

DISABILITIES ADVOCACY AT JUDICIAL REVIEWS

Presented by: Judith Burke, Esq. and Charlene Pinkney, Esq.

Thursday, May 21, 2015, Workshop Session A, 1:00 pm - 2:15 pm

Guardian ad Litem (GAL) Disabilities Training Conference, May 21-22, 2015

I. Workshop Objectives

Through this workshop you will learn to:

- Evaluate the child's needs,
- Prepare for the judicial review,
- Successfully advocate to obtain court orders to access appropriate services and protect the child's rights, and
- Participants will also learn about the 2015 legislative updates.

II. Judicial Review Overview



Judicial review hearings comprise a large number of the court's hearings in dependency proceedings. The practitioner must be prepared for a wide variety of issues that can arise during the court's review of the child's status, including change of placement, case plan modifications and access to services. Judicial reviews provide an opportunity to focus the court on the child's special needs.

III. What is a Judicial Review Hearing?

The purpose of a Judicial Review hearing is for the Court to review the status of the child and determine whether or not the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. **FS §39.701(1)(c)(1) and FS §39.701(2)(d)**

IV. When should a Judicial Review be held?

- A Judicial Review hearing shall be held at least every 6 months until the child reaches permanency status. **FS §39.701(1)(c)(1)**
- The initial Judicial Review hearing must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever comes first, but in no event shall the review be held later than 6 months after the date the child was removed from the home. **FS §39.701(1)(d)(1)**

Continued

- The court shall hold a judicial review hearing within 90 days after a child's 17th birthday. **FS §39.701(3)**

V. Who conducts a Judicial Review hearing?

- The Judicial Review may be conducted by a:

Judge, General Magistrate or the **Citizen Review Panel**.

- **Citizen Review Panels** may conduct hearings to review the status of a child. The court shall select the cases appropriate for referral to the citizens review panel. Any party may object to the referral. The court may conduct the review itself or refer to the panel. **FS §39.701(1)(c)(2)**

VI. Who may attend the hearing?

- The Child
- The Parents
- Case Manager
- Attorneys
- Caregivers
- Any relevant participants (therapist, caregivers, foster parents, etc.)

VII. General records and reports that should be reviewed prior to the hearing

- **Judicial Review Report (JR) and Judicial Review Social Study Report: (JRSSR) FS §39.701(7)(b)-(c)** (must be filed 72 hours prior to the hearing)
- **GAL Report: FS §39.701(7)(b)-(c)** (must be filed 72 hours prior to the hearing)
- **Reports of the Agency** (if applicable)
- **Medical records** (if applicable)
- **Psychological records:** (psychological/ mental health evaluations, diagnosing documents, treatment plans, therapist compliance documents)
- **Educational records:** (report cards, attendance sheets, tutoring reports, correspondence from the school, etc.)
- **Caregiver's statement: FS §39.701(2)(a)(6)**

Reports, continued

- **Drug Testing reports:** random urinalysis drug test results, S.C.R.A.M. continuous alcohol monitoring bracelet, hair follicle, etc. results
- **Certificates of Completion/Compliance with Services**
- **Independent Living Reports/ Transition Plan** (for children 13+)
- **Adoption Status Report:** For children pending adoption, the agency shall provide a written report concerning the progress being made to place the child for Adoption.
- **Home Study Reports**
- **Interstate Compact on the Placement of Children documents**
- **Letters from the Child**

Reports, continued

- All records supporting the case plan;
- Testimony by the social service agency, the parent, the foster parent or legal custodian, the guardian ad litem or surrogate parent for educational decision making if one has been appointed, and any other person deemed appropriate;
- And any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value.

VIII. Reports for Children with Disabilities

- **Individualized Education Program (IEP):** is a written document required for each child who is eligible to receive special education services. It is provided to a student who has been determined first to have a disability and, second, to need special education services because of that disability.
- **Prescribing Physicians Signed Medical Report:** If the child is prescribed psychotropic medications, be sure the following 4 documents align: Medication Report, UF Medline Response, Motion for Authority to Administer, and the Order of the Court.
- **Suitability Assessment:** is an evaluation of a child to consider placement in a Statewide Inpatient Psychiatric Program (SIPP). Seven findings are required in the evaluation. This is *not* a psychological and should not be relied upon as such. Coordination of the assessment is done by the child's SPOA (Single Point of Access). The primary role of the SPOA is to serve as a resource to the Community Based Care Service Workers in ensuring that children are assessed as to their need for mental health and/or substance abuse services and provided with individualized treatment and integrated services in support of their permanency goals. Request the referral and packet sent to the evaluator.

