Article 659 only authorizes single continuance of up to 5 days and only in extraordinary circumstances.

**PRACTICE TIP** | Amendment: If court allows Petition to be amended, child/parent may request continuance of Adjudication Hearing; may be granted for such period as required in the interest of justice (Article 635).

## **Appearances and Appointments**

- ARTICLES 575, 607-8, 623, 635.1-645, 661
- (1) ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY: Including parents, child, attorneys for child and parents, DA/ADA/ DCFS attorney (BGC), DCFS representatives, CASA, witnesses under examination, 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/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.

#### **Notice and Summons**

- ARTICLES 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.

## Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 661.1, 25 U.S.C. § 1902

## Court shall ask each person before the court whether they know or have reason to know child is:

- Member of or eligible for membership in Federally recognized Indian Tribe; AND
- Biological child of member of Federally recognized Indian Tribe.
- » Make record of answer in Order for each child; advise all to inform court if subsequently discovered.
- If know or have to reason to know, immediately proceed to Article 661.1. See <u>Indian Child Welfare Act (ICWA) Bench Card</u>.

#### **ESSENTIAL JUDICIAL FINDING** | Noncompliance With ICWA:

Noncompliance with ICWA may result in invalidation of proceedings. If a Tribe fails to respond to multiple requests for verification that child is an Indian child and court or DCFS has sought assistance of Bureau of Indian Affairs in contacting Tribe, court may make determination that child is not an Indian child based on information it has available and proceed to Adjudication in accordance with Louisiana Children's Code.

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## **Evidence and Testimony**

- ARTICLES 660-5, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II
- (1) **EVIDENCE:** Court shall set order of presenting evidence and conduct hearing according to rules of evidence applicable to civil proceedings unless otherwise provided in Children's Code.
  - Hearsay evidence not admissible unless fits hearsay exception or otherwise allowed in Children's Code.
  - May consider videotape prepared in compliance with Chapter 8 of Title III of Children's Code if relevant.
  - Evidence of prior criminal conviction shall be admissible to prove allegations made under Article 606.
  - Relevant testimony may not be excluded on grounds of privilege, except confessions/communications between attorney and client.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **STATE:** State has burden of proving allegations of Petition by a preponderance of evidence.
- (4) **FOSTER CAREGIVERS:** Foster parents, pre-adoptive parents, or relatives caring for the child have a legal right to notice and opportunity to be heard at any hearing involving a child in their care. If attend, court shall ask if they would like to speak regarding care and treatment of child. See Article 623, 42 U.S.C. § 675(5)(G), and 45 C.F.R. § 1356.21(o).
- (5) EXCLUSION OF WITNESSES: On own motion or party's motion, court may order non-party witnesses excluded from courtroom. On request of party, order exclusion. In interest of justice, may exempt witnesses from order.

**PRACTICE TIP** | **Engagement**: Court should do all it can to support and encourage meaningful engagement of families. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Keep in mind that both parents and children likely have their own history of trauma.

**PRACTICE TIP** | Child's Wishes: Whether present or not, child's attorney shall ensure court hears child's wishes. If child wishes to be heard but is not able/does not want to be present in courtroom, consider other methods of communication (i.e., audio or visual conferencing, videotaped interview, in-chambers conference, etc.).

PRACTICE TIP | Exclusion: Parties to proceeding cannot be excluded from courtroom. Only children can be taken out during testimony that may not be in their best interest to hear (Article 661(E)). DCFS, CASA, and foster caregivers are not parties and may be sequestered if any party plans to call them as a witness. However, DCFS representative would likely need to remain in court to assist ADA. See La. Code Evid. Art. 615(B)(2).

## Paternity/Maternity

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

PRACTICE TIP | Determine Paternity/Maternity: Ensure all biological, legal, and putative parents are legally determined as soon as possible. Decisions made in CINC hearings can affect child's entire life. When child does not know one of his/her parents, child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of paternity/maternity is in best interest of child and essential to due process and avoiding permanency delays.

**PRACTICE TIP** | **Identify Parents**: 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 of an alleged parent is known but filiation has not been 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, etc.). Court can also direct parent under oath to provide name, address, and whereabouts of any relatives of the child.

