

Dependency Cases Step by step...

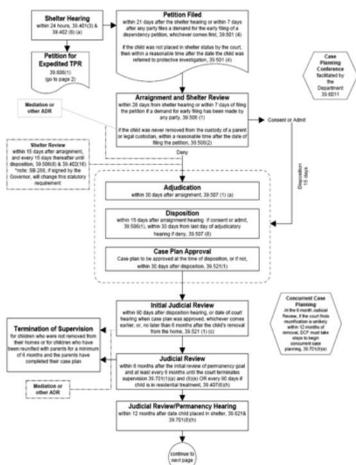
CLER Approval:
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Course Number: 81401
Course Title: Dependency Training
for Children's Attorneys
CLE Provider: Florida's Children First
Number of Credits: 4.5 C.L.E.R.
(4.5 general CLER, including 1.00 Ethics)

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Here we go...

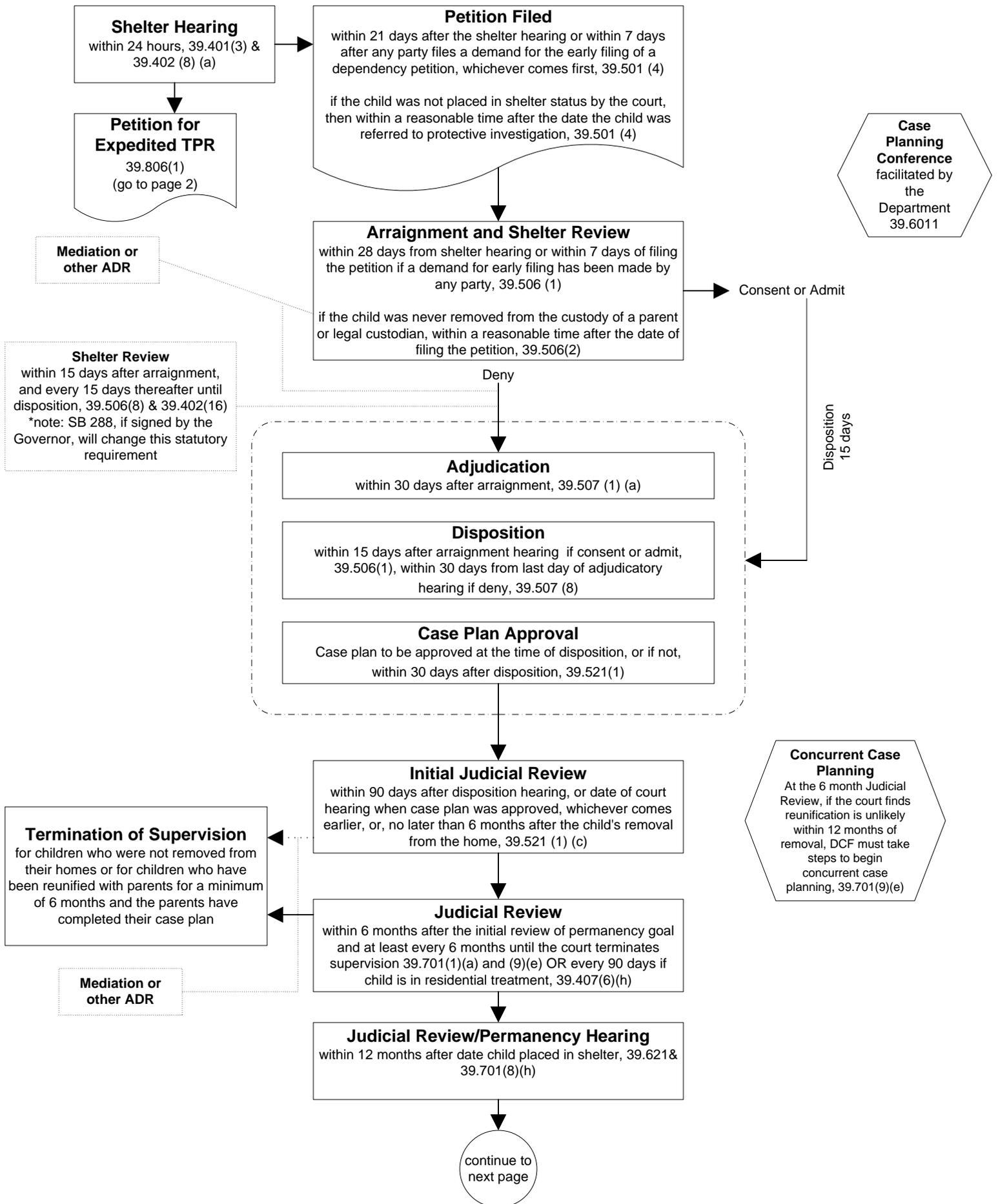
Dependency Case Management Flowchart



Dependency Case Management Flowchart
(continued)

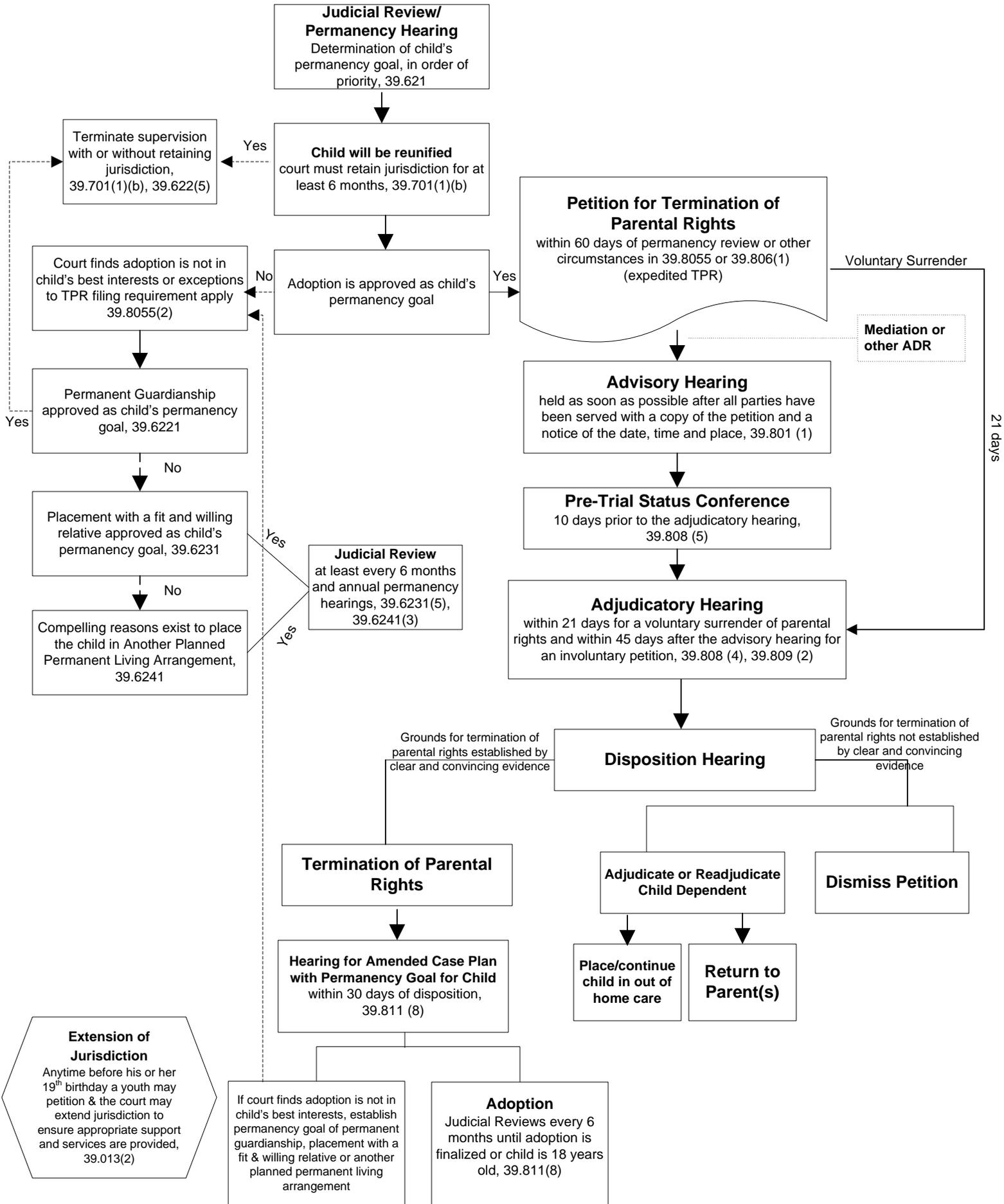


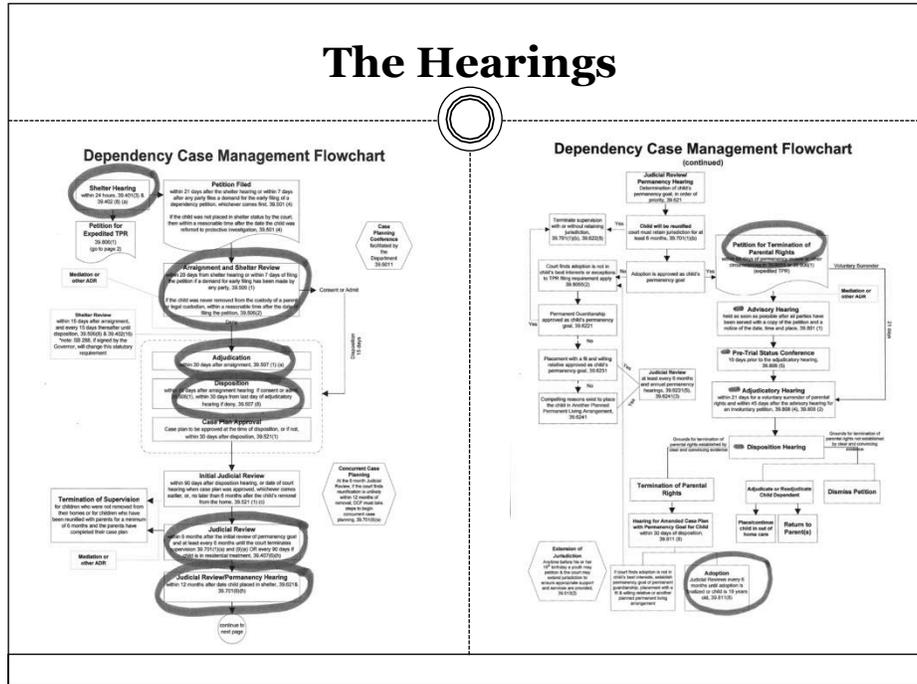
Dependency Case Management Flowchart



Dependency Case Management Flowchart

(continued)





