

Office of the State Public Defender
DN (PARENT REPRESENTATION)
CHECKLIST

January 1, 2011

INITIAL CLIENT CONTACT

- Meet with the client **as soon as possible** following assignment to the case
- Identify yourself by name and affiliation
- Be sure to clarify that you are not associated with DPHHS, law enforcement or the court
- Explain what is happening and why
- Identify all parties to the DN process
- Discuss and explain the client's rights in the DN process
- Explain the court process and timelines
- Advise the parent of all available options, as well as their consequences
- Explain the issues and possible outcomes
- Inform the parent that communications between client and attorney are confidential
- Advise the parent not to make statements to anyone concerning the case without prior consultation with counsel
- Obtain signed releases from client
- Obtain information from the parent concerning facts, statements, witnesses, etc.
- Secure assistance from experts if communication impairments arise
 - Language, literacy, chemicals, mental health. medication

HANDLING THE CASE (Generally)

- Remain familiar with applicable court rules and local customs regarding DN proceedings
- Determine if Indian Child Welfare Act applies (if so, see separate standards)
- Seek the most expedient and timely resolution that provides effective representation
- Do not agree to a continuance unless it is necessary for effective advocacy
- Carefully review the petition and all other evidence
- Prepare the parent for the proceeding
- If the child has been removed
 - Determine the basis for the removal
 - Determine if the State considered options to avoid removal
- Interview all witnesses and review all witness statements prior to hearing
- Actively represent the parent at all stages of the proceeding
 - Examine and cross-examine lay and expert witnesses
 - Challenge other non-testimonial evidence
- Ensure that the client actively participates in every stage of the proceeding
 - Encourage the parent to be present at all hearings
 - Advise the parent regarding the law at every stage of the proceedings
 - Make a record of advice regarding the parent's elections and waivers
- Solicit support of social workers who understand the public defender's advocacy role to investigate the various community health and social services available for the parent

HANDLING THE CASE (Show Cause Hearing -- §41-3-432, MCA)

- See above – plus:
- Determine whether there are other responsible adults available to care for child
- Confirm accuracy of statements
- Challenge unnecessary supervision and visitation restrictions

HANDLING THE CASE (Adjudicatory Hearing -- §41-3-437, MCA)

- See above – plus:
- Determine what actions parent has taken to ensure safety of child
- Discuss treatment with parent and identify what voluntary services parent will accept
- Determine if agency adequately investigated options for safely reunifying family
- Determine if agency failed to provide services to permit child to remain at home
- Investigate to determine accuracy of facts alleging abuse and neglect
- Consider if evidence exists which would obviate need for a treatment plan
- Challenge conditions in treatment plan which are unjustified or not supported by record
- **Where counsel believes the parent's wishes are not in parent's best interests, counsel may attempt to persuade parent to change parent's position. If parent remains unpersuaded, however, counsel must defend the parent's position vigorously**

HANDLING THE CASE (Disposition Hearing -- §41-3-438, MCA)

- See above – plus:
- Determine what sort of disruption the removal of the child has caused
- Determine whether the agency considered noncustodial parent or family members as caretakers
- Challenge the factual basis of the agency's recommendation for placement outside the home

HANDLING THE CASE (Permanency Hearing-- §41-3-445, MCA)

- See above – plus:
- Maintain contact with parent to determine actions parent has taken to address State's concerns
- Investigate actions taken by agency to explore services aimed at keeping child with parent

HANDLING THE CASE (Voluntary Relinquishment -- §42-2-412, MCA)

- See above – plus:
- Ensure that the parent understands the consequences of voluntary relinquishment
- Make sure parent understands that parent makes ultimate decision regarding voluntary relinquishment
- Investigate and explain prospective strengths and weaknesses of case
- Ensure that relinquishment is voluntary, understood, and factually supported
- Inform parent of effect of admission on other court or related matters

HANDLING THE CASE (Termination -- §41-3-607 & -609, MCA)

- See above – plus:
- Determine whether statutory grounds for termination have been met
- Determine whether termination is in best interest of child
- Determine whether agency made reasonable efforts to avoid termination, e.g.,
 - In-home babysitters
 - Intensive home-based services
 - Other services that address needs of parent and child, including disability support
- Challenge whether treatment plan was appropriate