PARENT COUNSEL DEPENDENCY-NEGLECT EX PARTE ORDER CHECKLIST

A.C.A. '9-27-314

Purpose:

Probable cause to believe that emergency custody is necessary:

¬ To protect the health or physical well-being of the juvenile from immediate danger **A.C.A. '9-27-314 (a)(1)**;

∧ To prevent the juvenile=s removal from the state **A.C.A. '9-27-314 (a)(1)**;

∨ To protect the juvenile from severe maltreatment, meaning sexual abuse, sexual exploitation, acts, or omissions which may result in death; abuse involving the use of a deadly weapon; bone fracture; internal injuries; burns; immersions; suffocation; abandonment; medical diagnosis of failure to thrive; or causing a substantial and observable change in behavior or demeanor of the child **A.C.A. '9-27-314 (a)(2)**; **A.C.A. ' 12-12-503(16)**; or

⇔ Because a juvenile is dependent defined as:

- A child of a parent under 18 and in DHHS custody;
- A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
- A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;
- A child whose custodial parent dies and no stand-by guardian exists;
- A child who is an infant relinquished to the custody of DHHS for the sole purpose of adoption;
- A safe-haven baby; or
- A child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. **A.C.A. ' 9-27-314(a)(3); A.C.A. ' 12-12-503(16)**

Time Constraints:

≅ The Probable Cause Hearing shall be held within 5 business days of the issuance of the ex parte order. **A.C.A. ' 9-27-315(a)(1)(A)**

Filing:

Only a law enforcement officer, prosecuting attorney or DHHS or its designee can file a dependency-neglect petition seeking ex parte relief. **A.C.A. 9-27-310(b)(2)**

Notice:

Immediate notice of the order shall be given by the petitioner or court to parents, guardians, or custodians, and service shall be in accordance with Arkansas' Rules of Procedure. **A.C.A. ' 9-27-314(c)(1)**

Emergency Order Shall Include:

- Notice to juvenile=s parents, custodian, or guardian of the right to a hearing, and that a hearing will be held within 5 business days of issuance of ex parte order;
- Notice of the right of parent, guardian or custodian:
  - to be represented by counsel;
  - to be appointed counsel if indigent; and
  - the procedure for obtaining counsel if indigent.

    Best Practice: Parent counsel appointed in the emergency ex parte order and indigency determined at PC hearing.

    The court may appoint counsel for parent or guardian from whom custody was removed in the ex parte emergency order. **A.C.A. '9-27-316 (h)(1)(B)**
- Appointment of attorney ad litem for child **A.C.A. ' 9-27-316(f)(1)**; and
- Provide information regarding hearing or location and telephone number of the court, and procedure for obtaining a hearing. **A.C.A. '9-27-314 (b)(4).**

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- **REQUIRED IV-E FINDING** In the initial order placing a child in DHHS custody, the Court must make the following findings:
  - "*it is contrary to the juvenile=s welfare to remain with the parent/guardian/custodian*"
  - immediate removal and the reasons for removal are *"necessary to protect the health and safety of juvenile;@* and
  - removal is in the juvenile's best interest.

Best Practices:

- ***Notify OCC attorney and attorney ad litem that you have been appointed and provide them with your contact information, including your telephone and fax numbers and e-mail address.***
- ***Obtain a copy of the emergency petition, affidavit, and order right away.***
- ***Contact the DHHS worker who signed the affidavit to get your client's contact information and contact the client prior to trial.***
- ***Obtain information to complete Affidavit Regarding Background Information and Affidavit of Indigency.***
- ***At initial meeting with client, review affidavit, discuss possible relatives for placement, and discuss paternity.***
- ***Give client a copy of the green book and the Clock is Ticking DVD, and explain the juvenile court process to the client.***
- ***Explain proper attire and courtroom conduct.***