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Nuts & Bolts of Each Hearing



- Timing
- Purpose
- Evidentiary issues
- Legal authority
- Basic considerations
- Local practice
- Preparation
- What the court could & should order?
- Next steps

Preliminary Issues in Dependency Cases



- Law & order
- Jurisdiction
- Parties & participants
- Right to notice, participate & counsel
- Time limitations
- Key considerations
- Common issues to look out for in every case
- How dependency cases begin

Law & Order

Applicable Statutes:

- Florida Statute, Chapter 39, Proceedings relating to children
- Florida Statute, Chapter 63, Adoption
- Florida Statute, Chapter 409.1451, Independent living transition services.

Court Rules:

- Juvenile Rules of Procedure
- Rules of Civil Procedure
- Appellate Rules of Procedure

Administrative Code:

- Florida Administrative Code, Chapter 65

Federal Law:

- Adoption and Safe Families Act of 1997 (ASFA)
- Fostering Connections to Success and Increasing Adoptions Act of 2008

Jurisdiction

- Circuit court has exclusive original jurisdiction over Chapter 39 proceedings.
- Jurisdiction attaches at:
 - initial shelter petition,
 - dependency petition,
 - termination of parental rights petition is filed, or
 - when a child is taken into the custody of the department
- Jurisdiction continues until:
 - 18 years old, unless terminated by court order;
 - 19 years old, if requested by the youth; or
 - 21 years old, solely for resolution of a pending SIJS (immigration) petition.
(§39.013(2), Fla. Stat.)
- Child=unmarried individual under age 18 & not emancipated.
(§39.01 (12), Fla. Stat)

Parties & Participants	
<p><u>Parties:</u></p> <ul style="list-style-type: none"> ○ Petitioner ○ Child ○ Parent(s)/Legal guardian ○ Department ○ Guardian ad litem or program representative, when appointed. <p style="text-align: center;">(§39.01(51))</p>	<p><u>Participants:</u></p> <ul style="list-style-type: none"> ○ Any non-party who should receive notice of hearings. <ul style="list-style-type: none"> • foster parents or preadoptive parents • legal custodian • identified prospective parents • actual custodians • relatives • grandparents entitled to notice of an adoption proceeding • state attorney • any other person whose participation may be in the best interest of the child. <p style="text-align: center;">(§39.01(50))</p>
<p>The court may add additional participants.</p> <p>The court may grant participants leave to be heard without a motion to intervene.</p>	

Right to Notice, Participate & Counsel	
<p style="text-align: center;">Parents</p> <ul style="list-style-type: none"> • Notice reviewed at each stage • On-going obligation to provide notice • Explicit right to be heard at shelter • Right to counsel at each stage of the proceedings (must be so advised) • Appointed counsel for indigent parents • Any waiver must be knowing & intelligent <p style="text-align: center;">Guardian ad Litem</p> <ul style="list-style-type: none"> • Shall be appointed at the earliest possible time & necessity of appointment reviewed at each stage • Appointment required for TPR, RTC placement & visitation under the Keeping Safe Children Act • Must be represented by an attorney in RTC placement proceedings 	<p style="text-align: center;">Child</p> <ul style="list-style-type: none"> • Presence & notice may be waived by the court • Attorney ad litem may be appointed where appropriate • Court may consider whether an attorney ad litem is necessary at any stage <p style="text-align: center;">Department</p> <ul style="list-style-type: none"> • Represented by an attorney at every stage <p style="text-align: center;">Participants</p> <ul style="list-style-type: none"> • Right to notice <ul style="list-style-type: none"> ○ Foster/pre-adoptive parents ○ Relatives <ul style="list-style-type: none"> ➢ Following protective investigation ➢ TPR petition ➢ Grandparents

Time Limitations



- A right of the child which may not be waived, extended or continued except:
 - At the request of the child's attorney, GAL or with the consent of the child.
 - At the request of a party due to unavailability of material evidence if due diligence & substantial grounds to believe the evidence will be available within 30 days; or to allow the requesting party additional time to prepare the case because of an exceptional circumstance.
 - To accomplish notice of the hearing to the child's parent or legal custodian
- Total time allowed for continuances may not exceed 60 days within any 12-month period and be granted only:
 - ✦ for extraordinary circumstances in which it is necessary to preserve the constitutional rights,
 - ✦ if substantial evidence exists to demonstrate that without granting a continuance the child's best interests will be harmed.
- When granted, continuances or extensions are limited:
 - Days absolutely necessary to preserve the rights of a party or the child's best interests of a child.

(§39.0136)

Time is of the essence for establishing permanency

KEY CONSIDERATIONS

Abby Bryan Cassian Dawn Eddie

Eddie is 8 years old. Mother left Father when Eddie was 2. Eddie and Father lived with a series of friends until Eddie was 7 when they got their own apartment. Father was arrested a couple of months after they settled into their apartment. Eddie was placed into a foster home that helped him stay in close contact with Father. When he was released, Father had no home for several months, so Eddie remained with Foster Parents, but had regular visits with Father. Father found a job and got a small apartment. Eddie has had several overnights with Father. Sometimes Father has to go to work and leaves him with a neighbor – which Eddie doesn't like very much. Father doesn't have any toys or a dog to play with. Someone told Eddie he will have to pick between Father and Foster Parents. He doesn't know what to do & is very scared.

Bryan, age 17, has an IQ of 53. He is enrolled in the 10th grade, but he reads at a 2nd grade level or below. Parents' rights were terminated when he was 10. He has 3 older half siblings, and is closest to his 20 year old sister who has 2 children. Brian was in a DJJ facility for 18 months and was released to a group home that was supposed to be a short-term stay. But no better place was located for him, and he has been there for several months. As a student with developmental disabilities, he is entitled to remain in public school until he reaches age 22. No one is really sure where Brian should live when he turns 18.

Cassian, age 3, was removed at 18 months due to neglect. He has been living with Foster Parents the whole time & they are interested in adopting. Parents made some efforts at complying with their case plan, but they have not kicked their drug habits. Their visits have been spotty. Grandmothers & Aunts have been somewhat involved, but they have not had routine contact. He has 2 older half brothers who live with other family members whom he sees occasionally. He was somewhat undernourished and developmentally delayed when he came into care, but he is thriving with Fosters. He is very verbal. The case is set for TPR

Dawn, age 16, was removed from her home for the first time 2 months ago after she told a teacher that Mother's Boyfriend was sexually molesting her. Mother told the CPI that Dawn was lying and was just angry because Boyfriend made her do chores and she was too lazy to do them. Dawn's 3 younger brothers were not determined to be at risk and remained in the home. Dawn is fiercely devoted to her brothers and fears that Boyfriend might hurt them as he can get angry when he is drunk. She was able to keep them out of his way when she was home, so he hadn't touched any of them before she left. Dawn has been living in a group home, she has lost touch with her school friends because she doesn't have access to a cell phone, and seldom has telephone privileges. Dawn is pretty street smart, but when she gets upset she can get very loud and lose control. She has been asking whether she can go home if she retracts her claim of sexual abuse.

Abby, age 11, is very intelligent, but hadn't done well in school for the last few years. Abby attended several schools, first by being moved by Mother, then twice since she came into care. Father died in Iraq when she was 9. Mother has had mental health issues for a long time. Ten months ago Mother was hospitalized under Baker Act proceedings and Abby was placed into a shelter. After several weeks caseworkers were able to locate paternal Grandmother, a snowbird, who moved back to care for Abby. Abby has started to do very well in her new school. She has maintained close contact with Mother – whom she loves very much. Mother and Grandmother don't get along very well – though they try to be civil. Mother has an apartment about 30 minutes from Grandmother, in a different school district. She is working on her case plan tasks and would like to speed up reunification. Abby's had 3 overnight visits with Mother in the last month

Common issues	
<p>Include...</p> <ul style="list-style-type: none"> ○ Permanency (forever home) ○ Placement ○ Education ○ Health ○ Psychotropic medication ○ Placement in Residential Treatment Centers (RTC) ○ Disabilities ○ Developmental delays ○ Safety & well-being ○ Family & friends ○ Income or assets 	<p>And...</p> <ul style="list-style-type: none"> ○ Indian Child Welfare Act ○ Uniform Child Custody Jurisdiction and Enforcement Act ○ Interstate Compact on the Placement of Children ○ Special Immigrant Juvenile Status (& other immigration laws) ○ McKinney-Vento ○ IDEA
<p><i>Any other issue important to the child</i></p>	

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How a dependency cases begins...



