

OCC GENERAL ISSUES

PRE-TRIAL ACTIVITIES

Initial Court Action

- Obtain HIPAA Order in order to obtain and share protected health information on the parents and juveniles
- Ask client if family has Native American heritage to determine if ICWA applies
- Ask client if relatives have been sought for possible Provisional Foster Home or as custodian
- Ask for appointment of CASA, if appropriate, and share with CASA why CASA is needed on the case

Thirty Days Before Hearing

- Ensure all parties have been properly served
- Check putative father registry
- Follow up with clients to ensure compliance with court orders

Three Weeks Before Hearing

- Ensure all parties have notice of hearing
- Communicate with investigator or caseworker about case and develop witness list and exhibits
- Read affidavit or court report at least two weeks prior to hearing in order to timely issue subpoenas for witnesses
- Ensure that the caseworker has provided notice of hearing to the foster parent or custodian

Two Weeks Before Hearing

- Ensure that the responsible attorney has obtained a transport order for incarcerated parents
- Identify and contact witnesses to discuss testimony
- Issue subpoena for medical records
- Copy photographs, audio and video tapes
- Contact service providers and obtain reports, if needed, to introduce into evidence at hearing

7 Business Days Before Hearing

- File court report and certificate of service and distribute court report at least 7 business days prior to the hearing
- Share exhibits with counsel
- Determine if counsel objects to entry of an exhibit so that the witness can be present to introduce the exhibit
- Determine if any facts can be stipulated

One Week Before Hearing

- Mark and copy all exhibits, make exhibit list

General

- Attend Staffings
- No ex parte communication with court
- Make referral to OCSE if putative father and child is in foster cares so that paternity can be established as soon as possible
- Determine if juvenile has been excused from attendance at hearing
- Ask client to keep OCC informed when change in caseworker or change in placement of foster child

HEARING ISSUES

Beginning of Hearing

- Request to close the courtroom
- Ask the court to swear in witnesses and put them on the witness stand
- If agreement of parties, bring prepared order to hearing (but no paper reviews) and be prepared to present evidence and call witnesses
- Object to any Motion to Intervene. Party status is not required for a party to obtain custody of a child.

During Hearing

- If the rule is invoked, call CASA as first witness so CASA can remain in the courtroom during the rest of the case
- Ask if the parent has moved and has a new address for service or notice of hearing
- Make objections when needed
- Make record for appeal
- Introduce court report and case plan into evidence
- Ask juvenile to be excused from the courtroom if needed because of subject matter
- Ask foster parent or custodian if they want to share information with the court
- Comply with Rules of Evidence
- Ask the court if the parent should be financially responsible in whole or in part for any family services delivered by DHHS or for any appointments which the parent fails to keep.

OCC GENERAL ISSUES

Ask for child support, SSI or social security benefits to be redirected to DHHS when custody is given to DHHS

- Ask for child support from the parents when the child is in an out of home placement
- Do not request to transfer the case to another jurisdiction unless the Area Manager from both counties has approved the request to transfer
- Ask the court to make findings about credibility of witnesses who testify
- Ask the court to make findings about whether or not the family has complied with the case plan and the orders of the court

End of Hearing

- Ask court to set next hearing date and time at the end of the hearing
- Individualize the next hearing date based on the needs of the case (3 months, 6 months, etc.) but be mindful of setting the next hearing date at the end of the statutory time frame because then no continuances can be granted if an emergency arises
- Provide written notice of the next hearing to the parents, caseworker and custodian, if applicable
- Provide written notice of the date and time of the next hearing to the parents, custodian and CFS at the end of the hearing
- Be mindful of setting the next court hearing at the end of the statutory time frame because that means no continuance can be granted if an emergency arises
- Ask the court to explain the nature of the next hearing

General

- Attorney does not testify
- Request time-specific hearings
- Bring calendar to court to set next hearing date and staffing dates

CONTINUANCE OF HEARING

- Request only when absolutely necessary
- Ensure notice of continuance and new hearing date provided to
 - Caseworker
 - Witnesses and CASA volunteer

- Foster parent or placement provider

POST-TRIAL ACTIVITIES

- Obtain signed, filed order within 30 days of hearing
- Distribute draft order to clients
- Distribute signed, filed order to parties, CASA and clients upon receipt
- Inform investigator or caseworker of next hearing date (if written notice not provided at hearing)
- Pulaski key in next court date on Outlook calendar
- Key data in legal screens on CHRIS
- Follow up with caseworker to ensure court orders are understood and complied with

SERVICE ON PARTIES

A copy of the summons and complaint shall be served together. The person effecting service shall make proof thereof to the clerk within the time during which the person served must respond to the summons. If service has been by mail, the signed return receipt shall be attached to the affidavit.

