

# CLIENT ADVOCACY FROM DISPOSITION THROUGH PERMANENCY

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# Role of Client and Attorney in Developing OHPP

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## **Minn. Stat. § 260C.212 - Children in Placement, Subd. 1 Out-of-home placement; plan.**

- (a) An out-of-home placement plan shall be prepared within 30 days after any child is placed in foster care by court order...
- (b) An out-of-home placement plan means a written document which is prepared by the responsible social services agency *jointly with the parent or parents or guardian of the child...*

# Role of Client and Attorney in Developing OHPP

**Minn. R. Juv. Prot. Proc. 26.02, subd. 4(b):**

- **Refusal to Participate in Development of Plan or Disagreement With Services.** When a parent or legal custodian refuses to participate in the preparation of the out-of-home placement plan *or disagrees with the services recommended* [emphasis added] by the responsible social services agency, the agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services...

# Role of Client and Attorney in Developing OHPP

## **Minn. R. Juv. Prot. Proc. 26.02, subd. 4(b):**

- ... Any party may ask the court to modify the plan to require different or additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court's approval of the plan shall be based upon the content of the petition or amended petition.

# Role of Client and Attorney in Developing OHPP

- "a case plan that has been approved by the district court is presumptively reasonable." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn.2008). We further concluded that "once a case plan has been approved by the court, the appropriate action for a parent who believes some aspect of the case plan to be unreasonable is to ask the court to change it, rather than to simply ignore it." *Id.*



# Role of Client and Attorney in Developing OHPP

- Case workers may (*inappropriately*) develop the case plan without consulting with the parent or guardian and then present the parent or guardian with the finished product and ask for a signature indicating that the parent/guardian received the case plan
- If the parent/guardian refuses to sign the case plan, it is filed with the court without a signature and the parent/guardian is seen as uncooperative

# Role of Client and Attorney in Developing OHPP

- How can a parent/guardian participate in development of case plan?
  - Ask
  - Arrange a meeting when client is presented with case plan to review and propose changes, if client has concerns
  - Bring a prompt motion to modify



# Role of Client and Attorney in Developing OHPP

- **Role of attorney as case worker:**
  - It is helpful to be familiar with available services and what the practice of the Agency is with respect to the provision of services
    - Different case workers may have different understandings about what the Agency is and is not able to pay for or provide
    - Keep in mind that service providers that are not approved by the Agency may not “count” from the Agency’s perspective

# Role of Client and Attorney in Developing OHPP

- Common areas of difficulty
  - Housing
  - Parenting/Mental Health Assessments
  - Trauma focused therapy

# Reviewing/Discussing GAL and Human Services Reports

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## **Minn. R. Juv. Prot. Proc. 27.01 - Social Services Court Reports – Generally, Subd. 1. Periodic Reports Required.**

- The responsible social services agency shall submit periodic certified reports to the court regarding the child and family...
- **Subd. 2. Timing of Filing and Service.**
- The agency shall file the report with the court and serve it upon all parties *at least five (5) days prior* [emphasis added] to the hearing at which the report is to be considered.

# Reviewing/Discussing GAL and Human Services Reports

## **Minn. R. Juv. Prot. Proc. 27.11 Reports to the Court by Child's Guardian ad Litem**

- **Subdivision 1. Periodic Reports Required.**
  - The guardian ad litem for the child shall submit periodic certified written reports to the court.
- **Subd. 2. Timing of Filing and Service.**
  - The guardian ad litem shall file the report with the court and serve it upon all parties ***at least five (5) days*** [emphasis added] prior to the hearing at which the report is to be considered...