Someone thinks that a child is abused, neglected or abandoned



A report should be made



The report may be accepted for investigation



If a report is accepted, an investigation will be initiated



The child may be removed from the home if there is probable cause



A petition for shelter must be filed if the child is removed

How a dependency cases begins...



Probable cause to believe that:

- ✓ The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;
- ✓ The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- ✓ The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

(§39.402(1))

The Hearings



- **SHELTER**
- Arraignment & Shelter Review
- Adjudication
- Disposition
- Judicial Reviews
- Permanency Hearings
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Shelter Hearing

TIMING	Within 24 hours of removal
PURPOSE	To determine whether the child should be placed or remain in shelter (an out-of-home placement) pending adjudication of dependency
BURDEN & STANDARD OF PROOF	<ul style="list-style-type: none"> •Petitioner has the burden to show probable cause •Clear & convincing evidence required for denial of visitation
EVIDENCE	Court will consider any and all relevant and material evidence
AUTHORITY	§§39.395 - 39. 402, Fla. Stat. Fla. R. Juv. P. 8.300-8.305

Basic Considerations



- **Should the child be removed?**
- **What efforts were made to prevent removal?**
- **Where should the child be placed?**
- **Should visitation be ordered?**
- **What services does the child/child's family need?**

What happens at the shelter hearing can set the tone for the entire case. The longer a child remains in an out-of-home placement, the more difficult reunification becomes.

Removal



- Did the department establish "probable cause that reasonable grounds for removal exist" or does it need more time (72 hours)?
(§39.402(8)(d))
- What was the probable cause?
 - Abuse, neglect, or abandonment, or imminent danger of illness or injury;
 - Parent has materially violated a court imposed condition of placement; or
 - No available parent, legal custodian, or responsible adult relative
(§39.402(1))
- Is it contrary to the child's welfare to remain in the home?
 - Was the removal necessary?
 - Is there a substantial & immediate danger which cannot be mitigated?
 - Is removal in the best interests of the child?
 - Any risks to the child's safety & well-being if removed? Any timing issues?
(§39.402(8)(h)(3))

\$\$\$ Federal reimbursement implication\$\$\$

The contrary to the welfare finding must be made at the 1st hearing following removal.

Removal continued



Abuse - Any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. (§39.01(2))

Neglect - Deprivation of necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired (§39.01(44))

Abandonment - Parent or legal custodian or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. (§39.01(1))

Harm - physical, mental, or emotional injury (§39.01(32))

What efforts were made to prevent removal?



Any efforts to prevent removal?

- If efforts were made, do the efforts make sense?
- If no efforts were made, why not?
 - The circumstances justify "deemed" reasonable efforts
 - 1st contact is during an emergency;
 - A substantial and immediate danger to the child which cannot be mitigated;
 - No services can ensure the health and safety of the child; or
 - Grounds for expedited TPR exist.

(§39.402(8)(h)(5))

Could the court order services that will allow the child to remain in the home?

- What specific services, if available, could eliminate the need for removal & when are those services available?
- If services are not available, why not?
- If no services offered, what can be put in place to ensure the child's protection at home?

*** Federal reimbursement implication***

Placement



If no probable cause found:

- Deny shelter & child remains at home/is returned home
- Withhold ruling & continue shelter for up to 72 hours

If probable cause found:

- Shelter the child
 - Shelter="Placement with a relative or a nonrelative, or in a licensed home or facility for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication." (§39.01(68))
- 2008 Dependency Benchbook lists...
 - Any adult for whom DCF has positive home study
 - Custody to DCF with permission to release without further hearing to court specified person (including non-offending parent) upon positive home study
 - Custody to DCF with permission to release without further hearing to person selected by DCF upon positive home study
 - Custody to DCF with directions for a home study for a specified person
- Child may not be released from shelter absent a court order

Placement Continued



Considerations

- Safety of the child is the paramount
 - the extent and type of maltreatment & circumstances surrounding the maltreatment
 - the strengths and vulnerabilities of the child, parent(s), family and community
 - The reaction and response to the investigation by the parent(s) & family
- Placements should be the least restrictive & stable
- Siblings should be placed together
- Preference for relatives (& sibling's adoptive parents) over non-relatives
- Caregivers should be aware of and able to meet the child's needs
 - Does the child need specific services?
- Is there good cause to request evaluations (mental or physical condition or substance abuse) of proposed caregiver?
 - What should the evaluation address? What information needs to be provided?
- Limitations on the length of shelter
 - 60 days without an adjudication of dependency
 - 30 days after adjudication unless there is a disposition order

Visitation



When should visitation be ordered?

- With parents unless clear and convincing showing that visitation is not in the best interest of the child
- Department must make a recommendation
- Visitation orders must conform with the Keeping Children Safe Act (§39.0139)
- If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department must provide justification
- Terms of visitation
 - With parents
 - With siblings
 - With relatives or anyone else?

Legislative intent that children involved in dependency proceedings enjoy regular visitation with their parents & siblings.

Services



- What impact is the court order going to have on the child's education?
 - Stability
 - Surrogate parent
- Does the child have any health needs?
 - Assessments & evaluations
 - Psychotropic medications
 - Residential treatment placement
- What reunification services should be implemented?
 - Appropriate/available services to protect the child in the home
 - Voluntary services
- Is there a need for any other services?
 - Child
 - Is the child eligible for a comprehensive behavioral health assessment (CBHA)?
 - Parent
 - Child's caregivers

Local Practice



- Here are some possible questions about local practice – feel free to add/delete.
- What happens if a child is removed over the weekend?
- Where are hearings held? Before whom?
- When are they held?
- Who else will be present?
- How does the judge conduct the hearings?
- How will the attorneys get a copy of the shelter petition? What about notice of siblings being brought to court at a later date?
- Are the children brought to court?
- Is the court child-friendly?
- What shelter orders does the court issue?

Preparation for the shelter



Review the legal requirements for shelter

- No removal if no probable cause
- No removal if the child can remain safely in the home (services needed?)
- Return home if safety issues have been resolved

Review the petition

- Clarify any vague allegations
- Were efforts made to prevent removal and were they effective?
- Watch out for template language & findings
- Obtain supporting documentation and information from the department
- Determine the other parties' positions
- If possible, interview the petitioner (with permission from counsel)
- Interview any other available witnesses

Meet your client as soon as possible

- Introduce yourself and explain your role – use examples
- Explain confidentiality-use examples
- Explain why the shelter hearing is being held and what will happen next
- Explain the roles of the different players (including the judge)
- Explain possible outcomes, but don't make promises
- Decide what your client is going to call you, let your client know how to reach you and how you will respond to any calls

Assess your client's ability to make considered decisions on the issues

- Is the client being influenced?
- Has your client been told to tell you anything?
- Can your client appreciate the risks or benefits of his decisions?

Preparation for the shelter cont.

Get to know your client

- Remind your client that there is no right or wrong answer
- Who & what is important to your client?
- Ask about relatives. Consider drawing a family tree - allow the client to define family
- Any siblings? Does the client have/want any contact?
- Ask about school.
- How is the client feeling?
- Medications?
- Ask the client about any person who is present at the shelter hearing.

Review the petition with your client

- Explain what the petition is
- Confirm the parents' identities

- Go through the allegations with the client*
- Ask your client to explain what happened
- Talk about any discrepancies between the allegations and your client's report
- Ask your client what she wants to happen, & where she wants to be. Why?
- Ask your client what she thinks the court should order. Why?
- Ask if there is anything that would make it okay to stay at home. Why?

Ask your client if she has any questions

- What does your client want to know?
- Is your client worried about any ramifications if she asserts a particular position?
- Is there anything that is worrying the client?

Preparation for the shelter cont.

Interview any available relatives

- How is the relative related to the family?
- What information does the relative have?
- What does this person think should happen?
- Does the relative know of any other relatives?
- Is the relative able & willing to care for the child?
- Does the relative know of any other person who may want to care for the child?
- What is the relative's relationship with the child? With the parent(s)?
- What services does the relative think the child or family needs?

Get ready to make your case

- Make sure you understand your client's position and any second choices
- Determine if the parties are in agreement
- Be prepared to explain why your client's position is in your client's best interests

- Be prepared to address safety
- Be prepared to address educational stability
- Be able to articulate the risks associated with other proposed placements
- Be able to explain what services are needed
- Review the evidence
 - What witness, document or other evidence supports or refutes each allegation and how does that impact your client's case?
- Be prepared to argue alternatives if the judge does not rule in your favor.

Remember

Removal is usually traumatic, confusing and overwhelming. Your client may be scared, angry, upset, anxious & unwilling to trust any adults at the moment.

What could & should the court order?

Required content

- Identification of parties present at the hearing (§39.402(h))
- Shelter care is necessary (§39.402(h)(1))
- Shelter care is in the best interest of the child (§39.402(h)(2))
- Continuation in the home is contrary to the welfare of the child (§39.402(h)(3))
- Probable cause to believe that the child is dependent exists (or the court needs additional time) (§39.402(h)(4))
- The department made reasonable efforts (or deemed reasonable efforts) to prevent or eliminate the need for removal. The finding must include a description of the services. (§39.402(h)(5) & (10)(a),(b)& (c))
- Parent(s) were advised of the right to counsel (§39.402(7))
- Findings with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents. (§39.402(8)(c))
- Parents required to provide financial information necessary to accurately calculate child support (§39.402(11)(a))
- Relative caregivers were advised of their right to be present and heard at subsequent hearings (§39.402(8))
- The parent(s) and relative caregivers were notified of the next hearing and of the importance of participating. (§39.402(6))

What could & should the court order?