- Service on juveniles – When a defendant is under the age of 14 years, service must be upon a parent or guardian having the care and control of the juvenile, or upon any other person having the care and control of the juvenile and with whom the juvenile lives. When the juvenile is at least 14 years of age, service shall be upon him.
- Person with appointed Guardian – service must be upon the individual and the guardian. If ward is confined to institution treating mentally ill, service shall be upon administrator of said facility and guardian.
- Sheriff or Process Server-service of summons may be made by a sheriff, or his deputy, of the county where the service is to be made or by any person appointed by the court for the purpose of serving summons
- Certified Mail, Restricted Delivery – services can also be made by U.S. Mail addressed to the person to be served with a return receipt requested and delivery restricted to the defendant.
- Warning Order-if by affidavit that, after diligent

OCC GENERAL ISSUES

inquiry, the identify or whereabouts of a defendant remains unknown, service shall be by warning order issued by the clerk. Must be published weekly for two consecutive weeks in a newspaper having general circulation in the county where the action is file and to be mailed, with a copy of the complaint, to the defendant at his last known address by any form of mail with delivery restricted to the defendant. No judgment by default shall be taken unless affidavit filed stating 30 days have elapsed since the warning order was first published.

- Incarcerated Parents-service must be upon the keep or superintendent of the institution who shall deliver a copy of the summons and complain to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as “legal mail” and, unless the court otherwise directs, to the defendant’s spouse, if any.

NOTICE OF HEARINGS

- All juvenile defendants age 10 years and above, any persons having care and control of the juveniles and all adult defendants shall be served with a copy of the petition and either a notice of hearing or order to appear in the manner provided by the Arkansas Rules of Civil Procedure. ACA 9-27-312
- Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile. All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court. ACA 9-27-314(c).

Best Practice: Serve Affidavit of Background Information and Affidavit of Financial Means on parent at the same time the Emergency Petition and Order are served on the parents.

IV-E FINDINGS

- A “Contrary to the Welfare” finding must be in the very first order removing the juvenile from the custody of the parent or guardian.
- Within 60 days after removal, the court must find that DHHS made reasonable efforts to prevent

removal.

- Within 12 months after removal, and annually thereafter, the court must find that DHHS has made reasonable efforts to achieve the permanency plan.
- The affidavit should identify the person(s) from whom custody is removed, both physically and legally. If a child is being removed from someone other than the legal custodian, the affidavit should explicitly state how long the child resided with the person from whom the child is being physically removed.

MEDICAL RECORDS

ACA 16-46-301 to 16-46-308

- Subpoena duces tecum does not include X rays, electrocardiograms and similar graphic matter unless specifically referred to in the subpoena.
- Custodian of records of any hospital can comply with subpoena duces tecum for records if the custodian tenders record by hand or registered mail to court. The custodian of the record shall include an affidavit that the copy is a true copy of all records, etc.
- Copy of medical records shall be separately sealed in an inner envelope, sealed with the title and number of the action, the name of the custodian of the record and the date of subpoena clearly inscribed thereon. Sealed envelope is then enclosed in an outer envelope and sent to the clerk or judge of the court.
- Copy of records remains sealed and shall be opened only at the time of trial upon the direction of the judge conducting the proceeding in the presence of all parties. The copy of the record is admissible in evidence to the same extent as though the original record was offered and the custodian had been present and testified to matters in the affidavit.
- If personal attendance of the custodian is desired, the subpoena duces tecum shall contain a clause which reads: “The personal attendance of the custodian of records is necessary.”