

## 2023 OPD Dependency and Neglect Annual Spring Conference

Dates: May 11 -- 12, 2023

Location: Virtual

### Thursday, May 11<sup>th</sup>

| Time        | Agenda Item  | Description  | Speaker   |
|-------------|--|--|---|
| 8:00–8:30   | <b>Legal Process of a DN case:</b> Basic Overview and Flow Chart.  | A basic overview of the legal proceedings in a DN case with timelines and flow chart, with the addition of Pre-Hearing Conferences and Emergency Protective Services Hearings.   | <b>Kelly Driscoll,</b><br>Deputy Public Defender,<br>Missoula |
| 8:30–10:00  | <b>Out of Court Advocacy in DN cases:</b> Client Intake, Case Preparation and Relationship Building with Parties.  | Building a trusting relationship with your client is key to a successful outcome in a DN case. Listening to your client's story, explaining the DN process and guiding your client through this difficult time builds trust with your client and can set the tone for the whole case. Getting information from your client can be difficult but is vital to advising your client appropriately and preparing for hearings. This session will take through that first contact with your client, maintaining a good relationship with your client, building relationships with all parties, and preparing for court.   | <b>Kelli Sather,</b><br>OPD Training Coordinator              |
| 10:00–10:10 | <b>BREAK</b>   |  |   |
| 10:10–10:40 | <b>Out of Court Advocacy in DN cases cont'd:</b> FEM, TTM and FCR and working with CASAs.  | Attending various meetings with your client and staying apprised of all the intricacies going on in the case is critical to a successful outcome. This session will go over the importance of attending FEMs, TTMs and FCRs, and working with CASAs.   | <b>Kelli Sather,</b><br>OPD Training Coordinator              |
| 10:40–12:10 | <b>Sources of Law in DN cases:</b> Constitutional, MCA, Federal, ICWA, Rules of Evidence and Civil Procedure, Confidentiality and Privileges in DN Cases and "Soft" Law. | How can we counsel our clients as to what the law is, or effectively advocate for our clients, when we have vague, illogical, and confusing statutes that don't even codify vital issues such as the constitutional standard for seizing children or if/when/how/why/by whom family contact can be restricted? This session will advocate for the "tripod model" of framing your legal arguments while defending families and sources of law you can use to build the three "legs" of your arguments, with those legs being theories derived from (1) statute, (2) constitutional principles, and (3) actual evidence-based assessment of the best interest of the child and family unit. In discussing the first statutory "leg," we will focus especially on statutes outside of Title 41, Chapter 3. For the second "leg," applicable constitutional principles, we will review general principles that apply to most every issue litigated in DN's. For the third "leg," we will focus on persuasive authorities | <b>Buddy Rutzke,</b><br>Managing Attorney,<br>Bozeman         |

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|                   |  | from best-practices research, foreign caselaw, and CFS policies. Even though we don't have much in the way of clear statutes or interpretive regulations or caselaw, the goal of this session is for you to leave with a framework that allows you to craft outstanding legal arguments.   |  |
| <b>12:10–1:00</b> | <b>LUNCH</b>   |  |  |
| <b>1:00–2:45</b>  | <b>In-Court Advocacy in DN cases:</b> PHCs, EPS, Show Cause, TIA, Adjudication; Dispositions, Treatment Plan, Placement and Status Hearings, Perm Plan Hearings and TPR. | A more in-depth look at all DN court hearings – timelines, burdens of proof, statutory authority and possible motions. A significant amount of time will be dedicated to how Pre-Hearing Conferences, Emergency Protective Services Hearings and Show Cause Hearings are occurring around the State considering new legislation.   | <b>Courtney Bagnell Morehead,</b><br>Deputy Public Defender,<br>Billings |
| <b>2:45–3:00</b>  | <b>BREAK</b>   |  |  |
| <b>3:00–4:00</b>  | <b>Other Legal Issues in DN cases:</b> The UCCJEA and ICPCs.   | With out-of-state parenting issues becoming more frequent in DN cases, DN practitioners must become knowledgeable with the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact on the Placement of Children (ICPCs). This session will provide an in-depth look into the UCCJEA and its interaction with DN cases and an overview of the ICPC process.  | <b>Kelly Driscoll,</b><br>Deputy Public Defender,<br>Missoula            |
| <b>4:00–5:00</b>  | <b>How to Develop and Challenge Treatment Plans and Termination of Parental Rights</b> (pursuant to failure to successfully complete Treatment Plan).                    | Treatment Plans are one of the most important – and often most overlooked – parts of a DN case. Failure of one task on a Treatment Plan can cause a parent to lose their parental rights. This session will review the process of parent involvement in developing a Treatment Plan, objections to make to a CFS proposed Treatment Plan, when and how to amend a Treatment Plan, and consequences of failing to successfully complete a Treatment Plan. | <b>Buddy Rutzke</b><br>Managing Attorney,<br>Bozeman                     |