## **Findings and Orders**

ARTICLES 646.1, 647, 649, 666

Court shall make the following written, separate, and individualized findings and orders for each child:

- DISMISS PETITION: If evidence demonstrates child is not in need of care NOR child's family in need of services.
- (2) ADJUDICATE CHILD IN NEED OF CARE:
  - **a.** Parents Stipulate After Prehearing Conference: Only if Articles 646.1 and 647 stipulation requirements were met and court finds a factual basis for Adjudication; <u>OR</u>
  - **b.** Allegations in Petition Proved by State: Only if proven by preponderance of evidence.
  - » Include specific provision(s) in Article 606(A)(1-8) that forms basis for Adjudication.
- (3) DISMISS CERTAIN ALLEGATIONS IN PETITION: Include any allegations not proven in Order.
- (4) TAKE UNDER ADVISEMENT: If exceptional circumstances; maximum of 10 days; set forth exceptional circumstances in Order.
- (5) MAY ADJUDICATE FAMILY IN NEED OF SERVICES: If evidence demonstrates child's family is in need of services.

**ESSENTIAL JUDICIAL FINDING** | Adjudication: Unless taken under advisement, court shall immediately declare whether evidence warrants a child in need of care Adjudication based upon one or more grounds codified in Article 606(A).

**PRACTICE TIP | One Parent:** At times, Petition makes allegations regarding one parent and not the other (although Petition should address all parents). Still, make determination as to whether State proved child should be adjudicated in need of care by a preponderance of evidence. Consider the other parent's circumstances and relationship with child in determination. If adjudicate child in need of care based on evidence presented, matter of custody to other parent should be determined at Disposition. There is considerable case law in this area.

PRACTICE TIP | Family in Need of Services (FINS): While the child's family may be adjudicated as a family in need of services at the Adjudication Hearing, best practice may be to dismiss case, and a FINS Petition could be filed to allow for proper alignment of parties. FINS proceedings bear similarities with CINC proceedings, with some minor differences. For example, Children's Code does not directly address parent's right to appointment of counsel, CASA is not usually involved, and parties may be aligned differently, etc. See Title VII of Children's Code.

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#### **Further Orders**

ARTICLES 102, 309, 318, 601, 627, 668-70, 674, 42 U.S.C. § 671

Upon adjudicating child in need of care, court may make additional orders in best interest of child, such as:

- PREDISPOSITION INVESTIGATION/REPORT: DCFS conduct to assist with decisions at Disposition.
- (2) PHYSICAL/MENTAL HEALTH EVALUATION/EXAMINATION: Be conducted on parents and/or child to assist in determining fair and just Disposition; file 10 days before Disposition; submit copy to counsel and unrepresented parties.
- (3) **POTENTIAL PLACEMENTS:** DCFS (a) explore all possible relative/ individual caregivers; (b) initiate child welfare background clearance, criminal background check, assessment of home or home study on potential caregivers so can be considered for placement by DCFS and/or custody/guardianship; (c) take necessary steps for potential caregivers to complete timely foster care certification, if needed; and (d) initiate Interstate Compact on the Placement of Children (ICPC) process for potential placement with out-of-State relatives/individuals.
- (4) VISITATION/FAMILY TIME: Specify visitation pending Disposition between child and parents/caretakers, siblings (half-siblings and those the child considers siblings) if not placed together, other family members, and those who matter to child; ensure time is in best interest of child, quality, frequent as possible, and developmentally and age appropriate.
- (5) FAMILY TEAM MEETINGS (FTM): DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (6) OTHER ORDERS: Related to paternity/maternity, services, child's education, Protective Orders, placement of child when he/she is in DCFS custody (See Article 672(A)(2)), etc.

**PRACTICE TIP** | **Potential Caregivers:** All persons and parties before the court have continued obligation to achieve timely permanency for the child. Suitable relatives/individuals must be found as soon as possible, so permanency can be achieved expeditiously if reunification becomes no longer viable. Court's role is to hold persons before court, parties, and DCFS accountable. Identifying other potential placements early on is crucial to reducing further trauma to child who may form secure attachments with current caregivers.

