

# **Client Advocacy from the EPC Hearing through Disposition**

**Melanie Dotty, Parent Attorney, Pequot Lakes**

**Pat Zenner, Zenner Law Office**

# Today's Agenda

We will discuss the legal requirements and your role during the following phases of a CHIPS proceeding:

- ▶ Appointment of Counsel
- ▶ Removal of Child from Home
- ▶ Emergency Protective Care (EPC) Hearing
- ▶ Admit/Deny Hearing (ADH)
- ▶ Adjudication
- ▶ Out of Home Placement Plan Preparation

# Appointment of Counsel

Topics we will address today:

- ▶ Statutory requirements
- ▶ Ethical requirements



# Statutory Requirement

- ▶ The court may appoint only one counsel at public expense for the first court hearing to represent the interests of the parents, guardians, and custodians, unless, at any time during the proceedings upon petition of a party, the court determines and makes written findings that extraordinary circumstances exist requiring counsel to be appointed to represent a separate interest of other parents, guardians, or custodians.

▶ *Minn. Stat. 260C.163, subd. 3(f)*

# Ethical Requirements

- ▶ Keep in mind ethical requirements related to dual representation and conflict of interest

*Rule 1.7 Minn. R. Prof. Resp.*



# Removal of Child from Home

Topics we will address today:

- ▶ Notice of removal
- ▶ Pre-hearing release or detention



# Notice of Removal

- ▶ If a child is taken into custody, the parent, guardian, or custodian of the child shall be notified as soon as possible.

*Minn. Stat. 260C.176, subd. 1*

# Pre-Hearing Release or Detention

- ▶ Unless there is reason to believe the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, or other suitable relative.

*Minn. Stat. 260C.176, subd. 1*



# Emergency Protective Care (EPC) Hearing

Topics we will address today:

- ▶ **Timing of Hearing**
- ▶ **Judicial Determinations**
- ▶ **Release**
- ▶ **Foster Care Placement**
- ▶ **Parental Visitation**

# Timing

- ▶ If a child was taken into custody, the court shall hold a hearing within 72 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, to determine whether the child should continue in custody.

*Minn. Stat. 260C.178, subd. 1(a)*

## PERMANENCY TIMELINE FOR CHILDREN IN OUT-OF-HOME PLACEMENT

(Timeline shows the latest date for each event)

### CHIPS Proceeding

	0	3	15	28	30	53	63	103	123	180	193	283	335*	365*
Child Removed from home	Petition Served <sup>1</sup>	Admit & EPC Hearing <sup>2</sup> (ADH) & attorneys appear	Deny Hearing <sup>4</sup>	Sched. Order Filed <sup>5</sup>	Out of Home Plan Filed <sup>6</sup>	Pretrial Hearing <sup>7</sup>	Trial <sup>8</sup>	Disp. Rev. if Adj.& ADH <sup>9</sup>	Adjud. & Dispo. Order	Perm. Progress Review Hearing <sup>12</sup>	Disp. Review Hearing <sup>9</sup>	Disp. Rev. Hearing <sup>9</sup>	Perm. Petition Filed	

GAL and SW reports must be filed and served at least 5 days prior to each hearing<sup>35</sup>

➔ If child not removed from home: Protective Services Case Plan must be filed with petition.<sup>3</sup>

### Permanency Proceeding (in order of statutory preference<sup>13</sup>)

**Termination of Parental Rights (TPR) (leading to adoption)**

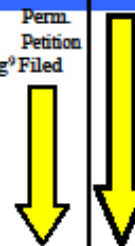
**Preferred permanency<sup>13</sup>:**  
Adoption through either  
TPR or Consent to Adopt