# Reviewing/Discussing GAL and Human Services Reports

**In relevant part, HS reports should (Minn. R. Juv. Prot. Proc. 27.01, subd. 5):**

- (e) identify progress made on the out-of-home placement plan or case plan;
- (f) address the safety, permanency, and well-being of the child
- (g) request orders



# Reviewing/Discussing GAL and Human Services Reports

**In relevant part, GAL reports should include (Minn. R. Juv. Prot. Proc. 27.11, subd. 5):**

- (7) a list of the resources or persons contacted who provided information;
- (8) a list of the dates and types of contacts with the child;
- (9) a list of all documents relied upon when generating the court report;
- (10) a summary of information gathered regarding the child and family;
- (11) a list of any issues of concern to the guardian ad litem; and
- (12) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

# Reviewing/Discussing GAL and Human Services Reports

Best practice is to provide the client with a copy of the reports prior to the hearing

- Be sure to meet with client prior to hearing to fully discuss client's thoughts and concerns
  - There can be a large amount of info in report
  - The client knows first-hand what has been happening in their case and it is important to get their perspective
    - Client wants to feel listened to

# Reviewing/Discussing GAL and Human Services Reports

- Client may be surprised by contents of reports and recommendations
  - Important to keep client focused on big picture
  - Don't assume that the reports are accurate
  - Don't assume that your client is telling the truth
    - Often have to talk to all parties to get a full picture

# Reviewing/Discussing GAL and Human Services Reports

- Go over any areas of concern in report (reports of non-compliance, etc.) and go over all recommendations
- Thoroughly go over pros and cons of raising issues at review hearing
  - Develop a strategy that best suits your clients goals
    - Oral motion vs. written motion
    - Waiting to raise an issue (credibility)

# Hearings to Review Disposition



# Hearings to Review Disposition

## **Minn. R. Juv. Prot. Proc. 51.03 - Hearings to Review Disposition, Subd. 1. Timing.**

- When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.



# Hearings to Review Disposition

- **Topics to be reviewed include:**
- OHPP progress
- Reasonableness of the OHPP
- Reasonable/active efforts
- Disposition
- Child's wellbeing

# Questions/Issues to Raise During Review Hearings

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- Things that are going well in case
  - Can help to bolster credibility to highlight parent's strengths/successes

# Questions/Issues to Raise During Review Hearings

- Requests regarding visitation
  - Barriers to visitation
  - Increase visitation
  - Supervised vs. unsupervised

# Questions/Issues to Raise During Review Hearings

- Barriers to services
  - Transportation
  - Scheduling conflicts
  - Language barriers
  - Insurance coverage
  - Parent's intellectual functioning/ability to comprehend/access services

# Questions/Issues to Raise During Review Hearings

- Parent's concerns about child/ren's placement
  - Safety concerns about current placement
  - **Minn. Stat. § 260.012, subd. 2(d):**
  - Siblings should be placed together... at the earliest possible time unless it... would be contrary to the safety or well-being of any of the siblings or unless it is not possible after reasonable efforts...
  - Has county thoroughly explored eligible relatives



# Questions/Issues to Raise During Review Hearings

- Factual disputes involving reports
  - Be sure to consult with all parties before raising significant issues in court

# Questions/Issues to Raise During Review Hearings

- Additional services that may be helpful
- Services that may be unhelpful

# Questions/Issues to Raise During Review Hearings

- Change of dispo. (or THV) (when appropriate)
  - Use timelines to your advantage

# Ensuring Frequent Visitation

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## **Minn. Stat. 260C.178, Subd. 3. Parental visitation.**

- (a) If a child has been taken into custody... and the court determines that the child should continue in foster care, the court shall include in its order notice that the responsible social services agency has a duty to develop and implement a plan for parental visitation of and contact with the child *that promotes the parent and child relationship unless the court finds that visitation would endanger the child's physical or emotional well-being.* [emphasis added]

# Ensuring Frequent Visitation

**Minn. Stat. 260C.178, Subd. 3. Parental visitation.**

- (b) ... the plan for parental visitation required under section [260C.212, subdivision 1](#), paragraph (c), clause (5), must be developed and implemented by the agency and the child's parents ***as soon as possible after the court's order for the child to continue in foster care.*** [emphasis added]



# Ensuring Frequent Visitation

## **Minn. Stat. 260C.178, Subd. 3. Parental visitation.**

- (c) When a parent has had no or only limited visitation or contact with the child prior to the court order for the child to continue in foster care, the court may order a visitation plan developed and implemented while the agency conducts the assessment of the parent's ability to provide day-to-day care for the child required under section [260C.219](#).