Consider asking for

- Access to medical or educational records if parents will not consent
- A surrogate parent for special educational purposes
- Medical/physical or substance abuse assessments of any caregiver/proposed caregiver
- Services needed by the child's safety & well-being
- Services needed for reunification
- Information on relatives from the parents
- Notice to relatives
- Home studies on potential placements
- Early reviews
- An injunction to prevent child abuse
- School stability

Next steps

After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Provide them with a copy of the court order
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing (Juv. R. Proc. 8.265)
 - Appeal (Juv. R. Proc. 9.146)
 - Demand for early filing
- Monitor compliance with any court orders

After the shelter hearing:

- Prepare for the arraignment
- Watch for the filing of the dependency petition
 - Deadline for filing
 - Is the child in shelter care?
 - Yes, filed within 21 days after shelter or 7 days after a demand for early filing
 - No, filed within reasonable time after the date referred for protective investigation
 - Specifically set forth the acts & identity of the person responsible
 - Served (on parents) 72 hours before arraignment
 - Amendments allowed up until conclusion of the adjudication

The Hearings

- Shelter
- **ARRAIGNMENT & SHELTER REVIEW**
- Adjudication
- Disposition
- Judicial Reviews
- Permanency Hearings
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Arraignment & Shelter Review

Timing	<ul style="list-style-type: none"> •If the child is in shelter, <ul style="list-style-type: none"> -28 days after the shelter hearing; or -7 days after dependency petition is filed if a demand for early filing has been made. •If the child is with the parents, <ul style="list-style-type: none"> -Within a reasonable time after the dependency petition is filed.
Purpose	To advise parents of the right to counsel, to have the parent or legal custodian admit, deny, or consent to findings of dependency alleged in the petition and to review any shelter order currently in place
Evidence	<ul style="list-style-type: none"> •Clear & convincing evidence required for denial of visitation •Court will consider any and all relevant and material evidence
Authority	§ 39. 506, Fla. Stat. Fla. R. Juv. P. 8.310-8.315

Basic Considerations



- **Do the parent(s) admit, consent, or deny the allegations?**
 - Parent with notice who FTA are deemed to have consented
 - Amendments
- **Has the department made reasonable efforts to prevent removal?**
 - Would the provision of any services have allowed the child to be safe in the home?
- **Should the child remain in shelter?**
 - Is the child's removal from the home still necessary?
 - Are there any other services that could be put in place?
- **What visitation should be ordered?**
 - Are the parties in compliance with any previous visitation order?
 - Should visitation be continued, modified or terminated?

Local Practice



- How are child's attorneys served with a copy of the dependency petition? Timing?
- Is the department willing to amend prior to court?
- How are motions to amend handled?
- Where & when are hearings held? Before whom?
- Who else will be present?
- How does the judge conduct the hearings?
- Are parents usually present? Are admissions or consents common?
- Are the children brought to court?
- Is the court child-friendly?

Preparation for the arraignment



Meet with your client before court

- Location of the meeting
 - Child/case specific determination
 - Confidentiality
 - Influence
- (Re)introduce yourself if necessary
- Explain your role (again)– use examples
- Remind the child about confidentiality
- Explain why the arraignment is being held
- Explain possible outcomes, but don't make promises

Review the dependency petition with your client

- Does your client agree with the allegations?
- Are any allegations harmful to your client?
- Are any of the allegations vague?
- Consider whether the child would be better off at home vs. in the shelter placement

Consider whether the petition should be amended

- Is the department willing to amend?
- Prepare a motion to amend
- Prepare to request an amendment



Find out how your client is doing?

- What is the placement like? Where does he want to be?
- Is visitation occurring as ordered?
- Is your client receiving any court ordered services? Any services still needed?
- Is the client attending school? Did your client miss any school?
- Has the client received any medical services ?
- Has anything changed since the shelter How?
- Does your client have any other concerns?
- Has a CBHA been completed? If yes, review.

What should & could the court order?

Required content

- If shelter is ordered/continued, all findings required at the shelter hearing (Juv. R. Proc. 8.305(c), and
- If the parent consents/admits to the dependency petition
 - Whether the admission /consent is voluntary & knowing
 - Whether the parent was advised of the right to counsel
 - Findings of fact specifying the acts causing dependency, by whom committed, and facts on which the findings are based.

Consider asking for

- Any amendments
- Reunification with services which would allow the child to go home safely
- Reunification (or change in placement) if the child would be better off due to unfavorable conditions in shelter
- A written determination regarding the child's continued placement in shelter within 24 hours if the petition is not filed timely
- Visitation or modification
- Services needed to ensure the child's safety & well-being during the shelter period (based on any reports or the CBHA)
- Services needed for reunification
- Information on relatives be provided to the Department and that the Department provide notice to relatives

Next steps

After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Provide your client with a copy of the court order
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing?
 - Appeal?
- Monitor compliance with any court orders

After the arraignment:

- If allegations denied, prepare for the adjudication
 - Watch timing issues for conducting discovery, subpoenaing witnesses
- If allegations admitted or consent, prepare for disposition
- Request and review copies of any evaluations and/or records which may be used by the court in determining the dispositions.

The Hearings



- Shelter
- Arraignment & Shelter Review
- **ADJUDICATION**
- Disposition
- Judicial Reviews
- Permanency Hearings
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Adjudication

TIMING	As soon as practicable after the filing of the dependency petition, but no later than 30 days after arraignment
PURPOSE	To determine whether or not the facts support the allegations stated in the petition
EVIDENCE	<ul style="list-style-type: none"> •Burden is on the Petitioner who must establish dependency by a preponderance of evidence (unless ICWA applies) •Clear & convincing for denial of visitation •Rules of evidence used in civil case •Anonymous calls must be independently corroborated
AUTHORITY	§ 39. 507, Fla. Stat. Fla. R. Juv. P. 8.330-8.335

Basic Considerations



- **Is the child dependent?**
- **Where should the child be placed pending disposition?**

***Failure to appear & deemed consent:
If a parent appeared at the arraignment & was ordered to personally
appear at the adjudication but fails to appear, that parent is
deemed to have consented to the dependency finding.***

Is the child dependent?



A dependent child is a child who has been found by the court:

- To have been abandoned, abused, or neglected by the child's parent(s);
- To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, and after which placement, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- To have no parent/legal custodians capable of providing supervision and care; or
- To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.

(§39.01(15))

Is the child dependent?



- Dependency can be based on the conduct of one parent, both parents, or a legal custodian.
 - In a subsequent evidentiary hearing, the court must determine whether each parent identified in the case abused, abandoned, or neglected the child.
- What do the facts show?
 - The facts do not support a finding child is not dependent, the case is dismissed and the child goes home.
 - The facts support a finding that the child is dependent, but the child will be able to remain in the home, the court may withhold the adjudication of dependency.
 - ✦ Child is in the home under supervision
 - ✦ Parents must comply with supervision
 - ✦ If court finds no compliance after a hearing, adjudicate the child dependent. without further evidence on dependency.
 - If the facts support a finding that the child is dependent and the child will be placed in an out-of-home placement, the child must be found dependent.

Where should the child be placed pending disposition?



Should the child go home, remain in the current placement or be moved somewhere new?

Remember the placement considerations

- Safety of the child is the paramount
- Placements should be the least restrictive & stable
- Siblings should be placed together
- Preference for relatives (& sibling's adoptive parents) over non-relatives
- Caregivers should be aware of and able to meet the child's needs
- Is there good cause to request evaluations (mental or physical condition or substance abuse) of proposed caregiver? What specific concerns should be addressed by the evaluator?
- Limitations on the length of shelter
 - 60 days without an adjudication of dependency
 - 30 days after adjudication unless there is a disposition order

Local Practice



- Issues concerning amendments to the petition
- Court's willingness to change placement at this stage
- Hot topics of concern for the court (is the court focused on education...)
- If the parents FTA, will the court provide the child with an opportunity to be heard on the dependency allegations?

Preparation for the adjudication



Meet with your client before court

- If you haven't met the client before, review preparations for earlier hearings.

Review the dependency petition with your client & consider any amendments

- Does your client agree with the allegations?
- Are any allegations harmful to your client?
- Are any of the allegations vague?
- Is the department willing to amend?
- Prepare a motion to amend

Find out how your client is doing?

- What is the placement like?
- Is visitation occurring as ordered?
- Is your client receiving any court ordered services? Any services still needed?
- Is the client attending school? Did your client miss any school?
- Has the client received any medical services ?

- Has anything changed since the last time you met? What? Is the change better? Worse? The same?
- Does your client have any other concerns?

Get ready to make your case

- Make sure you understand your client's position
- Develop a case theory
- Review the evidence & resolve any admission issues
 - What witness, document or other evidence supports or refutes each allegation and how does that impact your client's case?
- Conduct discovery & request necessary records
- Subpoena & prepare your witnesses
- Prepare a trial file
- Determine the other parties' positions (if possible)
- Be prepared to present your case as if the burden of proof was on the child.

Dawn

What could & should court order?

