

DISPOSITION ADVOCACY A PRACTICAL APPROACH

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Disposition is the “what happens next” stage of 7B Abuse/Neglect/Dependency cases. The question is no longer whether the child was abused, neglected or dependant but what happens next for the child and, of course, for your client, the parent. This is probably the most critical stage of the A/N/D process.

The first and foremost strategy to use in crafting a disposition plan to help your clients in 7B Abuse/Neglect/Dependency cases is to work with the Department of Social Services and the GAL. Most of these cases are won or lost by the work that you do outside of the courtroom. Although you must zealously represent your client, experience shows that confrontational and obstructionist tactics often tend to work against the parent’s interests. Some helpful advice when dealing with these cases is to:

- Attend Permanency Planning Team Meetings
- Help to develop the Family Services Agreement
- Be mindful of the ASFA and State imposed time lines
- Use Court Reports to espouse your client’s position
- Hold your client’s hand through the process

I. Attend Permanency Planning Team Meetings: PPT Meetings are held shortly after DSS takes custody of the children, within three months of the initial removal of the children and then once every 6 months while the children are in DSS’s custody. PPT meetings are not held for children who are not in DSS’s custody. Parents are invited by DSS to these meetings and their letter states they can invite their attorney if they so desire. The GAL and foster parents are also invited to these meetings. DSS usually has a community representative present as well. These meetings are generally short (15 minute or so) meetings to discuss the status of the case and make any recommendations for services or changes to plan. The attorneys are usually not informed of these meetings by DSS or the GAL who expect your client to notify you of this. That rarely happens or when the client’s do notify you, it is the day of the meeting and you are in court. It is important to let DSS know that you want to attend these meetings. Send them a letter and put them on notice. Tell DSS that you want to be involved in scheduling these meetings so you can attend. Many times, the social workers gather information to use against your clients from these meetings. If the attorney is present you can, to some extent, control your client and help prevent outbursts of statements that DSS can use against your client in court. Another important reason for attending these meetings is to gather free discovery about what is going on with the case and what DSS and the GAL’s positions might be prior to receiving their court reports.

- II. Help to develop the Family Services Agreement (FSA). By working with DSS to establish realistic goals for your clients you can help prevent DSS from setting your clients up to fail from the beginning. The FSA typically sets forth the type of placement, visitation schedule, parental problems to be addressed and services to be provided. Ask for a copy of the proposed FSA prior to the hearing and prepare a response to the agency's proposal, be able to negotiate or contest certain issues. Remind the agency that the purpose is to "fix" the specific issues that caused the children to be taken into care, not to create perfect parents. Parents do not have to be perfect to regain custody of their children, they have to be "ADEQUATE". In Re Nesbitt, 147 N.C. App. 349, 555 S.E.2d 659 (2001).

This is the time to look into what resources are available to your client – parenting classes, substance abuse treatment, anger or stress management, psychological assessment and counseling, etc. Do not feel hampered or closed in by the resources that DSS presents you or your client with. You can, and should, look into what other resources are available that may assist your client in being reunified with their children. When looking into outside sources, remember that our Supreme Court in reversing the Court of Appeals in the case of In Re D.M.W., 360 N.C. 583 (2006), reversed 173 N.C. App. 679 (2005), we lost our case law to argue that *respondent parents are not bound by a single source provider for recommended services when seeking to overcome the issues that led to the removal*. Make sure that you have DSS sign off on any independent services that you instruct your client to participate in or they may be doing it for nothing, not receiving credit for their efforts.

One of the most important aspects of the plan is determining where the children are placed after adjudication. Attempt, when possible, to locate a relative or family friend who is willing to take custody and who is acceptable to DSS. This can be beneficial to the client by facilitating visitation as well as, with relative placement, tolling the ASFA time lines. The visitation schedule is one of, if not the, most important aspect of these plans. It is imperative that your clients be allowed to see their children as often as possible, however, with the time constraints on DSS when dealing with supervised visitations, your clients are often only granted one hour per week to visit. Be creative in helping DSS craft the FSA's and offer other possible supervisors so your clients can enjoy longer and more meaningful visitations with the children.