## Friday, May 12th

| <b>Time</b> | <b>Agenda Item</b>  | <b>Description</b>   | <b>Speaker</b>  |
|-------------|---|--|---|
| 8:00–8:15   | <b>Intro to Day 2: Safety, Discovery, and Defining Success in DN cases.</b>             |  | <b>Kelli Sather,</b><br>OPD Training Coordinator  |
| 8:15–9:15   | <b>CFS SAMS Model: Protection and Prevention Plans.</b>                                 | From the identification of Immediate Danger through the completion of the Family Functioning Assessment, Protection Plans are developed with the assistance of the family to ensure the safety of the child(ren) while the CPS completes the overall assessment of the family. The Protection Plan is designed to control, or manage for, the Immediate Danger identified and is intended to include the input and involvement of the family in its development.   | <b>Ike Jessee,</b><br>Training Development Supervisor,<br>DPHHS, CFS and<br><br><b>Courtney Callaghan,</b><br>Recruitment, Retention & Training Bureau Chief,<br>DPHHS, CFS       |
| 9:15–10:15  | <b>CFS SAMS Model: Safety and Protection Plans.</b>                                     | Following the identification of Impending Danger in the home through use of the Family Functioning Assessment, CPS will work with the family to complete the Safety Plan Determination and develop the Safety Plan most appropriate to the needs of the family regarding the safety concerns identified. Prevention Plans may be utilized to assist in prevention of removal of the child(ren) and potential legal intervention when specific conditions are met and the use of a Prevention Plan is appropriate for the family's specific situation and needs.  | <b>Ike Jessee,</b><br>Training Development Supervisor,<br>DPHHS, CFS and<br><br><b>Courtney Callaghan,</b><br>Recruitment, Retention & Training Bureau Chief,<br>DPHHS, CFS       |
| 10:15-10:30 | <b>BREAK</b>  |  |   |
| 10:30–12:00 | <b>CFS SAMS Model: CFS's Process for Assessing for Safety and Conditions of Return.</b> | Once a Safety Plan has been developed and implemented with a family, CPS will continually monitor the safety of the child(ren) through the consistent monitoring of the Safety Plan for effectiveness in addressing the identified Impending Dangers and controlling for the safety of the child(ren). If, through the completion of the Safety Plan Determination, the child(ren) cannot be safely maintained in the home, the CPS will work with the family to develop the Conditions for Return which outline what specific conditions need to be met in order for the child(ren) to be safely returned to the home. Conditions for Return are not dependent on Treatment Plan tasks or compliance with said tasks. | <b>Ike Jesse,</b><br>Training Development Supervisor,<br>DPHHS, CFS<br><br>and<br><br><b>Courtney Callaghan,</b><br>Recruitment, Retention & Training Bureau Chief,<br>DPHHS, CFS |
| 12:00–1:00  | <b>LUNCH</b>  |  |   |

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| 1:00–2:00 | <b>Other Legal Issues in DN cases cont'd:</b> Alternate Dispositions pursuant to MCA § 41-3-438.                                      | Due to the <i>In re</i> S.S. line of cases, alternate Dispositions are becoming more common. Depending on the issues facing each parent, DN practitioners need to be knowledgeable about what Dispositions are available to the client and how to achieve those Dispositions. This session will also discuss the complexity of Dispositions with the emergence of PHCs and EPS hearings.  | <b>Kelly Driscoll</b> ,<br>Deputy Public Defender,<br>Missoula  |
| 2:00–3:00 | <b>Formal Discovery in DN cases:</b> How to write and respond to Interrogatories, Requests for Admission and Requests for Production. | While most jurisdictions have their own informal discovery processes, at times it is advantageous or mandatory to use formal discovery in a DN case. As practitioners, we need to know how to write Interrogatories, Requests for Admission and Requests for Production, and how to respond to them. As an experienced civil law practitioner, Travis Dye will lead us through how to do formal discovery in a DN case.   | <b>Travis Dye</b> ,<br>Esq., Missoula<br>Legal Solutions,<br>PLLC   |
| 3:00–3:15 | <b>BREAK</b>  |   |   |
| 3:15–4:15 | <b>DN Legislative update.</b>   | This Montana Legislative session has probably had the most DN bills ever proposed with the most significant changes we've ever seen to Title 41. This session will cover all substantive changes to Title 41, including PHCs and EPS Hearings, Warrants for Removal, MT ICWA and Attorneys/GALs for Children.   | <b>Buddy Rutzke</b> ,<br>Managing Attorney,<br>Bozeman<br><br>and<br><br><b>Kelly Driscoll</b> ,<br>Deputy Public Defender,<br>Missoula |
| 4:15–5:00 | <b>Defining Success in DN cases:</b> What is winning? Placement, Family Time, and Services.   | Winning contested EPS, Show Cause, Adjudication and Termination Hearings is rare. While those BIG wins are great for our clients, it's the LITTLE wins that keep us going in this practice and can often be the most helpful to our clients. Getting a client the help they need and their child into their arms is often the most rewarding and beneficial WIN in a DN case. This session will define "success" in a DN case and how DN practitioners are important in the overall success of a DN case. | <b>Bridget Menard-Carneal</b> ,<br>Managing Attorney,<br>Bozeman  |