Required Content

- Legal basis for a finding of dependency,
 - specifying the facts upon which the finding is based,
 - stating whether the finding is made by a preponderance of the evidence or by clear and convincing evidence.
 - stating whether the adjudication is withheld and the facts upon which the finding is made.
(Juv. R. Proc. 8.332)
- Findings with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents. (§39.013(9))
- Date of the next hearing (§39.502(18))

Consider asking for

- Amendments
- Reunification with services which would allow the child to go home safely
- Information on relatives be provided to the Department (Juv. R. Proc. 8.332(e))
- Change of placement
- Assessments of current or proposed caregivers
 - Ordered if good cause
 - Substance abuse assessment or evaluation
- Participate in and comply with treatment and services
- Sanctions for noncompliance
- No placements with persons requiring substance abuse treatment unless parents.
- Need for any injunctions
- Any other order necessary to protect the health, safety, and well-being of the child, including diagnosis, evaluation, treatment, and visitation

Next steps

After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Provide a copy of the court order to your client.
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing?
 - Appeal?
- Monitor compliance with any court orders

After the adjudication hearing:

- Review your client's immigration status
- Consider options for relative placements
- Determine whether grandparent visitation should be ordered
- Determine whether RTC placement is being considered
- Participate in the development of a case plan
- Prepare for the disposition
- Meet with your client before the case planning conference & before the next court date

The Hearings

- Shelter
- Arraignment & Shelter Review
- Adjudication
- **DISPOSITION**
- Judicial Reviews
- Permanency Hearings
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Disposition	
TIMING	<ul style="list-style-type: none"> •Within 15 days of arraignment if the parent consents or admits to the allegations in the petition; or •Within 30 days after the last day of the adjudicatory hearing.
PURPOSE	Determine the most appropriate protections, services, and placement for the child & approve the case plan.
EVIDENCE	<ul style="list-style-type: none"> •Department has the burden of demonstrating that it made reasonable efforts to reunify the child with the child's parent(s). •The court will consider the predisposition study & may consider any other relevant and material evidence, including other written or oral reports, in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value.
AUTHORITY	§ 39.507(8) & 39.521, Fla. Stat. Fla. R. Juv. P. 8.340-8.410

Basic Considerations

<ul style="list-style-type: none"> ○ Should the court approve the case plan? ○ Where should the child be placed? ○ What services should be ordered? ○ If the child was in a shelter placement at the time of the disposition, did the department make reasonable efforts to reunify the child?

Case Plans



- Case plan and predisposition study required to be filed
- CBHA should be used to guide case planning & identify needed services for the child
- Agreement with the case plan shall not be used against the parent
- Developed in a “face-to-face conference” with the parent, GAL, and, if appropriate, the child and the temporary custodian
- Parent can have help, including counsel
- If parent unwilling to participate in the process, department must document unwillingness
- Signature indicates agreement with the plan
- Must be approved by the court
 - Initial plan at disposition (or within 30 days of disposition)
 - May request a court review of the case plan prior to initial judicial review hearing
- Amendments require court approval

Must be meaningful & designed to address facts and circumstances upon which the court based the finding of dependency

Placement



- With the parent (s) from whom the child was removed
 - Conditions of placement
 - Protective supervision of not less than 6 months
- With the previously non-custodial parent
 - Home study
 - No danger and in the child’s best interests
 - What is the child’s relationship with this parent?
 - Is this parent willing and able to meet the child’s needs?
 - Sole custody
 - Visitation & jurisdiction terminated
 - Custody subject to court’s jurisdiction
 - Services to one or both parents,
 - Change in custody is a best interest of the child determination.

Placement Continued



- With an approved adult under an order of temporary legal custody under Department's protective supervision.
 - Protective supervision of not less than 6 months
 - Approved adults
 - Adult relative
 - Adoptive parent of the child's sibling
 - Other approved adult
- With a licensed foster care provider under an order of temporary legal custody of the Department
 - Authority to determine placement with the Department
 - Not placed with parents or relative, diligent search for relatives required.
 - One time obligation
 - Provide evidence to the court or be court ordered

Placement Continued



Placement changes

- Any post-dispositional hearing
- No re-adjudication of dependency required
- At department's or any other person's request
- Parents or legal custodians oppose the change, court hears from all parties
- Standard is in the best interest of the child, considering stability
- If going home, court must determine whether there is substantial compliance with the case plan
- Children with extraordinary needs & group homes
- RTC placements

What services should be ordered?



The court shall, in its written order of disposition, include all ... [o]ther requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

(§39.521(1)(d)(9))

Did the department make RE to reunify the child?



- If the child was removed before the disposition hearing, what efforts did the department make to reunify the family?
 - What efforts were made?
 - Are the efforts likely to be successful?
 - Should the proposed case plan be modified?
 - If efforts are not required
 - ✦ Has a TPR petition been filed?
 - ✦ If not, why not?

Reasonable Efforts

The exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

(§39.521(1)(f)(1))

Local Practice



- How good is the local CBC at developing case plans? Face-to-face?
- Are case plans developed with the required parties?
- How thorough are the predisposition studies?
- Does the court ever order placement with an individual with an unfavorable home study?
- How available are reunification services?
- Does the court ever make no RE findings?

Preparation for the disposition



Meet with your client before court

- If you haven't met before, review preparation for the previous hearing

Find out how your client is doing

- What is the placement like?
- Is visitation occurring as ordered?
- Is your client receiving any court ordered services? Any services still needed?
- Is the client attending school? Has your client missed any school?
- Has the client received any medical services ?
- Has anything changed since the last time you met? What? How?
- Does your client have any other concerns?
- What does your client want to have happen in the case? Case plan?
- What services does your client think are necessary? Unnecessary? Why?
- Interview the caregiver.

Participate in the development of the case plan

- Does the plan address all the required findings?
- Is it designed to remedy the reasons that the child came into care?
- Is it reasonable?
- Does it specify what all parties need to be doing? Ensure that the tasks required of all parties are specific and enforceable.
- Consider adding "what ifs" to the case plan.
- Avoid template language

Review the predisposition study & CBHA

- Is the study complete?
- What are the key recommendations?
- Are there any red flags?
- Anything that needs additional follow-up?
- Are any proposed placements ruled out?

Eddie

What could & should the court order?

Required content

- Placement or custody of the child (§39.521(1)(d)(1))
- Special conditions of placement and visitation (§39.521(1)(d)(2))
- Evaluation, counseling, treatment activities, & other actions to be taken by the parties (§39.521(1)(d)(3))
- Supervising or monitoring agencies (§39.521(1)(d)(4))
- Continuation or discharge of the guardian ad litem (§39.521(1)(d)(5))
- Date of next review (§39.521(1)(d)(6))
- Child support payments, if the child is in an out-of-home placement (§39.521(1)(d)(7))
- If the child is placed in foster care, the reasons why and whether the department made a diligent search for relatives (§39.521(1)(d)(8)(a))
- Approval of the case plan or direction to amend the case plan within 30 days (§39.521(1)(a) & Juv. R. Proc. 8.340(c)(8))

Requirements as are deemed necessary to protect the health, safety, and well-being of the child. (§39.521(1)(d)(9))

- Findings with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents. (§39.013(9))
- If the court places the child in an out-of-home placement, determination that the child cannot safely remain at home with services and that removal is necessary. (§39.521(1)(f))
- If the child is removed before the disposition hearing, determination as to whether the department made reasonable efforts to reunify. (§39.521(1)(f))
 - Including whether prevention or reunification efforts were indicated.
 - A description of what appropriate and available efforts were made.
 - Whether further efforts could or could not have prevented or shortened the separation (§39.521(1)(f)(2))

What could & should the court order?



Consider

- Any services which would protect the child's health, safety, and well-being .
- Any service that would preserve the stability of the child's educational placement.
- Any service that would promote family preservation or reunification.
- Placement options – placement in a placement with unfavorable home study if in the child's best interest
- Challenging RE findings & seeking order to correct lack of reasonable efforts
- Early reviews

Next steps



After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing?
 - Appeal?
 - Exceptions (Juv. R. Proc. 8.257(f))
- Monitor compliance with any court orders

After the disposition hearing:

- Monitor compliance with the case plan
 - Maintain periodic contact with the case worker
 - Maintain periodic contact with the parent(s)' attorney
 - Ensure case plan is being worked on from the beginning
 - Don't wait for the next court date to resolve issues
- Remain in contact with your client
 - Provision of services
 - Any need to modify the case plan
 - Any risks to the child's well-being
- Consider filing motions to compel compliance with the case plan or to request modification
- Prepare for the initial judicial review

The Hearings



- Shelter
- Arraignment & Shelter Review
- Adjudication
- Disposition
- **JUDICIAL REVIEWS**
- Permanency Hearings
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Judicial Review

TIMING	First review: •The earlier of 90 days after the disposition or case plan approval; but no later than 6 months after removal. On-going reviews •Every 6 months; or •Every 90 days for a child in residential treatment •Within 90 days of a youth's 17 th birthday
PURPOSE	To review the status of the child including the parties' compliance with the case plan and whether the child is receiving safe and proper care.
EVIDENCE	The court may consider any relevant and material evidence submitted to the court to the extent of their probative value.
AUTHORITY	§§ 39. 701-704, Fla. Stat. Fla. R. Juv. P. 8.415

Basic Considerations



- **Is child receiving safe and proper care?**
- **Are the parties in compliance with the case plan?**
- **Should the case plan be amended?**
- **Is the youth ready to leave foster care at age 18?**
- **Does the child need to be placed in a RTC?**

Is child receiving safe and proper care?