# Ensuring Frequent Visitation

- Frequency of maternal visitation is significantly, positively related to the likelihood of reunification even after controlling for mother's substance abuse and mental illness. Leathers (2002)
- Children of parents who visit frequently spend significantly less time in foster care (expediting case closure) than those whose parents visited infrequently or not at all (Fansel & Shinn, 1978; Mech, 1985; Milner, 1987)

# Ensuring Frequent Visitation

- Frequency of visitation is positively related to children's emotional and intellectual development, as well as to their overall adjustment to the transition into foster care (Cowan & Stout, 1939; Fanshel & Shinn, 1978; Weinstein, 1960; Zimmerman, 1982)

# Ensuring Frequent Visitation

- Increased parental visitation is associated with a decrease in behavioral problems among children in foster care (Cantos, Gries, & Slis, 1997; McWey, Acock, & Porter, 2010; Simsek, Erol, Oztop, & Munir, 2007)
- Children of parents who visited frequently had significantly lower levels of depression than their counterparts. McWey, et al.

# Ensuring Frequent Visitation

- Frequency and consistency of maternal visits are positively related to the quality of attachment between the mother and child. Children with higher levels of attachment had fewer behavioral problems and better developmental outcomes than those with lower levels of attachment.

McWey and Mullis (2004)



# Ensuring Frequent Visitation

- Discuss visitation with county outside of court
  - Often more efficient than litigating the issue
  - Always weigh pros and cons of bringing a motion
    - May be divisive and have long term impact on case
    - Bring motion when necessary



# Ensuring Frequent Visitation

## **Minn. R. Juv. Prot. Proc. 14.01**

- **Subd. 2. Motions to Be in Writing.**
- Except as permitted by subdivision 3, a motion shall be in writing...
- **Subd. 3. Exception.**
- Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing... When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

# Ensuring Frequent Visitation

- Be persistent
  - It may take several hearings to achieve desired change in visitation

# Requesting Additional Services for Client

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- Significant gaps in services may ultimately sabotage reunification
  - Transportation
  - Housing
  - Phone
  - Trauma services
  - ARMHS worker
  - Parent mentor
  - Family therapy
  - Support groups
  - Anything that may help to address a significant issue/barrier to reunification
    - A drug addict will likely never achieve reunification without addressing CD issue

# Requesting Additional Services for Client

- Step 1: Get client approval
- Step 2: Discuss with caseworker
- Step 3: Bring motion or address at next review hearing
  - Judge may order requested services, if she/he believes that they would help reunify the family
  - Good to bring to judge's attention even if county is in support of requested service

# Limiting Services To Correcting Reason For Removal



# Limiting Services To Correcting Reason For Removal

**Minn. Stat. §260C.178, Subd. 7**

- Out Of Home Placement Plan:
  - Required under §260C.212
  - Shall be filed with the court within 30 days of a CHIPS petition being filed

# Limiting Services To Correcting Reason For Removal

- Should be developed jointly with the parent and other service providers (parent attorney, GAL, Adult Mental Health Case Manager §260.212, Subd. 1.
- Parent may ask the court to modify the plan to require different or additional services refused by the agency
  - §260C.178, Subd. 7(c).

# Limiting Services To Correcting Reason For Removal

## **Minn. R. of Juvenile Protection Procedure**

### **26.02, Subd. 4(b):**

“Any party may ask the court to modify the plan to require different or additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court’s approval of the plan shall be based upon the content of the petition or amended petition”.

# Limiting Services To Correcting Reason For Removal

- Ensure the services recommended are applicable/appropriate/realistic for your client
- CHEMICAL HEALTH ISSUES?
  - UA'S
  - Evaluation / Re-evaluation?
  - Treatment program (outpatient vs. inpatient)
  - Aftercare
  - Additional services (AA/NA/Sponsor/Classes)

# Limiting Services To Correcting Reason For Removal

## ASSESSMENTS

### Psychological Assessments

- Diagnostic Assessment vs. Psychological Evaluation

### Psychiatric Assessments

- Medications needed?
- Review how often?