**Guardianship to Commissioner of Human Services – Consent to Adopt (GLCHS)**

**Transfer of Permanent Legal and Physical Custody to a Relative (TPLPC)**

**Permanent Custody to the Agency for Placement in Foster Care (PCA)**

**Temporary Legal Custody to the Agency for Specified Period of Time (TLCSP)**



**\*Only three exceptions:** The Admit/Deny Hearing (ADH) on the permanency petition may be continued beyond month 12 ONLY if: (1) the child is on a trial home visit (THV) at the time the permanency petition is supposed to be filed, and then the ADH may be continued for the remaining length of the THV (a THV may last no more than 6-months); or (2) the child is in protective supervision with the parent from whom the child was removed; or (3) at least one other CHIPS petition has been filed within the last 5 years and the child has been in out-of-home placement for 365 days on those prior petition(s), then, if the agency establishes a compelling reason, the court may continue the ADH on the permanency petition for up to 6 months.<sup>13</sup>

	335	365	415	425	485	575
TPR Petition Filed <sup>14</sup>	Admit/Deny Hearing <sup>15</sup>	Pretrial Hearing <sup>16</sup>	Trial Start <sup>17</sup>	Findings Filed <sup>18</sup>	Post-TPR Review Hearing <sup>19</sup>	
335	365	415	425	485	575	
Consent To adopt Filed <sup>20</sup>				Findings Filed <sup>21</sup>	90-Day Review Hearing <sup>22</sup>	
335	365	415	425	485	575	
TLC Petition Filed <sup>23</sup>	Admit/Deny Hearing <sup>24</sup>	Pretrial Hearing <sup>25</sup>	Trial Start <sup>26</sup>	Findings Decision Filed <sup>27</sup>	Post-TLC Review Hearing <sup>28</sup>	
335	365	415	425	485	575	
PCA Petition Filed <sup>29</sup>	Admit/Deny Hearing <sup>30</sup>	Pretrial Hearing <sup>31</sup>	Trial Start <sup>32</sup>	Findings Decision Filed <sup>33</sup>	Annual Review Hearing <sup>34</sup>	
335	365	415	425	485	575	
TLCSP Petition Filed <sup>29</sup>	Admit/Deny Hearing <sup>30</sup>	Pretrial Hearing <sup>31</sup>	Trial Start <sup>32</sup>	Findings Decision Filed <sup>33</sup>	Annual Review Hearing <sup>34</sup>	

# Judicial Determinations: Initial Prima Facie Showing

- ▶ The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that:
  - a juvenile protection matter exists, and
  - the child is the subject of that matter.

*Juv. Prot. R. 42.08*



# Judicial Determinations: Endangerment

The court shall determine whether the petition makes a prima facie showing that:

- ▶ the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or
- ▶ the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

*Juv. Prot. R. 42.08*

# Judicial Determinations: Endangerment

- ▶ If the court finds that endangerment exists, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to ensure the safety of the child or others.
- ▶ If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

*Juv. Prot. R. 42.08*

# Release

- ▶ Unless there is reason to believe the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release.

*Minn. Stat. 260C.178, subd. 1(b)*

# Judicial Determinations: Contrary to the Welfare

- ▶ The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or legal custodian is contrary to the welfare of the child.

*Minn. Stat. 260C.178, subd. 1(f)*



# Judicial Determinations: Indian Child Welfare Act

- ▶ The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry.
- ▶ If there is any reason to believe the child may be an Indian child, the case shall proceed as if ICWA applies unless and until information to the contrary is learned.

*Juv. Pro. R. 42.08;  
Minn. Stat. 260C.178, subd. 1(e)*

# Judicial Determinations: Indian Child Welfare Act

- ▶ If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.
- ▶ Upon receipt of information from the tribe, the court shall make a finding about whether the ICWA does or does not apply.

*Juv. Pro. R. 42.08;*

*Minn. Stat. 260C.178, subd. 1(e)*

# Judicial Determinations: Reasonable/Active Efforts

- ▶ The court shall determine whether reasonable efforts, or active efforts for and Indian child, were made to prevent placement or whether reasonable efforts to prevent placement are not required.