- Appropriateness of the child's current placement
 - family-like setting
 - close to the parent's home as possible, consistent with the child's best interests and special needs
- Stability in the child's educational placement
 - placement of the child takes into account the appropriateness of the current educational setting
 - proximity to the school in which the child is enrolled at the time of placement.
- For youth 13 -17 years old, is the child's preparation for adulthood and independent living adequate?
- Need for an appointment of a surrogate parent?

Are the parties in compliance with the case plan?



- Levels of compliance
 - None, partial and substantial compliance
- Consequences
 - If parents have failed to substantially comply to the degree that further reunification efforts are without merit and not in the best interest of the child, the court may order the filing of a petition for TPR regardless of the case plan time periods.
 - If parents have substantially complied & the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health, the court shall return the child .
 - If the department has not complied with the case plan, the court may find the department in contempt, shall order it to submit plans for compliance & require it to show why the child could not safely be returned.
- Concurrent planning required if, at the initial judicial review, the court finds reunification unlikely within 12 months after removal

Should the case plan be amended?



When can a plan be amended?

- At any time to
 - Change the goal of the plan,
 - Employ the use of concurrent planning,
 - Add or remove tasks the parent must complete to substantially comply with the plan,
 - Provide appropriate services for the child, and
 - Update the child's health, mental health, and education records

What is the process for amending the plan?

- Upon court approval if all parties agree, sign the plan and submit a memorandum of explanation.
- By the court or upon motion of any party at any hearing if there is a preponderance of evidence demonstrating the need for the amendment.
- By the court or upon motion of any party at any hearing to provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment

Amendments must :

- Include service interventions that are the least intrusive into the life of the parent and child,
- Focus on clearly defined objectives, and
- Provide the most efficient path to quick reunification or permanent placement

A copy of the amended plan must be immediately given to the parties

Is the youth ready to leave foster care at age 18?



- Youth must have:
 - A medicaid card and sufficient information to apply for coverage upon reaching age 18
 - A certified copy of birth certificate
 - A driver's license or Florida identification card
 - Information relating to any Social Security Insurance benefits & a full accounting.
 - Information and training related to budgeting, interviewing and parenting skills.
 - All relevant information related to the Road-to-Independence Program
 - An open bank account (or can open one) & has been provided with essential banking skills.
 - Information on public assistance and how to apply.
 - Clear understanding of where he will be living on his 18th birthday, how living expenses will be paid, and what educational program or school he will be enrolled in.
 - Notice of the right to petition for the court's continuing jurisdiction.
 - Been encouraged to attend all judicial review hearings occurring after age 17
- Updated case plan that includes specific information regarding provision of IL services
- Plan for normalcy

Is the youth ready to leave foster care at age 18?



- What IL services have been provided to the youth?
 - Did the youth receive an assessment?
 - What areas did the youth need services, training or assistance?
 - Were appropriate services provided?
 - Was the youth assessed upon completion of the services?
- What IL services is the youth eligible for post-18?
- Department not in compliance with case plan or statute
 - Show Cause & 30 days to comply
- Foster parent, legal custodian, guardian ad litem, and the child have the opportunity to be heard specifically on the issue of IL services.
- Order removing disability of nonage required
- Jurisdiction extended until 19 upon request or 21 if SIJS.

Local Practice



- How does the court assess compliance with the case plan? (Does the court adopt the department's findings? Does the court ever find differently even if no party challenges the findings?)
- How willing is the court to require show cause from the department?
- How are judicial reviews conducted?
- Scheduling? Is there time for evidence?
- Is evidence well received?
- Are teenagers welcomed? (By the court & by when the hearings are scheduled)

Preparation for the judicial reviews



Meet with your client before court

- If you haven't met before, review preparation for the previous hearing

Find out how your client is doing

- What is the placement like?
- Is visitation occurring as ordered?
- Is your client receiving any court ordered services? Any services still needed?
- Is the client attending school? Has your client missed any school?
- Has the client received any medical services ?
- Has anything changed since the last meeting?
- Does your client have any other concerns?
- What does your client want to have happen in the case?
- What services does your client think are necessary? Unnecessary? Why?
- Interview your client's caregiver? Ask about any concerns or needs.
- Obtain and review any relevant records?

Review the department's judicial review report & other records

- Consider compliance with the case plan
- What is the dept. recommending?
- Assess efforts made to reunify (no templates)
- Assess likelihood of reunification/current case plan
- What are the key recommendations? Red flags?
- Anything that needs additional follow-up?
- Review any master trust accounting
- Prepare to challenge any inaccuracies in the report
 - Subpoena any necessary witnesses/documents

Review IL assessments with your client

- What IL services are indicated?
- What services have been provided? Helpful?
- Does the youth have opportunities to participate in normal activities?
- What services does the teen want? Why?
- What services does the teen not want? Why?

Bryan

What could & should the court order?

Required

- Findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. (§39.701(10)(e))
- Findings with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents. (§39.013(9))
- Date of next judicial review. §39.701(4).

Consider asking for

- Amendments to the case plan
- Extension of jurisdiction for a youth aging out
- Filing of a TPR petition
- Requesting that the child return home if parents in substantial compliance and no risk to the child.
- Protective order
 - Reasonable requirements of behavior of any person or agency before the court
 - May include reporting requirements
- Contempt proceedings
 - Failure of the agency to comply with IL provisions
 - Failure of the agency to comply with the case plan

Next steps

After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing?
 - Appeal?
 - Exception
- Monitor compliance with any court orders

After the judicial review:

- Monitor compliance with the case plan
 - Maintain periodic contact with the case worker
 - Maintain periodic contact with the parent(s)' attorney
 - Ensure case plan is being worked on from the beginning
 - Don't wait for the next court date to resolve issues
- Remain in contact with your client
 - Provision of services
 - Any need to modify the case plan
 - Any risks to the child's well-being
- Consider filing motions to compel compliance with the case plan or to request modification
- Consider asking for more frequent reviews

The Hearings

- Shelter
- Arraignment & Shelter Review
- Adjudication
- Disposition
- Judicial Reviews
- **PERMANENCY HEARINGS**
- Termination of Parental Rights (TPR)
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Permanency Hearing	
TIMING	-No later than 12 months after the child was removed or -No later than 30 days after a court determines that reasonable efforts not required, whichever occurs first -Every 12 months thereafter
PURPOSE	To determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child.
EVIDENCE	The court may consider any relevant and material evidence submitted to the court to the extent of their probative value.
AUTHORITY	§ 39. 621, Fla. Stat. Fla. R. Juv. P. 8.425

Basic Considerations	
	
<ul style="list-style-type: none"> • What should the child's permanency plan be? <ul style="list-style-type: none"> ○ Should a concurrent plan should be ordered? • Has the department made reasonable efforts to finalize the plan in effect? • When a permanent placement is achieved, when can it be modified? 	

What should the permanency plan be?



- Plans in order of preference:
 - Reunification
 - Adoption
 - Permanent guardianship of a dependent child
 - Permanent placement with a fit and willing relative; or
 - Placement in another planned permanent living arrangement (APPLA).
- Is the plan appropriate?
 - Is the plan in the child's best interests?
 - What is the child's preference?
 - What does the GAL recommend?
- Should there be a concurrent plan?
- Is the child placed with a relative or a sibling's adoptive family?

Permanent guardianship



- Conditions under which permanent guardianship can be granted:
 - In placement for not less than the preceding 6 months
 - Guardian is suitable and able to provide a safe and permanent home
 - Not likely to need supervision or services
 - Commitment to provide for the child until 18
 - Guardian agrees to give written notice of any change in address or the residence of the child
- Court order must contain:
 - Reasons why the child's parents are not fit and why reunification is not possible
 - Reasons why a permanent guardianship is being established instead of adoption
 - Parental, grandparent & sibling visitation
 - No return to parents without court approval
- Permanent Guardianship orders are not subject to (Insert Chap 744) requirements
- Jurisdiction shall be maintained
- Department is no longer responsible for the welfare of the child.
- Guardians should get a separate order to use in accessing services for the child.

Permanent placement with a fit and willing relative



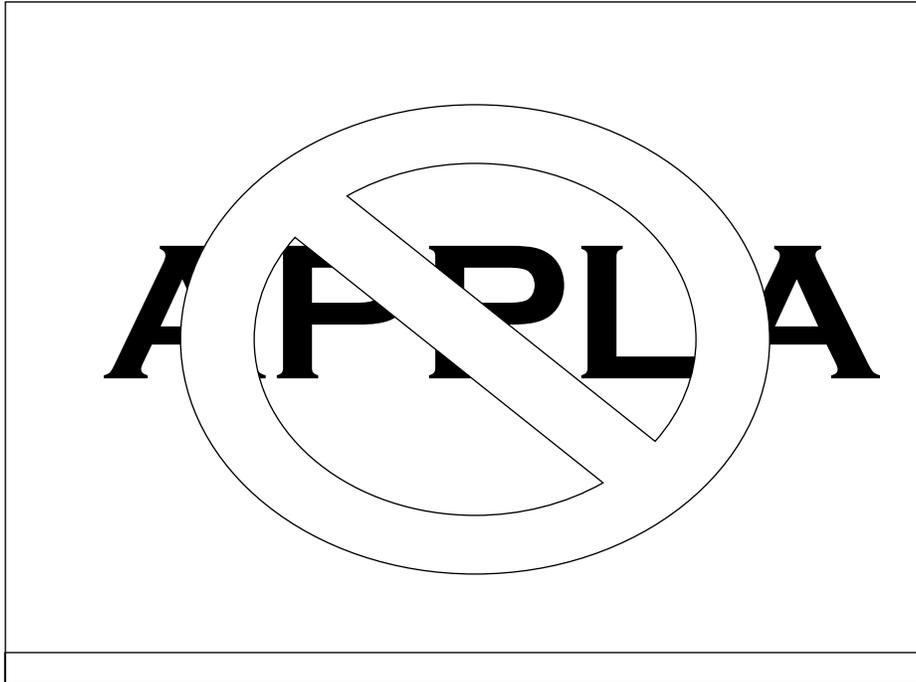
- Conditions under which permanent placement can be granted:
 - In placement for not less than the preceding 6 months
 - Commitment to provide for the child until 18
 - Relative is suitable and able to provide a safe and permanent home
 - Relative agrees to give written notice of any change in address or the residence of the child
- Department & GAL shall provide the court with a list of services needed by the child and the family in order to ensure the permanency of the placement
- Court order must contain:
 - Reasons why the child's parents are not fit and why reunification is not possible
 - Reasons why this plan is being established instead of adoption
 - Parental, grandparent and sibling visitation
 - No return to parents without court approval
- Relatives get a separate order
- Department continues to supervise & review hearings required
- Parents can seek modification