- III. Be mindful of the ASFA and State imposed time limits. ASFA is the Adoption and Safe Families Act of 1997 which was passed to reform the child welfare system. ASFA severely shortened the time frames within which efforts toward reunification can be achieved. This is where the magic (and arbitrary) twelve months in placement language comes from. Inform your clients that they have a very narrow window of time, relatively speaking, to correct the problems that caused the children to be taken into care before the court will state that

reasonable efforts are futile and proceed toward a goal other than reunification.

- IV. Use Court Reports to espouse your client's position. Too often at disposition, parents' counsel is bombarded by the Court Reports of DSS and the GAL. Create court reports for your client to be handed up at the disposition stage, as well as other review hearings, so the Court can read your spin on events. It's quite clear that people's perceptions of the same events can differ and it is a good tool to give judges a report that is in black and white, that they can hold in their hand, and which can explain your client's position better than your client taking the stand and risking being torn apart by DSS and the GAL while explaining themselves on the stand.

Remember that at the disposition stage, the burden of proof is "best interests of the child", In Re O.W., 164 N.C.App. 699, 596 S.E.2d 851 (2004), and "the court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable and necessary to determine the needs of the juvenile and the most appropriate disposition." North Carolina General Statutes §7B-901. The burden of proof in the dispositional hearing is not placed on either the parents or the Department of Social Services. In Re Shue, 311 N.C. 586, 310 S.E.2d 567 (1984). This is your opportunity to introduce hearsay into a hearing, use it because DSS and the GAL will.

Be positive in your reports. Include items that help your client's position. State how many visits your client has made and been on time to as opposed to DSS's report of how many might have been missed. Advocate for your client in these reports so that you put the very best light on what your client has done because, nine times out of ten, DSS and the GAL are going to put your clients in the very worst light possible. Make sure you include what DSS is not doing. For many reasons; over-work, heavy case load, pre-court decisions by DSS that reasonable efforts are futile; the social workers don't or won't provide services to your clients. Tell that to the judge. If there are services that you think your client would benefit from, put it into the report. There are many ways to drafting these reports. In the Eleventh Judicial District, Court Reports are distributed via email. I have found it useful to take DSS's emailed report and craft it into my own. The format is what the judge is used to seeing and it makes it easy for the judge to compare the two. However, there are no right or wrong ways of preparing court reports as long as what you prepare helps your client and your case. Some items to include in a parent's court report are:

- Visitation
- Mental Health Services
- Employment
- Housing
- Daycare

- Transportation
- Improvement services – parenting classes, anger management, etc.
- Child Support
- Family or Community Support
- DSS assistance or lack thereof
- Recommendations

It is important that your court report include your client's recommendation. What it is that your client wants to see happen with their children and what they, the parent, needs to do further to accomplish that.

In addition to filing a Court Report, you may also want to consider filing a response to the

- V. Hold your client's hand through the process. This area of law, more than most, requires constant vigilance by the attorney with their client. Explain the law as well as the reality of the situation to your client. Tell you clients how important it is for them to attend each and every visitation and, if they can't attend, have the client call the social worker or you to explain why. Have someone from your office stay in regular contact with your clients to find out their progress on the case plan; do not wait until time for court to be updated by the social worker. Contact the service providers and provide written follow-ups for your clients. Do the same with the social workers.

RESOURCES

Family Preservation Law Center: <http://www.fplcenter.org/>

Representing Parents in Child Welfare Cases by Diane Rauber with Lisa Granik, an ABA publication, 2000

Making Sense of the ASFA Regulations, edited by Diane Rauber, an ABA publication, 2001

LIST OF SAMPLE FORMS

- Sample Parents Court Report Style A
- Sample Parents Court Report Style B
- Sample Parents Court Report Style C
- Sample Parents Court Report Style D
- Sample Response to DSS/GAL Court Report