*Minn. Stat. 260C.178, subd. 1(e)*

# **Judicial Determinations: Reasonable/Active Efforts**

The court shall enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:

- ▶ (1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

# Judicial Determinations: Reasonable/Active Efforts

*(continued)*

- ▶ 2) that there are no services or other efforts that could be made at the time of the hearing that could safely permit the child to remain home or to return home.

*Minn. Stat. 260C.178, subd. 1(e)*

# **Judicial Determinations: Reasonable/Active Efforts**

When reasonable efforts to prevent placement are required and there are services or other efforts that could be ordered which would permit the child to safely return home, the court shall order the child returned to the care of the parent or guardian and the services or efforts put in place to ensure the child's safety.

*Minn. Stat. 260C.178, subd. 1(e)*

# Judicial Determinations: Reasonable/Active Efforts

- ▶ If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

*Minn. Stat. 260C.178, subd. 1(e)*

# **Judicial Determinations: “By-Pass” Cases**

**At the emergency protective care hearing, upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a prima facie case that any of the following exist so as to permit bypassing CHIPS reasonable/active efforts requirements and going directly to permanency:**

*(continued)*



# Judicial Determinations: “By-Pass” Cases

*(continued)*

- ▶ the parent has subjected a child to egregious harm (e.g., murder, manslaughter, felony malicious punishment, solicitation, etc.)
- ▶ the parental rights of the parent to another child have been involuntarily terminated
- ▶ the parents' custodial rights to another child have been involuntarily transferred to a relative
- ▶ the child is an abandoned infant

# Judicial Determinations: “By-Pass” Cases

*(continued)*

- ▶ the parent has committed sexual abuse against the child or another child of the parent
- ▶ the parent has committed an offense that requires registration as a predatory offender
- ▶ the provision of services or further services for the purpose of reunification is futile and therefore unreasonable

*Minn. Stat. 260C.178, subd. 1(g)*

# Judicial Determinations: “By-Pass” Cases

- ▶ If the court makes a determination that the petition establishes a prima facie showing that one of the above circumstances exists, the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency by scheduling a permanent placement determination hearing (Admit/Deny Hearing on permanency petition) within 30 days.

*Juv. Prot. R. 42.08*

# Parental Visitation

- ▶ If the child continues in foster care, the court shall include in its order that the social services agency has a duty to develop and implement a plan for parental visitation and contact that promotes the parent and child relationship, unless one of the exceptions applies.

*Minn. Stat. 260C.178, subd. 3(a)*

# Parental Visitation

- ▶ The plan for parental visitation must be developed and implemented by the agency and the child's parents as soon as possible after the court's order placing the child in foster care.



*Minn. Stat. 260C.178, subd. 3(b)*

# Parental Visitation – Exception: Endangerment

- ▶ The court is not required to order parental visitation if the court finds that visitation would endanger the child's physical or emotional well-being.

*Minn. Stat. 260C.178, subd. 3(a)*

# Parental Visitation – Exception: Limited Contact

- ▶ When a parent has had no or only limited visitation or contact with the child prior to the 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.

*Minn. Stat. 260C.178, subd. 3(c)*

# Parental Visitation – Exception: Putative Father

- ▶ When it is in the best interests of the child, the agency may ask the court to defer its duty to develop a visitation plan between a putative father and the child until the paternity status of the child's father is adjudicated or until there is a positive paternity test result.

*Minn. Stat. 260C.178, subd. 3(d)*



# Relative Search: Timing

- ▶ The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent.
- ▶ The county agency shall consider placement with a relative under this section without delay and whenever the child must move from or be returned to foster care

# Relative Search: Refusal to Identify Father or Relatives

- ▶ If the child's parent refuses to give information to the social services agency regarding the child's father or relatives, the court may order the parent to disclose the names, addresses, telephone numbers, and other identifying.

*Minn. Stat. 260C.178, subd. 1(j)*

# Order for Parental Evaluations

- ▶ When the court has ordered the child into foster care or the home of a noncustodial parent, the court may order a chemical dependency evaluation, mental health evaluation, medical examination, and parenting assessment for the parent as necessary to support the development of a plan for reunification.