APPLA



Conditions under which APPLA can be granted:

- Adoption, permanent guardianship, or placement with a fit and willing relative is not in the best interests of the child;
- Department has documented reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care;
- The court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and
- There are compelling reasons to show that placement in another planned permanent living arrangement is the most appropriate permanency goal.
 - × parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability, and the child's foster parents have committed to raising him or her to the age of majority and to facilitate visitation with the disabled parent;
 - × An Indian tribe has identified another planned permanent living arrangement for the child;
 - × Child is 16 years of age or older who chooses to remain in foster care, and the child's foster parents are willing to care for the child until the child reaches 18 years of age.
- Department continues to supervise & review hearings required



Reasonable Efforts to Finalize the Plan



- Findings of RE
 - Must be explicitly documented, made on a case-by-case basis and stated in the court order
 - What has the department done to finalize the plan?
 - Are there any services currently in place?
 - Are there any barriers that are preventing finalization of the plan? Can they be overcome?
 - If can't overcome barriers or will take a long time, is the plan appropriate?
 - Is there anything else that may work?
 - If guardianship or relative placement is the plan, is the caregiver committed to providing for the child? Is the caregiver capable of caring for the child?
 - Has the department complied with the statute, court orders and the Florida Administrative Code?
 - Be careful of templates and checklists

Reasonable Efforts for disposition purposes...

The exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

\$\$\$ Federal reimbursement implication:

If a court does not make a reasonable efforts finding or finds that reasonable efforts were not made at least every 12 months.

Modification of a permanent placement



- Permanent placements are intended to continue until age 18
- May not be disturbed absent a finding that it is no longer in the best interest of the child
- Guardianship, placement with a relative or APPLA do not terminate parent-child relationship, so parent(s) may motion for reunification or increased contact
 - Parent must show no harm to child's safety, well-being, and physical, mental & emotional health and
 - The court must consider
 - The parent's history of compliance or noncompliance with the case plan;
 - The circumstances which caused the child's dependency and whether those circumstances have been resolved;
 - The stability and longevity of the child's placement;
 - Child's preference
 - Current custodian's recommendation
 - GAL's recommendation

Local Practices



- How specific are APPLA plans?
- Does the local CBC require any internal reviews before APPLA can be suggested?
- Does the court, CBC or anyone else think that APPLA=Long term foster care?
- Does the court use templates for orders?

Preparation for permanency reviews

Meet with your client before court

- If you haven't met before, review preparation for the previous hearing

Find out how your client is doing and review the options for permanency

- What does your client want?
- Does your client have any questions about the options?
- What living arrangement does your client consider permanent?
- Who is your client's family?
- Does your client want to be adopted (okay at any age)?
- What are the barriers to achieving permanency?
- Can those barriers be resolved? How?
- Does your client feel as though the department is trying hard enough to finalize the plan? Explain.

What does the client want the court to order?

- Are there any resources, relatives or non-relatives, that should be explored?
- Are there any resources that should be re-examined?
- Does the client have siblings who are in permanent families?
- Does your client feel as though the department is trying hard enough to finalize the plan? Explain.
- What services does your client think are necessary? Unnecessary? Why?
- Interview the caregiver and other relatives.

Review the department's report & other records

- Consider compliance with the case plan
- What is the dept. recommending?
- Assess efforts made (no templates)
- Assess likelihood of reunification/current case plan
- Are there any red flags?

ABBY

What could & should the court order?

Required content

- Whether the current permanency goal for the child is appropriate or should be changed (§39.621(4)(a))
- When the child will achieve one of the permanency goals (§39.621(4)(b))
- Whether the department has made reasonable efforts to finalize the permanency plan currently in effect. (§39.621(4)(c))
- Explicit findings of reasonable efforts to finalize the permanency plan (§39.621(7))
- Findings with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents. (§39.013(9))
- Date of next review. §39.502(18)

Consider asking for

- A concurrent plan
- An amendment to the case plan to better tailor the services to meet the child's needs/finalize the plan.
- A no reasonable efforts finding and asking the court to order specific remedial efforts?
- Show cause and/or contempt
- Protective orders
- Injunctions
- TPR to be filed
- Early reviews or status reports on filing of TPR

Next steps

After every hearing:

- Talk to your client - explain what the court ordered and what will happen next
- Give your client a copy of the order
- Encourage your client to contact you if he is having any problems
- Plan to meet with your client before the next hearing
- Consider options if the ruling was unfavorable to your client
 - Can the matter be addressed out of court?
 - Motion for rehearing?
 - Appeal?
 - Exception?
- Monitor compliance with any court orders

After the permanency review:

- Monitor compliance with the case plan and any other orders
 - Maintain periodic contact with the case worker
 - Maintain periodic contact with the parent(s)' attorney
 - Ensure case plan is being worked on from the beginning
 - Don't wait for the next court date to resolve issues
- Remain in contact with your client
 - Provision of services
 - Any need to modify the case plan
 - Any risks to the child's well-being
- Consider filing motions to compel compliance with the case plan or to request modification
- Consider asking for more frequent reviews

The Hearings



- Shelter
- Arraignment & Shelter Review
- Adjudication
- Disposition
- Judicial Reviews
- Permanency Hearings
- **TERMINATION OF PARENTAL RIGHTS (TPR)**
 - Advisory Hearing
 - Pre-Trial Status Conference
 - Adjudication
 - Disposition
- Adoption

Basic Considerations



- When must a TPR petition be filed?
- Who can file a TPR petition?
- What is the TPR process?
 - Petition filed
 - Advisory hearing
 - Status conference
 - Adjudication
 - Post-dispositional hearing

Basic Considerations



When must a TPR petition be filed?

- The department is required to file within 60 days if:
 - The child is not returned to the physical custody of the parents at the 12 month review.
 - The child has been in state supervised out-of-home care for 12 of the most recent 22 months.
 - A parent has been convicted of certain crimes (murder) against the other parent or a child.
 - The court determines that reasonable efforts to reunify the child and parent are not required.

UNLESS:

- Child is with a relative (sibling's adoptive parent)
- The department has documented in the report to the court a compelling reason
 - ✖ Adoption is not the appropriate permanency goal for the child.
 - ✖ No grounds to file a petition to terminate parental rights exist.
 - ✖ The child is an unaccompanied refugee minor
 - ✖ There are international legal obligations/foreign-policy reasons
 - ✖ The department has failed to provide services **(reasonable efforts)**

- Upon good cause shown or on its own motion, the court may review the decision by the department that compelling reasons exist for not filing or joining a petition for termination of parental rights.

Basic Considerations



<p>When can a TPR petition be filed?</p> <ul style="list-style-type: none"> • At any time the petitioner has knowledge of the facts alleged or is informed of them and believes that they are true. <p>Who can file a petition?</p> <ul style="list-style-type: none"> • Department, GAL, or any other person <p>Requirements for the petition</p> <ul style="list-style-type: none"> • Contain facts supporting the following <ul style="list-style-type: none"> ○ At least one of the <u>grounds for TPR</u> ○ Parent advised of the right to counsel in all proceedings. ○ Child was adjudicated dependent in any prior proceeding relied upon in offering a parent a case plan. ○ That TPR is in the <u>manifest best interests</u> of the child 	<p>Notice of advisory hearing & petition</p> <ul style="list-style-type: none"> • The parents • The legal custodians • If the parents entitled to notice are dead or unknown, a relative of the child, unless none. • Person who has physical custody of the child. • Grandparent entitled to priority for adoption • Any prospective parent • The GAL for the child • Who is missing from this list? <p>Civil rules govern notice & service of process must be made as specified by law or civil actions.</p> <p>Notice as may be waived if the person properly executes a written surrender.</p>
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TPR Advisory Hearing	
TIMING	As soon as possible after all parties have been served with a copy of the petition and notice of the advisory hearing, but no less than 72 hours after notice.
PURPOSE	To advise parents of the right to counsel To take pleas To appoint GAL Can deem consent if a parent with notice fails to attend.
EVIDENCE	Not applicable
AUTHORITY	§ 39. 808, Fla. Stat. Fla. R. Juv. P. 8.510

TPR Status Conference	
TIMING	Not less than 10 days before the adjudicatory hearing on a petition for involuntary TPR.
PURPOSE	To determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing to prevent any undue delay in the conduct of the adjudicatory hearing
EVIDENCE	Not applicable
AUTHORITY	§ 39. 808(5), Fla. Stat. Fla. R. Juv. P. 8.510

TPR Adjudication	
TIMING	<ul style="list-style-type: none"> •Contested - Within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. •Voluntary -Within 21 days of the filing of the petition
PURPOSE	To determine whether the evidence presented is sufficient and it is in the child's best interests to terminate parental rights.
EVIDENCE	<ul style="list-style-type: none"> •Petitioner has the burden of establishing each element required for TPR by clear and convincing evidence (unless ICWA applies) •Rules of evidence in civil cases applicable.
AUTHORITY	§§ 39. 801-817, Fla. Stat. Fla. R. Juv. P. 8.525

Basic Considerations Continued



Should the rights of the parents be terminated?