### Counseling Services

- Individual / couples / group
- Day treatment
- DBT / EMDR / PTSD / cognitive / parenting

# PERMANENCY PROGRESS REVIEW HEARINGS



# PERMANENCY PROGRESS REVIEW HEARINGS

- Minn. Stat. §260C.204
- Minn. R. Juv. Prot. Proc. 43, Subd. 9(a)
  - When a child has been ordered into foster care or the home of a noncustodial or nonresident parent, and reasonable efforts are required, the first out-of-home placement order shall set deadlines for:
    - (i) the six-month permanency progress review hearing, pursuant to 260C.204(a) and
    - (ii) the twelve-month hearing to commence permanency proceedings required by 260C.503, subd. 1.

# PERMANENCY PROGRESS REVIEW HEARINGS

- At the hearing the Court must review:
- 1) Progress of the case, the parent's progress on the case plan or OHP plan (whichever applies);
- 2) The agency's reasonable (ICWA cases – active) efforts for reunification and provision of services;
- 3) The agency's efforts to finalize the permanent plan for the child (§260C.212(e) and to make a placement in a home that will commit to being the legally permanent home if no reunification.
- 4) In the case of an Indian child, active efforts to prevent the breakup of the Indian family and to place under United States Code, title 25, chapter 21, §1915.

# PERMANENCY PROGRESS REVIEW HEARINGS

- Notice to Relatives required to anyone who responded to the Agency's prior notices and asked to be notified of planning for the child, court proceedings

# PERMANENCY PROGRESS REVIEW HEARINGS

- **IF** at the hearing the Court finds:
- 1) The parent/guardian is in compliance with the court ordered OHP plan **AND**
- 2) The parent/guardian has maintained contact with the child – **THEN**
- The court may **either**
  - Return the child home if conditions leading to OHP have been sufficiently mitigated so home is safe and return home is in best interests **OR**
  - Continue the case **UP TO** six more months. If the child is not returned home at the end of the additional six months the court must proceed to permanency proceedings.

# PERMANENCY PROGRESS REVIEW HEARINGS

- If the court determines the parent is not in compliance with the OHP plan **OR**
- Not maintaining regular contact with the child as outlined in a visitation plan made part of the OHP plan the court may order the agency to:
  - Develop a permanent placement plan;
  - Consider, identify, recruit and support one or more permanency resources;
  - File a permanency petition

# HOW TO PROCEED IF CLIENT IS NOT WORKING THEIR CASE PLAN



# HOW TO PROCEED IF CLIENT IS NOT WORKING THEIR CASE PLAN

- **MEET WITH CLIENT**
  - Go over case plan
  - Identify what is going well/what is not
  - Identify barriers to their ability to be successful
  - Bring in family/friends/mentors to help if they are open to assistance with case plan
  - Write letters to client to help remind them of their case plan expectations

# HOW TO PROCEED IF CLIENT IS NOT WORKING THEIR CASE PLAN

- Write letters to client to help remind them of their case plan expectations
- Obtain releases from client to talk directly to service providers regarding treatment plans/adjustments needing to be made/additional services/reduction of services/change in service providers
- Discuss case outcome goals with client (reunification vs. permanency) – what are their hopes/goals for their child/family/themselves?
- Make a plan to support their case outcome goals

# Permanency Proceedings

# PERMANENCY PROCEEDINGS

## ADMIT / DENY HEARING

### **Minn. Stat. §260.507**

- Shall be held within 10 days of the filing of the petition when a TPR or a transfer of physical and legal custody petition has been filed
- The court shall determine whether there is a prima facie basis for finding that the agency made reasonable/active efforts for reunification.

# PERMANENCY PROCEEDINGS

## ADMIT / DENY HEARING

### **Minn. R. Juv. Prot. Proc. 44.02**

- Service: The summons and petition shall be personally served upon the parents in a manner that will allow completion of service at least 10 days before the admit/deny hearing.
  - Service by publication – Published notice shall be made once weekly for three weeks with the last publication at least 10 days before the admit/deny.