*Minn. Stat. 260C.178, subd. 1(1)*

# Admit/Deny Hearing

Topics we will address today:

- ▶ **Timing**
- ▶ **Who Admits or Denies**
- ▶ **Scheduling Orders**



# Timing

- ▶ **When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within 10 days of the date of the EPC hearing.**
- ▶ **When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than 5 days and no later than 20 days after the filing of the petition.**

*Juv. Prot. R. 46.02*

# Timing: ICWA Case

- ▶ If the child is an Indian child, the parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days from receipt of the notice to prepare for the admit/deny hearing.

*Juv. Prot. R. 46.02*

# Timing: Combined with EPC Hearing

- ▶ Upon agreement of the parties, an admit/deny hearing may be combined with an EPC hearing.

*Juv. Prot. R. 46.02*

# Who Admits or Denies

- ▶ A parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent.
- ▶ If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

*Juv. Prot. R. 47.01*



# Who Admits or Denies

- ▶ Except as noted below, the child shall not admit or deny the petition.
- ▶ In matters where the sole allegation is that the child's behavior is the basis for the petition, only the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

*Juv. Prot. R. 47.01*

# Denial

- ▶ A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.
- ▶ When a denial by any party is entered, the court shall schedule a pre-trial and trial.

*Juv. Prot. R. 47.02*

# Trial and Decison

A trial in a CHIPS proceeding must be:

- ▶ Commenced within 60 days of EPC or ADH, whichever is earlier
- ▶ Held over consecutive days
- ▶ Completed within 30 days



Findings and order issued within 15 days of trial  
person who testified (court may add 15 days,  
for total of 30)

*Juv. Prot. R. 49.04*

# Scheduling Order

- ▶ The court shall issue a scheduling order at the admit/deny hearing or within 15 days of the admit/deny hearing.
- ▶ The Order shall include date or deadline for:
  - Pre-trial and trial
  - Permanency progress review hearing
  - Date for filing permanency petition
  - Date of admit/deny hearing on permanency petition

# Adjudication

Topics we will address today:

- ▶ **Timing**
- ▶ **Withholding of Adjudication**

# Timing

- ▶ If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:
  - ▶ (a) adjudicate the child as in need of protection or services and proceed to disposition; or
  - ▶ (b) withhold adjudication of the child pursuant to Rule 50.02. *Juv. Prot. R. 50.01*

# Withholding Adjudication

- ▶ When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services.
- ▶ The court may withhold adjudication for a period not to exceed 90 days from the finding that the statutory grounds have been proved – even if proved as a result of a trial.

*Juv. Prot. R. 50.02*

# Hearing After Withholding Adjudication

- ▶ At a hearing, which shall be held within 90 days following the court's withholding of adjudication, the court shall either:
- ▶ (a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

*Juv. Prot. R. 50.02*



# Hearing After Withholding Adjudication

*(continued)*

- ▶ (b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance.
- ▶ If the court enters an adjudication, the court shall proceed to disposition.

*Juv. Prot. R. 50.02*

# Developing an Out of Home Placement Plan

Topics we will address today:

- ▶ **Timing**
- ▶ **OHPP Developed Jointly with Parents**
- ▶ **Right to Counsel When Developing OHPP**
- ▶ **Preparing Your Client for OHPP Meeting**

# Timing

- ▶ An out-of-home placement plan shall be filed with the court within 30 days of the filing of the CHIPS petition.

*Minn. Stat. 260C.178, subd. 7(a)*

# **OHPP Developed Jointly with Parents**

- ▶ **An out-of-home placement plan means a written document prepared by the responsible social services agency jointly with the parents or guardians of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the foster care facility, and, where appropriate, the child.**

***Minn. Stat. 260C.178, subd. 7(a)***

# Right to Counsel When Developing OPHH

- ▶ The parents or guardians and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child.
- ▶ The parents may also receive assistance from any person or social services agency in preparation of the case plan.