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- **Medical Records:** particularly those from physicians treating a physical disability or issues arising from a physical disability, such as; neurologists, gastroenterologists, orthopedists, ENT, etc.
- **Therapy Records:** Speech, physical, occupational, etc.
- **Mental Health Reports:** Progress notes from all therapists. May require a court order or subpoena.
- **Psychiatric Evaluation:** If the child is prescribed psychotropic medications or needs to be evaluated for psychotropic medication, be sure the prescribing doctor has all relevant and current documentation. Children prescribed psychotropics meet with the psychiatrist regularly. Be sure to get these reports to assure this is being done. Regardless of consistent medication management, an annual psychiatric evaluation is advisable.
- **Psychological Evaluation:** These should be current. (Preferably annually) Axis diagnosis are not necessary in all cases and may be left off to avoid “labeling” our children.

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- **Sex Abuse Evaluation:** Be sure all recommendations are followed, and reports generated by those recommendations are received. Again, beware of a label that the child will carry the rest of his/her life.
- **175-88 Safety Plan:** A form that goes with the child to protect the child and others from risk of further sexual abuse where there is a history of victimization or acting out. (Also the potential, based on certain behaviors)
- **Bonding Assessments:** An evaluation to determine the quality of a bond (child/ caregiver, sibling, child/parent) for the purpose of permanent placement or separation. May also be used to gain recommendations on how to strengthen a bond.
- **APD (Agency for Persons with Disabilities)**
- **CMS (Children's Medical Services)**

IX. Preparing for the Judicial Review

Advocacy Framework (Parental Rights Intact)

- Permanency
- Placement
- Child's Needs
- Legal Needs and Rights of the Child
- Case Management
- *(See handout)*

Continued

Advocacy Framework (Permanently Committed Children)

- Case management
- Placement
- Psychotropic Medications
- Mental Health/Developmental Needs
- Other needs
- Legal Needs and Rights of the Child
- (*See handout*)

Continued

- **Use Your Resources**

- GAL, CAM, SA, AAL, CG, CM, Waiver Support Coordinator
- The Child-who better?
- “Show your hand”
 - Advocating for a disabled child requires a different mindset from normal litigation. Better to attempt to resolve prior to court. You then can present a stipulated order or report that at least you tried.

- **Anticipate the Relief you Want**

- Know the problem, but also know the solution.
- Review the order or present your own.

X. JUDICIAL REVIEW HEARING



a. The Judge may speak with the child(ren)

- The child(ren)'s presence is encouraged at the hearing. The child(ren) may feel empowered by being able to express their wishes and/or concerns directly to the judge.
- The child may speak to the judge either in chambers or in open court with their Guardian ad Litem present (if one is appointed).
- If a child with special needs or a disability decides to attend the hearing, accommodations may need to be made in advance with the Court.
 - Persons in the courtroom
 - Lighting
 - Service dog/Facilities dog

b. The Judicial Review Social Study Report (JRSSR) is reviewed

- The JRSSR will be presented by the Case Manager and reviewed in detail by the Judge and attorneys for compliance purposes.
- After a review of the services and the parties compliances with court ordered services, the Judge will make a ruling regarding the parties compliance with the case plan tasks.

c. Case plan compliance

- The findings the court may make are:
 - **Substantial Compliance:** 100% completion of ALL required services (be aware that if the Court finds the parent(s) are/is in substantial compliance, reunification may be deemed appropriate under the statute.)
 - **Partial Compliance:** Less than 100% compliance with required services
 - **Non-Compliance:** The parties are not in compliance with required services.
 - **No Findings:** Appropriate if the parent is not charged or if the parent(s) have yet to enter a plea or go to trial.

d. Additional topics at the JR Hearing

- Visitation (including sibling visitation)
- Reunification **FS §39.701 (2)(d)(2)**
- Appropriateness of Case plan Goal
- Timesharing
- Termination of Services
- Case Closure

XI. Legislative Updates

- **CS/CS/HB 437: Guardians for Dependent Children who are Developmentally Disabled or Incapacitated**
- Guardians for Dependent Children who are Developmentally Disabled or Incapacitated; Requires continued review of necessity of guardianships for young adults; requires updated case plan developed in face-to-face conference with child, if appropriate, & other specified persons; provides requirements for DCF when court determines there is good faith basis to appoint guardian; requires DCF to provide specified information if another interested party initiates proceedings; provides that guardianship court has jurisdiction over proceedings for appointment of guardian advocate if petitions are filed for certain minors subject to ch. 39, F.S., proceedings when such minors have reached specified age; provides that such minor has same due process rights as certain adults; provides that if child is subject to proceedings under ch. 39, F.S., parents may act as natural guardians unless court finds that it is not in child's best interests or parental rights have been terminated.
- Effective Date: 7/1/2015

Questions/Comments

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Thank you!