PRACTICE TIP | Relatives: Per Federal law, within 30 days following removal and anytime a relative is identified, DCFS is required to contact all known adult relatives of child and to inform them of placement and permanency possibilities. (See 42 U.S.C. § 671).

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.

#### 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?

## **Order of Notices and Future Hearings**

ARTICLES 424.7, 674-7

Upon adjudicating child in need of care, court should also make the following orders:

- PARTIES, COUNSEL, DCFS, AND CASA: Be present at all future hearings;
- (2) DCFS CASE PLAN: Be filed at least 10 days before hearing and copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- (3) DCFS COURT REPORT: Be filed at least 10 days before hearing and provide copies to CASA, counsel, and unrepresented parties (Although Children's Code is silent on submission of court report for Disposition Hearing, DCFS policy requires for hearings beginning at Disposition);
- (4) CASA COURT REPORT: Be filed before next hearing and copies distributed per Article 424.7;
- (5) SET MATTER FOR DISPOSITION HEARING: Within 30 days of Adjudication (unless held immediately after);
- (6) SERVICE/NOTICE OF HEARINGS: Be made on parties, counsel, CASA, and foster caregivers; AND
- (7) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend hearing, either in person or remotely.

PRACTICE TIP | Disposition Hearing: Ask if parties have objections to holding Disposition Hearing immediately after Adjudication. Time may be needed to resolve paternity/maternity issues; conduct medical, sensory, psychological, or psychiatric examinations; obtain evidence; secure witnesses; further investigate placement possibilities; file case plan and court reports; etc. If matter goes forward to Disposition, court must issue both an Adjudication Order and Disposition Order.

PRACTICE TIP | Coordinating Services: Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at Disposition. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

## **Case Management**

- Ask parents and children if they understand what occurred at hearing; engage conversation about next steps.
- An attorney or the court is responsible for completion of Order.
   See <u>Adjudication Order Template</u>.
- 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 and/or concerns.
- · Provide parents with copy of Order immediately following hearing.

## **Possible Next Steps**

- ARTICLES 635, 651-658, 700, 710
- (1) **SPECIAL MOTIONS AND DISCOVERY:** Articles 635 and 651-658 provide various motions and discovery available between Adjudication and Disposition Hearings.
- (2) DISPOSITION HEARING: May be conducted immediately after Adjudication but shall be conducted within 30 days of Adjudication.

PUBLISHED 2021 3 0

STATE OF LOUISIANA				DOCKET NUMBER:	
IN THE INTEREST OF				SECTION:	
	DOB: _			COURT:	
	DOB: _			PARISH OF	
				STATE OF LOUISIANA	
Filed:				DEPUTY CLERK:	
		ADJUDI	CATIO	N ORDER	
THIS CAUSE can	ne for Adjudicatio	n pursu	ant to	Louisiana Children's Cod	e Articles 659-667 on
theday of	,	20	, pursu	ant to a Child in Need of	Care Petition filed on
theday of	<i>.</i>	20	, conce	erning the following child	(ren),
and parent(s),					
The child(ran)		l.		EARANCES	
is/are present.					
is not present and: (Pleas	e check the applicable b	ox for eac	ch child)		
				e, and the court grants the	
years of age, an	d counsel did not	reques	t the c	hild's appearance.	
Parent			Depart	tment of Children and Far	mily Services
Parent's Attorney			Staff/F	Representative	
Parent			Foster	Parent(s), Pre-adoptive P	arent(s), Relative(s)
Parent's Attorney			Provid	ing Care for Child(ren)	
Caretaker(s)					
Child(ren) Attorney(s) _			Assista	int District Attorney	
			Bureau	u of General Counsel	