*Minn. Stat. 260C.212, subd. 1(d)*

# Statement Regarding Participation

- ▶ The out of home placement plan shall include a statement about whether the child and parent or legal custodian participated in the preparation of the plan.

*Juv. Prot. R. 26.02*

# Attending or Not Attending Case Plan Meeting

- ▶ See correspondence between county attorney and parent's attorney

# Lengthy OHPP

1. That temporary physical and legal custody of the above named child shall be granted to [REDACTED] Human Services for placement out of the care of [REDACTED] which may include relative foster care.
2. That [REDACTED] shall maintain financial stability by means of employment and/or financial assistance, medical assistance, food stamps, child support, and social and supplemental security income to meet his and his child's basic daily needs of food, clothing and shelter.
3. That [REDACTED] shall cooperate with a relative search by [REDACTED] Human Services by providing the names, addresses, and phone numbers of relatives and significant friends of the children for possible short term, long term, or permanent placement options for the child.
4. That [REDACTED] will cooperate with [REDACTED] Human Services including, but not limited to, signing all necessary releases of information, authorizations and consents for care and programming, and that if [REDACTED] is unable, unavailable or unwilling to sign, that [REDACTED] Human services shall have the authority to sign all necessary authorizations, consents, or releases of information.
5. That [REDACTED] shall meet the physical, dental, mental health and educational needs of his child. And if the child needs education, physical or mental health services that [REDACTED] will participate and collaborate with that service and attend all medical appointments if requested by [REDACTED] Human Services.
6. That [REDACTED] Human Services, in consultation with the Guardian ad Litem, may return the child to [REDACTED] on a trial home visit, following substantial compliance with the court ordered disposition and case plan.
7. That [REDACTED] shall participate, along with family members and significant friends/advocates of the child, in a Family Group Conference if recommended by [REDACTED] Human Services.
8. If recommended [REDACTED] shall complete a diagnostic assessment conducted by a licensed mental health professional and follow all recommendations including but not limited to obtaining psychiatric evaluations and medication management, community mental health services, anger management therapy/education and/or further assessments and recommendations as indicated by the licensed mental health professional.
9. That [REDACTED] will cooperate with all parenting education programs referred to and will meet with these programs as scheduled. [REDACTED] will meet with all providers as scheduled and actively participate in these programs such as Level 3 parenting through Kindred Family Focus, Help me Grow, PRIDE, ECFC and any other services that are recommended by [REDACTED]. [REDACTED] will utilize these services to demonstrate that he is meeting the physical, medical, dental and overall well-being of the child.
10. That [REDACTED] will not have any contact with the child's mother, [REDACTED], and that he will also ensure that the child does not have any contact with [REDACTED] at any time.
11. If [REDACTED] were to have a live in companion, that person will need to be pre-approved by [REDACTED] and shall consent to voluntary services and participate with [REDACTED] in service planning with [REDACTED] Human Services.
12. That [REDACTED] provides supervision appropriate to the child's age and development, or provide safe alternative child care, in those periods in which he is unavailable included but not limited to work, illness, or injury. Any one providing care for the child shall be pre-approved by [REDACTED] in consultation with the Guardian ad Litem.
13. That [REDACTED] shall exercise regular, consistent, and appropriate supervised visitation with the child and that visitation will be scheduled by [REDACTED] Human Services, which shall have authority to go to unsupervised visitation, or return to supervised visitation if deemed the best interest of the child. *in consultation w/GAL.*
14. That if recommended by [REDACTED] Human Services, [REDACTED] comply with completing a parent capacity assessment and follow through with all further recommendations.
15. That [REDACTED] will be forthright, honest, cooperative, and follow all recommendations of service providers, including the social worker. [REDACTED] will notify [REDACTED] Human Services and-Guardian ad Litem of any change in address, phone number and whom he is residing with.



# **Preparing Client for OHPP Meeting**

- ▶ **How to prepare client for meeting with social worker if you can attend meeting**
- ▶ **How to prepare client for meeting with social worker if you can't attend meeting**

**???** Questions **???**