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IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____

Case No. _____

Year of Birth _____ A ☐ male ☐ female**JOURNAL ENTRY AND ORDER
OF REHEARING OF DISPOSITION**Pursuant to K.S.A. 38-2256 and 42 U.S.C. § 671 *et seq.**(Orders pertaining to more than one child must include findings specific to each child listed in the caption.)*

Now on this _____ day of _____, _____, the above-captioned matter comes on for rehearing of disposition, ☐ on the Court's own motion ☐ on the motion of _____.

The Court finds that each child named above has been adjudicated a Child in Need of Care, and that the Indian Child Welfare Act (ICWA) is not applicable. *(If there is reason to know the child is an Indian child, use ICWA Form 218.)*

The Court finds that jurisdiction and venue are proper. Notice to parties, interested parties and those required to receive notice has been given as required by K.S.A. 38-2254.

- ☐ The petitioner appears by _____ ☐ County/District Attorney or designee ☐ other _____.
- ☐ The child appears ☐ in person and ☐ not in person, but by the child's guardian *ad litem*, _____.
- ☐ _____ *Name of Mother*, the mother ☐ appears in person *pro se* ☐ appears in person, and through her attorney, _____ ☐ appears not in person, but by and through her attorney _____ ☐ does not appear.
- ☐ _____ *Name of Father*, the ☐ father ☐ putative father of _____ *Name of child*, ☐ appears in person *pro se* ☐ appears in person, and through his attorney, _____ ☐ appears not in person, but by and through his attorney, _____ ☐ does not appear.
- ☐ Interested parties appearing: _____
- ☐ The Secretary ~~appears is present~~ through _____
- ☐ Also present: _____

THE COURT FURTHER FINDS THAT the Court's previous findings and orders:

- ☐ shall remain in full force and effect.
- ☐ shall remain in full force and effect to the extent they are not inconsistent with any findings or

orders in the present order.

THE COURT FURTHER FINDS ☐ Appropriate public and private agencies ☐ **have**
☐ **have not made** reasonable efforts to facilitate the permanency plan.

The Court ☐ **approves and adopts the proposed permanency plan as the plan for permanency in the present matter or** ☐ **does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.**

THE COURT FURTHER FINDS:

THE COURT THEREFORE FINDS AND ORDERS

(If this is the first order removing custody, complete and attach Form 107.)

☐ A grandparent has requested custody and, in evaluating what custody, visitation and residency arrangements are in the best interests of the child, substantial consideration is given to the wishes of the parents, child, and grandparent; the extent that the grandparent has cared for the child; the intent and circumstances under which the child is placed; and the physical and mental health of all involved individuals.

The above named child ☐ **shall be** ☐ **shall remain** placed in the custody of:

- ☐ _____, a parent.
- ☐ _____, a relative.
- ☐ _____, an unlicensed person with close emotional ties to the child.
- ☐ _____, a youth residential facility.
- ☐ _____, a shelter facility.
- ☐ The Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

THE COURT ORDERS all providers of services, treatment or care of the child and family, even if not specifically referred to herein, to provide information to the Secretary, any entity providing services to the child and family, counsel for the parties including the county or district attorney, appointed CASA, Citizen Review Board members, the court, and each other to the extent needed to ensure the safety of the child, prevent further abuse or neglect, and to provide appropriate treatment to the child and family. This order encompasses the provisions of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

☐ THE COURT FURTHER ORDERS:

☐ A restraining order shall be filed against _____.

☐ The Secretary ☐ Court Services ☐

_____ shall complete reports and submit them to the Court by _____.

THE COURT FURTHER ORDERS this matter set for review hearing before ☐ the Court ☐ the CRB on the ____ day of _____, _____, at _____ ☐ a.m. ☐ p.m. and for permanency hearing before ☐ the Court ☐ the CRB on the ____ day of _____, _____, at _____ ☐ a.m. ☐ p.m.

IT IS SO ORDERED THIS ____ day of _____, _____.

Judge of the District Court

Authority

K.S.A. 38-2256 and 42 U.S.C. § 671 *et seq.*

Notes on Use

This is the only form for rehearing, complete with a recitation of appearances and space for findings and orders. A separate journal entry is neither required nor advised.

If the court, in issuing this order, removes the child from the home and it is the first order removing the child from the home or the first order of removal when the child has been home for six months or longer (as in an informal supervision) Form 107 must be used. Failure to make and properly document the findings required by [the Adoption and Safe Families Act \(ASFA\)](#) will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case. Federal funding is not available when the court finds reasonable efforts have not been made unless the court also finds the efforts were not required. Finding that reasonable efforts were not made does not bar the court from removing the child and failure to make these findings does not bar the court from removing the child.

When a court has reason to know a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA) applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms must be used. **If ICWA applies, use form 218 instead of this form.** In addition to the federal ICWA statutes, all federal regulations (25 C.F.R. 23) must be followed. The court should also consult the BIA December 2016 guidelines (www.bia.gov/bia/ois/dhs/icwa).

The court must ask each participant in the case whether the participant knows or has reason to know that the child is an Indian child. The inquiry and all responses should be on the record. The term “participant” is used in the regulations and is meant to be very broad. The goal is to encourage anyone, not just parties, to provide information to the court. The court must also instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. 25 C.F.R. 23.107(a). **If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child. 25 C.F.R. 23.107(b).** The court “has reason to know” a child is an Indian child if:

- “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

- (4) The court is informed that the domicile or residence of the child, the child's parents, or the child's Indian custodian is on a reservation or in an Alaska Native village;
- (5) The court is informed that the child is or has been a ward of a Tribal court; or
- (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” 25 C.F.R. 23.107(c).

The court may enter any dispositional order authorized by the code after notice as required by K.S.A. 38-2254 and a rehearing. However, a child support order registered under K.S.A. 38-2279 may only be modified pursuant thereto.

If a grandparent requests custody, the form facilitates documentation required by K.S.A. 38-2286 which sets out requirements concerning grandparents as potential custodians. If the court does not award custody of the child to a parent and, if a grandparent requests custody, the court shall give substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Relevant factors to be considered include wishes of the parents, child and grandparent; the extent to which the grandparent has cared for, nurtured and supported the child; the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to seek work or attend school; and the physical and mental health of all individuals involved.

When the term “or” stands alone between optional findings/orders, more than one choice may be checked. Each choice checked must be justified as instructed, *e.g. specify basis for finding*.