Others \_\_\_\_\_

#### II. NOTICE

THE COURT FINDS that: (Ple	ase check the applicable boxes)
☐ the parent(s),	, <u>has been</u> properly served and summoned.
☐ the parent(s),	, has not been properly served and summoned.
THE COURT FINDS that: (Ple	ease check the applicable boxes)
☐ the foster parent(s), pre-adoptive	e parent(s), or relative(s),,
providing care for the child(ren),	, is absent and that notice
of the date, time, and place of the l	hearing and right to attend and be heard was given by the
Department; and, that diligent effo	rts were made by the Department to locate and notify the absent
caregiver.	
$\Box$ the foster parent(s), pre-adoptive	e parent(s), or relative(s),,
providing care for the child(ren),	, is absent and that notice of the
date, time, and place of the hearing	g and right to attend and be heard <u>was not given</u> by the Department;
and, that diligent efforts $\square$ were no	ot made or \( \text{ were made} \) by the Department to locate and notify the
absent caregiver.	
	III. INDIAN CHILD WELFARE ACT
The Court asked each perso	on whether he or she knows or has reason to know that the child(ren)
is a member of a federally recogniz	ed Indian Tribe or is eligible for membership in a federally recognized
Indian Tribe and is the biological ch	ild of a member of a federally recognized Indian Tribe, pursuant to 25
U.S.C. § 1903. The Court has instruc	cted each person before the Court to inform the Court if he or she
subsequently discovers information	n indicating that the child(ren) is a member of a federally recognized
Indian Tribe or eligible for members	ship in a federally recognized Indian tribe and is the biological child of
a member of a federally recognized	Indian Tribe, pursuant to 25 U.S.C. § 1903.
THEREFORE, the Court find	s that there is $\square$ reason to know child(ren),,
☐ no reason to know that child(ren)	),,
is a member of a federally recogniz	ed Indian Tribe or eligible for membership in a federally recognized
Indian Tribe and is the biological ch	oild of a member of a federally recognized Indian Tribe, pursuant to 25
U.S.C. § 1903, at this time.	

## IV. PATERNITY/MATERNITY

## THE COURT FINDS that: (Please check the applicable boxes)

□ paternity/maternity <u>has been</u> determined for child(ren),,
pursuant to Louisiana laws.
□ paternity/maternity <u>has not</u> been determined for child(ren),,
pursuant to Louisiana laws.
V. FINDINGS AND ORDER
THE COURT FINDS that: (Please check the applicable boxes)
☐ the evidence does not warrant an Adjudication of child(ren),,
in need of care or family in need of services.
☐ the parent(s),, <u>stipulate</u> that the child(ren),
, are in need of care and knowingly and voluntarily consent to the
judgment:
$\square$ <u>without admitting</u> to the allegations of the Petition after being advised of their rights
by the Court and their attorney;
$\square$ and admit to the allegations of the Petition after being advised of their rights by the
Court and their attorney;
If admitting, the Court finds that: (Please check the applicable box)
☐ there is a factual basis for Adjudication;
☐ there is not a factual basis for Adjudication;
If there has been a stipulation, whether admitting or not admitting:
The requirements of Article 647 have been met, and a Pre-Hearing Conference was
convened in accordance with Article 646.1 on theday of, 20
☐ the following grounds in Article 606(A) were not proven/dismissed by the State as to:
☐ the State proved the allegations set forth in the Petition by a preponderance of the evidence and the evidence warrants a Child in Need of Care Adjudication in accordance with Article 606(A).
☐ the evidence demonstrates that the child's family is in need of services.
☐ considering exceptional circumstances, the Court will take the matter under advisement for a maximum of 10 days.

#### VI. ORDER

## THE COURT ORDERS that: (Please check the applicable boxes)

☐ the matter be dismissed for child(ren),
□ child(ren),, are adjudicated in need of care
in accordance with Article 606(A) (1-8).
☐ the family of the child(ren),,
is adjudicated in need of services and, therefore, procced to a Disposition in accordance with Chapters
10 and 12 of Title VII of the Children's Code.
VII. FURTHER ORDERS
<b>THE COURT FURTHER ORDERS</b> the following as necessary and appropriate: Please check the applicable boxes):
☐ IT IS FURTHER ORDERED that a Predisposition Investigation be conducted by
in accordance with Article 668, and a written report of the
investigation and findings be submitted to the court prior to the Disposition Hearing.
☐ IT IS FURTHER ORDERED that a physical evaluation and examination be conducted in
accordance with Article 669 on parent(s),
child(ren),
☐ IT IS FURTHER ORDERED that a mental evaluation and examination be conducted in
accordance with Article 669 on parent(s),
child(ren),
☐ <b>IT IS FURTHER ORDERED</b> that the Department make arrangements to motion for DNA tests to
determine the paternity/maternity of any alleged parents and that alleged parents comply.
☐ IT IS FURTHER ORDERED that the Department immediately assess all possible placements
with suitable relatives and individuals with the results and/or updates to be presented at the Disposition
Hearing.

