

# ADJUDICATION

La. Ch. C. arts. 659-667

BENCH  
CARD



## 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

- (1) **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 expedite 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 [Indian Child Welfare Act \(ICWA\) Bench Card](#).

### 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.

## 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:

- (1) **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; OR
  - 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.

## 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:**

- (1) **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:**

- (1) **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 [Adjudication Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions 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.