PARENT COUNSEL DEPENDENCY- NEGLECT ADJUDICATION /DISPOSITION HEARING CHECKLIST

A.C.A. '9-27-327; -329; -334; -335

Petitioners:

- ✓ Any adult and any juvenile in the home age 10 years or older. **A.C.A. '9-27-310(b)(3)**
- ✓ Only law enforcement, prosecuting attorney or DHHS or its designee can file d-n petition seeking ex parte relief. **A.C.A. '9-27-310(b)(2)**

Venue:

- ✓ Shall be commenced in the county where the juvenile resides or where the alleged act or omission occurred. No d-n petition shall be dismissed if filled in the incorrect county, but shall be transferred to the proper county upon the discovery of the juvenile's residence. **A.C.A. '9-27-307(a)(1)(B) - (2)(C)**
- ✓ Following the adjudication, the court may on its own motion or any party's motion transfer the case to the juvenile's residence when UCCJEA does not apply. **A.C.A. '9-27-307(b)(1)**

Adjudication & Disposition Purpose:

- ➢ To determine whether allegations in the petition and affidavit are substantiated by the evidence. **A.C.A. '9-27-327(a)(1)(a)**
- ➢ To enter orders consistent with disposition alternatives. **A.C.A. '9-27-329(a)**
- ➢ In considering the disposition alternatives, the court shall give preference to the least restrictive disposition consistent with the best interest and welfare of the juvenile. **A.C.A. '9-27-329(d)**

Time Constraints:

- ≅ A written adjudication order shall be filed by the court within 30 days of the date of the adjudication hearing or prior to the next hearing, whichever is sooner. **A.C.A. '9-27-327(f)(1)**
- ≅ Any predisposition reports shall be provided in writing to all parties and counsel at least 2 days prior to the disposition hearing. **A.C.A. '9-27-327(e)**
- ≅ The Disposition Hearing may be held immediately following or concurrent with the Adjudication Hearing, but shall be held no more than 14 days following the Adjudication Hearing. **A.C.A. '9-27-329(c)**
- ≅ A written disposition order shall be filed 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. '9-27-329(e)**
- ≅ Within 60 days from removal the court must make reasonable efforts findings to prevent removal. **A.C.A. '9-27-328(b)(1)(C)**

Pre-trial Preparation:

- ***Attend staffing to develop an appropriate case plan.***
- ***Meet with client and talk to potential witnesses.***
- ***Draft transport order if client is incarcerated.***
- ***Determine what witnesses and exhibits are needed.***
- ***Issue subpoenas.***
- ***Make sure appropriate relatives are present and try to have home studies done prior to the hearing.***
- ***Do discovery if necessary (but at least talk to the OCC attorney and ad litem to find out what witnesses and exhibits they will present).***
- ***Mark exhibits you intend to introduce and bring sufficient copies for all parties.***
- ***Evaluate whether the client should stipulate to all or some of the facts in the affidavit.***
- ***Remind client that he or she is likely to be drug tested at any staffing, visitation, or court hearing, and explain that failing to go to a scheduled drug test is considered a positive result. Telling the judge he or she tested positive as a result of being around someone else who was using will not be a satisfactory explanation of a positive result.***
- ***Make sure the case plan lists all services the family needs as well as transportation by DHHS to those services, if needed.***

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Present at Hearing:

- ✓ Judge;
- ✓ Parties, including children, unless excused for good cause by court and their attorneys;
- ✓ CASA volunteer, if appointed;
- ✓ Foster parents or relative caregivers;
- ✓ Investigator, case worker, and relevant witnesses; and
- ✓ Court Reporter.

Burden of Proof:

Preponderance of the evidence *(Note: clear and convincing in cases involving ICWA).*

Best Practice At Hearing:

- ***The Rules of Evidence apply at adjudication hearings; make sure they are followed by all parties and object when appropriate.***
- ***Remind client of appropriate courtroom behavior, and give client paper and pen to give you notes if they're inclined to talk during the hearing.***
- ***Make sure witnesses are sworn.***
- ***Invoke the rule and ask that the hearing be closed when necessary.***
- ***Properly introduce all exhibits.***
- ***Make sure all issues for appeals are properly preserved by objecting at all necessary times and being sure to get a ruling from the court on each objection.***
- ***If necessary, request findings of fact and conclusions of law, and volunteer to draft them for the court if appropriate.***
- ***Ask that disposition issues be heard after the adjudication issues in a contested adjudication.***
- ***Ensure that DHHS limits the case to the facts in the petition and affidavit.***

Issues:

- ➢ Have all the parties, including putative fathers, been properly identified and served with petition?
- ➢ Counsel for all parties entitled to appointment or proper waiver on the record? A.C.A. '9-27-327; -329; -334; -335