$\Box$ <b>IT IS FURTHER ORDERED</b> that the Department initiate child welfare background clearance,
criminal background check, and/or assessment of the home or home study on the following relative(s)
or individual(s),
☐ IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of
Children (ICPC) process for the following out-of-state relative(s) and/or individual(s), .
☐ IT IS FURTHER ORDERED that the following visitation rights between the child(ren),
, and the parents, caretakers, siblings, or other family members of
the child(ren) pending the Disposition are established:
ine child(ren) pending the Disposition are established.
·
☐ IT IS FURTHER ORDERED that prior to every family team meeting (FTM) hereafter conducted
n this case, the Department shall provide reasonable notice of said FTM to all parent(s), caretaker(s),
child(ren), foster caregivers, CASA workers, and attorneys for child(ren) and attorneys for
parent(s)/caretaker(s).
☐ The next date for FTM is tentatively set for theday of
20, atam/pm.
☐ IT IS FURTHER ORDERED that:
VIII. ORDERS OF NOTICES AND FUTURE HEARINGS
☐ <b>IT IS FURTHER ORDERED</b> that the parent(s) of the child(ren), all attorneys of record, the DCFS
representative(s), and CASA be present at all future hearings.
☐ <b>IT IS FURTHER ORDERED</b> that the case plan shall be filed with the Court at least 10 days prior
to the Disposition Hearing and that, upon filing, copies shall be provided by mail or email to counsel and
unrepresented parties by certified mail or electronic mail in accordance with Article 674.
☐ <b>IT IS FURTHER ORDERED</b> that the Department file its court report with the Court at least 10
days prior to the Disposition Hearing and that copies be provided to CASA, counsel, and unrepresented
parties.

☐ <b>IT IS FURTHER ORDERED</b> that CASA shall file its court report with the Court at least 10 days
prior to the Disposition Hearing and copies be distributed to counsel, unrepresented parties, and DCFS
prior to at the same time submitted to the Court.
☐ IT IS FURTHER ORDERED that:
Upon ordering the matter be set for Disposition Hearing, the clerk shall notify all parties of the date,
time, and location of the hearing and that all parties of interest appear; the Sheriff's Office serve the
parent(s) with a summons commanding him or her to appear at Court for the hearing; the Department
shall provide notice to the parent(s) of the date, time, and location of the hearing; notice of the hearing
be made on the child and parent representation programs and CASA (if appointed); the Department
provide notice to any foster parent, pre-adoptive parent, or relative providing care for the child(ren) of
the date, time, and location of the hearing and recipients right to attend and be heard; and for any
parent(s) incarcerated, arrange for the parent(s) to attend the hearing, either in
person or remotely.
This matter has been set for <b>DISPOSITION</b> on theday of,
20, atam/pm.
<b>THUS DONE AND SIGNED ON THIS</b> day of,20, in
, Louisiana.
, Louisiana.
, Louisiana.
JUDGE
JUDGE
JUDGE  DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:
JUDGE  DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent:  Street:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent:  Street:  City, State, Zip:
JUDGE  DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent:  Street:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip: Email Address:  Email Address:  Email Address:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip: Email Address:
DISTRIBUTION OF NOTICE  Please serve all parties and counsel of record as follows:  Parent: Street: City, State, Zip: Email Address:  Parent's Attorney: Street: City, State, Zip: Email Address:  Email Address:  Email Address:

Parent's A	Attorney:
Street:	
City, State	e, Zip:
Fax Numb	per: ()
Email Add	dress:
Child(ren) Attorr	ney(s):
City, State, Zip: _	
Fax Number: (	_)
Email Address: _	
Assistant District	t Attorney/Bureau of General Counsel:
 Street:	
Fax Number: (	)
Email Address: _ se send notice ar	nd copy of order as follows:
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