Is there at least one ground for TPR?

Is TPR in the manifest best interests of the child after considering all the statutory factors and any other evidence?

Is TPR the least restrictive means of protecting the child from harm?

Does clear and convincing evidence support each of those determinations?

<h2>Grounds for TPR</h2>	
<ul style="list-style-type: none"> • Voluntarily executed written surrender of the child and consent to the order • Abandonment or identity or location of the parent(s) is unknown • Conduct demonstrating that continuing the parent-child relationship threatens the child. • Incarceration in correctional institution for a long time , for certain crimes or if continuing the relationship is harmful. • Continuing abuse, neglect or abandonment of a dependent child • Material breach of the case plan • <u>Egregious conduct that threatens the child or child's sibling</u> 	<ul style="list-style-type: none"> • <u>Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse.</u> • <u>Murder, manslaughter...conspiring to murder the other parent or another child, or a felony battery resulting in serious bodily injury to the child or to another child.</u> • <u>Involuntary termination of parental rights (and substantial harm to this child)</u> • <u>History of extensive, abusive, and chronic substance use & failed treatment 3 years prior</u> • <u>Drug exposed infant with maternal sibling adjudicated dependent due to drugs and mother had the opportunity for treatment.</u> • <u>The child or sibling in out-of-home care 3 or more times because of the parent(s).</u>

<h2>Manifest Best Interests</h2>	
<ul style="list-style-type: none"> • Any suitable permanent custody arrangement with a relative of the child. • Parent's ability to provide food, clothing, medical care and other material needs. • Parent's capacity to ensure the child's safety, well-being, and health at home. • Child's current and future mental & physical health needs • Emotional ties between the child and biological family and degree of harm TPR would cause. • Likelihood of remaining in foster care due to child's problems or special needs. 	<ul style="list-style-type: none"> • Child's ability to attach and likelihood of a more permanent family as a result of TPR. • Child's length of time in a stable environment and the desirability of continuity. • Relationship between the child and the present custodian. • Child's preferences and wishes • Child's GAL's recommendation. × Not a comparison between attributes of the parents and those of any persons providing a present or potential placement for the child

Basic Considerations Revisited



Should the rights of the parents be terminated?

- Is there at least one ground for TPR?
- Is TPR in the manifest best interests of the child?
- Is TPR the least restrictive means of protecting the child from harm?
- Does clear and convincing evidence support each of those determinations?

If YES? Order must contain the findings of fact & conclusions of law on which the decision was based.

What can the court order?

If the child is in the department's custody, termination of parental rights and placement of the child in the custody of the department for the purpose of adoption.

If the child is in the custody of one parent, termination of the rights of the other parent, and placement of the child in the custody of the remaining parent with a grant of sole parental responsibility.

If the child is neither in the custody of the department nor in the custody of a parent, termination of the parental rights of one or both parents, and placement of the child with the department or an appropriate legal custodian.

If in the child's best interest, order post-TPR contact with relatives.

Basic Considerations Revisited



Should the rights of the parents be terminated?

- Is there at least one ground for TPR?
- Is TPR in the manifest best interests of the child ?
- Is TPR the least restrictive means of protecting the child from harm?
- Does clear and convincing evidence support each of those determinations?

If NO? Have grounds for dependency been established by a preponderance of the evidence?

If YES? Adjudicate or re-adjudicate the child dependent
Place/continue the child in out-of-home care under a case plan; or
Return the child to the parent(s) & retain jurisdiction for 6 months

If NO? Dismiss the petition.

Preparation for the TPR

Review the legal requirements for TPR

- Are there any grounds for TPR?
- Is TPR in the child's manifest best interest?
- Is TPR the least restrictive means?
- Is there sufficient evidence to establish, C&C, that the petition should be granted?

Review the petition

- Does it comply with the form requirements?
- Does it allege sufficient facts for TPR?
- Any concerns about parent's right to counsel?
- Is either parent consenting? Is the consent valid?
- Make sure you know when the advisory hearing will be held

Meet with your client as soon as possible and before the advisory hearing

- If you have not met your client before, review previous preparation suggestions.
- Do not limit the meeting to TPR and be prepared to meet more than once.
- Explain the TPR process. Discuss legal and practical implications. Give the child examples.
- Ask about any desire for post-TPR contact

Attend the Advisory Hearing

- If your client objects to TPR, make that objection on the record & object to any deemed consents
- If objecting, consider requesting an adjudication even if a parent is objecting.
- If your client consents to TPR, carefully consider whether a deemed consent will subject the case to an appeal.

Preparation for the TPR

Prepare for trial

(as though you were the moving party)

- If in agreement with TPR, consider strategizing with the petitioner and any other party in order to make the best use of resources, but do not rely on the petitioner or another party to make the case.
- Conduct discovery
- Review the department's case file
- Review the dependency case file
- Review records of any previous court proceedings that may be used by the court.
- Subpoena any necessary witnesses /records
- Prepare witnesses
- Watch discovery deadlines
- Stay in contact with your client
- Be prepared to ask for post-TPR contact

- If your client does not want to testify, be prepared to respond to any subpoenas
- If your client wants to or has to testify, prepare your client for court.
 - Consider visiting the court in advance of the trial and watching other proceedings*
 - Consider any other mechanisms allowed to make your client's experience less traumatic.
- Develop a case theory
- Prepare a trial file
- Familiarize yourself with any local rules regarding marking evidence.
- Review the applicable rules of evidence.
- Monitor rulings being issued by appellate courts.
- Staff the case with a colleague
- Breathe

CASSIAN

What could & should the court order?

Required content

- The order must contain the findings of fact and conclusions of law on which the decision was based. (§§39.809(5) & 811(5))
- The court shall include the dates of the adjudicatory hearing. (Juv. R. Proc. 8.525(i))
- Hearing scheduled in 30 days (§39.811(8))

Consider asking for

- Asking for a more specific order if you are concerned about the findings the court is making or has made (think about appellate implications)
- Post –TPR contact with parents, siblings or relatives
 - Visitation orders must include the nature and frequency of this contact
- Requesting an early disposition
- Any services that will protect the child or is in the child's best interests (consistent with the client's position)

TPR Post-Disposition Hearing	
TIMING	Within 30 days after the date of disposition granting TPR, and every 6 months thereafter until permanency is obtained or the child is 18 years old.
PURPOSE	To review progress being made toward permanency for the child and assess the efforts made by the department to finalize the child's plan.
EVIDENCE	Preponderance of the evidence
AUTHORITY	§§39. 811(8)-812, Fla. Stat. Fla. R. Juv. P. 8.525

The Hearings	
	
<ul style="list-style-type: none"> ○ Shelter ○ Arraignment & Shelter Review ○ Adjudication ○ Disposition ○ Judicial Reviews ○ Permanency Hearings ○ Termination of Parental Rights (TPR) <ul style="list-style-type: none"> ○ Advisory Hearing ○ Pre-Trial Status Conference ○ Adjudication ○ Disposition ○ ADOPTION 	

<h2>Adoption</h2>	
TIMING	No sooner than 30 days after the date the judgment terminating parental rights was entered or after the issuance of a mandate affirming the TPR order.
PURPOSE	To determine whether to grant an order of adoption.
EVIDENCE	The court must determine that the date for a parent to file an appeal of a valid judgment terminating that parent's parental rights has passed and no appeal and that the adoption is in the best interest of the person to be adopted
AUTHORITY	§§ 63, Fla. Stat. Fla. R. Juv. P. 8.535

<h2>Basic Considerations</h2>	
	
<ul style="list-style-type: none"> • Circuit Court has exclusive jurisdiction <ul style="list-style-type: none"> • The petition for adoption must be filed in the division of the circuit court that ordered TPR. • Who can be adopted? ANYONE • Who can adopt? <ul style="list-style-type: none"> • Husband and wife jointly • An unmarried adult • A married person without the other spouse (step-parent adoptions and for good cause) • Homosexuals? • Who has to consent to the adoption? <ul style="list-style-type: none"> • The department • The child, 12 and over. 	

Basic Considerations



- Review hearing required if department withholds consent.
 - Court must determine whether the department abused its discretion
 - All relevant information considered.

- If the court determines the Department's withholding of consent is unreasonable and the petitioner has filed a favorable home study:
 - Incorporate its findings into a written order,
 - Make specific findings of fact as to the department's abuse of discretion, &
 - Waive the consent of the department.

- Post-adoption contact considered
 - Visits, written correspondence, or telephone calls
 - Siblings
 - Upon agreement of the adoptive parents, birth parents & other specified biological relatives

- Voidable if substantially fails to meet the legal requirements (Limited to 1 year of TPR)

Questions