Adjudication

- ➢ Have the allegations in petition been substantiated by the proof?
- ➢ Is child d-n as defined by the statute - start with A.C.A. '9-27-303(18)

Disposition

Disposition Alternatives & Limitations

¬ **Order family services** defined at A.C.A. 9-27-303(25). **A.C.A. '9-27-334(a)(1)**

- ✓ If DHHS is not party, court must provide DHHS 5 days notice of intent to order DHHS to provide services or order is void. **A.C.A. '9-27-335(a)(1)**
- ✓ Court shall not specify a particular provider for family services when DHHS is the payor or provider. **A.C.A. '9-27-335(b)**
- ✓ Court shall determine parent's, guardian's, or custodian's ability to pay in part or whole for services and shall include findings in written order. **A.C.A. '9-27-335(c)(1)**

∧ If in child=s best interest, transfer custody to DHHS, licensed agency responsible for care of juveniles, relative, or other individual. **A.C.A. '9-27-334(a)(2)**

- ✓ Custody can be transferred to a relative or other individual only after a home study by DHHS or licensed social worker of the placement is conducted and submitted to court in writing and court determines placement in child=s best interest. **A.C.A. '9-27-335(a)(d)**
- ✓ Prior to placing a child in DHHS custody, court must find that reasonable efforts were made to prevent need for removal. Reasonable efforts are deemed if emergency. **A.C.A. '9-27-335(a)(e)**
- ✓ If court finds that RE could have been made with the juvenile remaining safely at home, but that DHHS failed to do so, the court may dismiss the petition, order services, or transfer custody to protect child=s health and safety or prevent removal from court=s jurisdiction. **A.C.A. '9-27-335(e)(2)**

- ✓ **If court transfers to DHHS, the court shall issue orders regarding educational issues of the juvenile including:**
  - ✐ If the parent or guardian(P/G) shall have access to school records;
  - ✐ If P/G is entitled to school records, are they entitled to placement information including the name and address of foster parent; and
  - ✐ If P/G may participate in any school conferences or similar school activities. **A.C.A. '9-27-334(a)(2)(E)**
  - ✐ The court may also appoint an individual to consent to the IEP as a surrogate parent, including the foster parent. **A.C.A. '9-27-334(e)(1)(E)**

∨ Grant Permanent Custody **A.C.A. '9-27-334(a)(3)**

⇔ Order parent/guardian/custodian to attend parental responsibility training **A.C.A. '9-27-334(a)(4)**

Best Practice:

- ***As the case progresses, if you don't believe your client is getting needed/ordered services, appropriately use the possibility of a no reasonable efforts finding to obtain services for your client.***
- ***Advocate for the parents to have access to educational and medical records and be notified of medical and school appointments.***
- ***Ask that all orders include the fact that DHHS will provide transportation upon reasonable notice even if the client claims he or she does not need transportation assistance.***
- ***Request that all referrals be done by a date certain, and that confirmation of that be sent to all parties.***
- ***Monitor whether services are being provided and request a hearing if necessary.***
- ***Make sure the judge explains the timeline of dependency-neglect cases, the purpose of the next hearing, what the PPH is, and make sure the parties understand what they have to do to get their children back. Separately, you should also go over all those things with your client. Provide the client with the order, go over it with the client to make sure they understand what they need to do, and tell them to call you if services are not being offered.***
- ***Suggest that your client keep a calendar of all appointments and visits.***
- ***Make sure caseworker has your and your client's contact information. Advise client to immediately notify you and the caseworker if contact information changes.***
- ***Make sure your client knows to call you if they get a new caseworker.***
- ***Set the next hearing and the PPH at the conclusion of the hearing.***
- ***Set a staffing before leaving the courthouse.***
- ***Point out to your client that the law is clear that last minute compliance with the trial court's orders is not enough; they have to begin complying with the court orders and case plan immediately.***
- ***Discuss the central registry with your client, and let them know the process for appeal. Discuss the pros and cons of an appeal.***
- ***Discuss concurrent planning with your client.***
- ***If your client has the children returned and subsequently they are removed on a totally separate issue (which may be later raised as a subsequent issue upon which TPR can be based), insist upon a second adjudication.***
- ***If the children are returned to the parent's custody and subsequently removed again, a second adjudication is not necessary. A.C.A. 9-27-315(2).***

IV-E COURT FINDING REQUIRED

The court is required to make a finding on DHHS' reasonable efforts, describing the efforts in detail as to whether DHHS provided services to the family to prevent removal. **A.C.A. '9-27-328(b)(1)(C)**