# PERMANENCY PROCEEDINGS

## PRETRIAL HEARING

- Meet with client in person at least one week prior to pretrial hearing to discuss:
  - Witnesses
  - Exhibits
  - Discovery requested/collected from the social worker case file/GAL/service providers
  - Provide client with a letter discussing legal options
- E-File and serve prior to hearing:
  - Witness list
  - Exhibit list



# PERMANENCY PROCEEDINGS

## PRETRIAL HEARING

- At the pretrial hearing:
  - Discuss with parties and court expected length of trial (Consecutive days?)
  - Finalize who the county expects to call as witnesses (Often list more than are called)
  - Discuss methods of testimony (In person / telephone / stipulated exhibits)
  - Discuss county's expectations regarding GAL testimony (who will call the GAL/question)
    - Consider any potential settlement options for client (transfer to a relative vs. TPR / contact plan to be attached to a voluntary petition)

# Permanency Proceedings

## Trial Matters

- **Minn. Stat. § 260C.301 (Termination of Parental Rights)**
  - Voluntary vs. Involuntary
    - Presumption of palpable unfitness if involuntary
      - Burden shift and presentation of evidence at future trials
    - In order to make voluntary, must make clear record that parent is admitting voluntarily and for good cause
      - **(In the Matter of the Child of A.S. and A.M., Parents, 698 N.W.2d 190)**
      - Petition must only cite to Minn. Stat. § 260C.301, subd. 1(a)

# Permanency Proceedings

## Trial Matters

- **Minn. Stat. § 260C.503 – Permanency Proceedings, Subdivision 1 Required permanency proceedings.**
- ... the court shall commence proceedings to determine the permanent status of a child by holding the admit-deny hearing required under section [260C.507](#) not later than 12 months after the child is placed in foster care or in the care of a noncustodial or nonresident parent...

# Permanency Proceedings Trial Matters

- In order to prevail, the petitioning party must demonstrate that at least one statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child and that the county has made reasonable efforts to reunite the family. *In re Welfare of Children of R. W.*, 678 N.W.2d 49, 55 (Minn. 2004); *In re Children of T.A.A.*, 702 N.W.2d at 708.

# Permanency Proceedings

Minn. Stat. § 260C.503 – Permanency Proceedings, Subd. 2 Termination of parental rights

- (a) The responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition when:
  - (1) ... egregious harm... ;
  - (2) ... sibling of a child who was subjected to egregious harm;
  - (3) the child is an abandoned infant...;
  - (4) ... [prior] order involuntarily terminating the parent's rights;
  - (5) the parent has committed sexual abuse as defined in section [626.556, subdivision 2](#), against the child or another child of the parent;
  - (6) the parent has committed an offense that requires registration as a predatory offender... ; or
  - (7) another child of the parent is the subject of an order involuntarily transferring permanent legal and physical custody of the child to a relative...



# Permanency Proceedings

## Trial Matters

### **Minn. Stat. § 260.012 – Duty to Ensure Placement Prevention and Family Reunification; Reasonable Efforts**

- ... Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that:
  - (1) the parent has subjected a child to egregious harm...
  - (2) the parental rights of the parent to another child have been terminated involuntarily;
  - (3) the child is an abandoned infant...;
  - (4) the parent's custodial rights to another child have been involuntarily transferred... ;
  - (5) the parent has committed sexual abuse as defined in section [626.556, subdivision 2](#), against the child or another child of the parent;
  - (6) the parent has committed an offense that requires registration as a predatory offender... ; or
  - (7) the provision of services or further services for the purpose of reunification is futile...



# Permanency Proceedings

## Trial Matters

### **Minn. Stat. § 260C.312 – Disposition; Parental Rights Not Terminated**

- (a) If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section [260C.201](#).

# Permanency Proceedings

## Trial Matters

**Minn. Stat. § 260C.515 (Transfer of Custody)**

- Can be voluntary or involuntary

# Permanency Proceedings

## Trial Matters

- **Minn. Stat. § 260C.515, subd. 4(6)**
  - another party to the permanency proceeding regarding the child may file a petition to transfer permanent legal and physical custody to a relative. The petition must... be filed...
    - By the A/D in a conventional case OR at least 30 days prior to trial in a fast track TPR case

# Permanency Proceedings Trial Matters

## **Standards of Proof**

### **Non-Indian Child: Minn. R. Juv. Prot. Proc. 49.03**

In a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

### **Indian Child: Minn. R. Juv. Prot. Proc. 28.04, subd 3**

In a Termination of Parental Rights matter involving an Indian Child, the standard of proof is beyond a reasonable doubt. In all other juvenile protection matters concerning an Indian child, the standard of proof is clear and convincing evidence.



# THANKS FOR JOINING US!

