

Practice Standards

September 26, 2018

Section XVII, Representation of Parents in Dependent/Neglect Cases

3. HANDLING THE CASE:

A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective and competent advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.

B. Counsel must be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.

C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:

- a. Review the petition and all other evidence;
 - b. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
 - c. If the child has already been removed from the home, determine the basis for the removal;
 - d. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services.
 - e. Review all statements, documents, reports, and documentary evidence, including medical records, if any, and discuss these documents with the client;
 - f. Familiarize himself or herself with relevant law; and,
 - g. Interview all witnesses, favorable and adverse.
- D. During any proceedings, counsel shall, where it benefits the client:
- a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
 - b. Offer evidence favorable to the client's case, if available; and,
 - c. Determine whether an expert is needed to assist in preparation of the parent's case.
- E. During the show cause hearing, counsel shall examine witnesses as to:
- a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
 - b. Whether there are other responsible relatives or adults available who may be able to care for the child or provide additional supervision;

Practice Standards

September 26, 2018

Section XVII, Representation of Parents in Dependent/Neglect Cases

- c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,
 - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- F. In preparation for an adjudicatory hearing, counsel shall:
 - a. Determine what actions the client has taken since the preliminary proceeding, if there was one, to address the concerns of the state as to the safety of the child, and discuss with the client the treatment or other services to which the client would voluntarily agree;
 - b. Investigate whether the agency made reasonable efforts to prevent the need for placement and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services, and whether the agency has taken prompt steps to evaluate relatives as possible caretakers.
- G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:
 - a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
 - b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
 - c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;
 - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation. In addition, after consultation with the client, counsel shall consider offering evidence to the court of treatment or services in which the client would voluntarily participate to obviate the need for a treatment plan or, if a treatment plan is ordered, to include in the treatment plan. Counsel shall challenge conditions in the treatment plan that are not justified or supported by the record.
- H. Prior to making admissions or stipulations or agreeing to voluntarily place the child or relinquish any right to visitation with the child, counsel must:
 - a. Ensure that the client understands the consequences of such a decision;
 - b. Make it clear to the client that the ultimate decision to make the admission or voluntarily place the child has to be made by the client;
 - c. Investigate and candidly explain to the client the prospective strengths and weaknesses of the case, including the availability of the State's witnesses,

Practice Standards

September 26, 2018

Section XVII, Representation of Parents in Dependent/Neglect Cases

concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication;

- d. Be satisfied that the admission is voluntary, that there is a factual basis for the admission, and that the client understands the right being waived; and,
- e. Be aware of the effect the client's admission will have on any other court proceedings or related issues.

I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the client's situation.

J. Where counsel believes that the client's desires are not in the client's best interest, counsel may attempt to persuade the client to change his or her position. If the client remains unpersuaded, however, counsel should assure the client he or she will defend the client vigorously.

K. Notwithstanding the existence of ongoing negotiations with the State, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to a hearing on the merits.

L. In preparation for a disposition hearing, counsel should:

- a. Determine what actions the client has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
- b. Investigate what the agency has done to explore services that will allow the child to remain safely at home; and,
- c. Determine what sort of disruption that the removal of the child has caused the child and the family.

M. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
- b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
- c. The factual basis of the agency's recommendations for placement outside of the home.

N. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

Practice Standards

September 26, 2018

Section XVII, Representation of Parents in Dependent/Neglect Cases

- O. In preparation for a permanency hearing, and, if parental rights have not been terminated, counsel should:
- a. Keep in contact with the client and determine what actions the client has taken to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
 - c. Determine what sort of disruption the removal of the child has caused the child and the family.
- P. In preparation for a parental rights termination proceeding, counsel should:
- a. Determine what actions the client has taken to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
 - c. Determine what sort of disruption that the removal of the child has caused the child and the family.
- Q. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
- a. Whether the statutory grounds for termination have been met;
 - b. Whether termination is in the best interest of the child;
 - c. Whether the agency made reasonable efforts to prevent the need for termination and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services;
 - d. Whether the treatment plan, if one was required, was appropriate.