PARENT COUNSEL PERMANENCY PLANNING HEARING CHECKLIST

A.C.A. '9-27-338

Purpose:

Court shall finalize a permanency plan for the juvenile (**A.C.A. '9-27-338**).

Pre-Trial Preparation:

- ***A staffing is required to be held prior to the PPH; make sure you attend and participate in the staffing.***
- ***Analyze the case to determine whether DHHS has done everything it was required to do.***
- ***Meet with your client and evaluate your client's wishes and evidence to support his/her wishes.***
- ***Make sure you have a permanency planning court report (not just a regular court report) and a CASA report if CASA is assigned.***
- ***Get witness lists in advance of trial and do discovery if necessary.***

Time constraints:

≅ The Permanency Planning Hearing shall be held no later than 12 months after the date the child enters an out-of-home placement, or no later than 30 days after the court files a no reunification services order. The permanency planning hearing shall be held annually each year thereafter to reassess the permanency plan for the juvenile (**A.C.A. §9-27-338(a)(1)**).

◷ DHHS shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, 7 business days prior to the scheduled review hearing (**A.C.A. §9-27-361(b)(1)**).

◷ CASA volunteers shall provide written reports for the court and shall provide all parties or the attorney of record with a copy of the report 7 business days prior to the hearing (**A.C.A. §9-27-316(g)(3)(A)(iii); §9-27-361(b)(1)**).

◷ A written order shall be filed and distributed to the parties by the court, or by a party or party's attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner (**A.C.A. §9-27-338(e)**).

◷ Upon the court's determination that the goal is termination of parental rights, DHHS shall file a TPR petition within 30 days of the order (**A.C.A. '9-27-338(f)**).

◷ Nothing shall prevent the state from filing a petition for termination, guardianship or permanent custody prior to any hearing (**A.C.A. '9-27-338(b)(1)**).

◷ If DHHS failed to provide services, court shall continue the PP hearing no longer than 6 months (**A.C.A. '9-27-338(c)(2)(C)(i)**).

Present at Hearing:

T Judge;
T Parties, including children, <u>unless</u> excused for good cause by court;
T Attorneys for all parties;
T CASA volunteer, if appointed;
T Case worker and relevant witnesses;
T Foster parents or relative caregivers; and
T Court Reporter.

Permanency Plans:

The court shall enter one of the following permanency goals, listed in the order of preference, in accordance with the juvenile's best interest:

¬ **Return Home** if child's health and safety can be adequately protected (**A.C.A. §9-27-338(c)(1)**);

- ✓ Review facts of case and parents' and agency's compliance with case plan and court orders.
- ✓ Did the services alleviate the reasons for removal? What is different now?
- ✓ How has visitation gone and has there been a plan to transition home with increased visits while the court continues to monitor the children's health and safety?
- ✓ What needs to happen to allow children to return home safely?
- ✓ What has the agency done to reduce the risk or likelihood of disruption after the children are returned home?

Best Practice: Meet with the clients to discuss the above issues and what has happened in the case.

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∧ **TPR** unless:

- The child is placed with a relative and TPR is not in the child's best interest;
- Compelling reason not to terminate exists; or
- DHHS failed to provide services. **A.C.A. '9-27-338(c)(2)**

Note: DHHS' failure to provide services is a valid reason not to terminate. Check the dates of referrals (i.e., if addiction was your client's major problem and DHHS didn't refer the client for a drug and alcohol assessment for six months and didn't get your client into treatment for another three months, argue that DHHS didn't provide appropriate services timely and your client should be allowed more time).

- ✓ Is there an exception to not terminate?
- ✓ Is TPR in the child's best interest?
- ✓ What specifically are the plans for the child to be adopted?
- ✓ If TPR, are there putative parents with rights?
- ✓ Who is entitled to notice of TPR?
- ✓ Can TPR be achieved without trial through voluntary relinquishment or mediation?
- ✓ To avoid trial delays, schedule pre-trial with all attorneys to ensure proper service, exhibits, and witness list are shared prior to hearing and adequate time is scheduled on the docket for the hearing.

Best Practice: If appropriate, question whether DHHS has a valid permanency plan for the child (i.e., if the child is 13 and insistent that he or she doesn't want to be adopted, argue that there is no point in terminating parental rights because adoption is unlikely). Minors over 10 have to consent to adoption and have 10 days to withdraw that consent, but the judge may waive both the consent and the time period to withdraw consent (A.C.A. 9-9-206(a)(2)(5)).

∨ **Guardianship A.C.A. '9-27-338(c)(3)**

- ✓ What are the child's needs, wishes and best interests?
- ✓ Are there convincing reasons that the child cannot return home or be adopted?
- ✓ Is this the best guardian for the child and does he/she have a commitment to remaining in the child's life?
- ✓ Have home study and all background checks been completed?
- ✓ Will the guardian need financial assistance to care for the child?
- ✓ Does the guardian understand his/her rights and responsibilites?
- ✓ Will there be onging contact with the child's parents and siblings?
- ✓ Will the agency still provide services or provide some ongoing monitoring?

Best Practice: Discuss this option with your clients. It is favored over permanent custody in the law.

⇔ **Permanent Custodian A.C.A. '9-27-338(c)(4)**

- ✓ What are the child's needs, wishes, and best interests?
- ✓ Why is this a better plan than return home, adoption, or guardianship?
- ✓ Does the child have a bond with the custodial family?
- ✓ Have home study and all background checks been completed?
- ✓ Will the custodian need financial assistance or services to care for the child?
- ✓ Does the custodian understand his/her rights and responsibilities?
- ✓ Will there be ongoing contact with the child's parents and siblings?
- ✓ Has this custodian made a long-term commitment to the child?

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⇐ **Continue Reunification** only if:

- parent is complying with case plan and court orders and making significant measurable progress toward reunification (**A.C.A. §9-27-338(c)(5)**), and
- reunification can occur within time frame consistent with child's developmental needs (**A.C.A. §9-27-38(c)(5)**).

Note: parent counsel has the burden of proof that the parent has made genuine, sustainable progress.

⇑ **Plan for Another Planned Permanent Living Arrangement (APPLA)** only if:

- child cannot be reunited with family;
- another permanent plan is not available; and
- there is a compelling reason not to TPR and it is not in the child's best interest, or a child is being cared for by relative (**A.C.A. §9-27-338(c)(6)(B)**).
- APPLA shall address the quality of services, including independent services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive (**A.C.A. §9-27-38(c)(6)(A)**).

Best Practice: Discuss APPLA with your client if it is appropriate for his/her child.

- ✓ What are the child's needs, wishes, and best interests?
- ✓ Why is this a better plan than return home, adoption, guardianship, custody, or continued reunification?
- ✓ What services will be provided to the juvenile?
- ✓ What is the educational plan for the child?
- ✓ What is the plan for supervision and structure for the child? Does the agency have a mentor for the juvenile?

IV-E COURT FINDING REQUIRED

The court shall make a finding on whether DHHS has made reasonable efforts and shall describe the efforts to finalize the permanency plan for the juvenile (**A.C.A. § 9-27-338(d)**).

Note: *If a finding of reasonable efforts to finalize the permanency plan is not made within 12 months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care or the end of the month of the most recent judicial determination to finalize permanency was made and remains ineligible until such a determination is made (**45 CFR Sec. 1356.21(b)(2)(i)**).*