

OHIO ABUSE, NEGLECT AND DEPENDENCY LAW

A Practice Manual for Attorneys in Hamilton County

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INTRODUCTION

Child abuse, neglect and dependency law is a complex and narrow specialty. It receives little attention in law school or continuing legal education seminars. There are few published materials to assist attorneys who desire to practice in the area to gain the necessary expertise.

This practice manual is designed to assist attorneys who practice or desire to practice in the court's child abuse, neglect and dependency docket. This manual provides an introduction to Ohio child abuse, neglect and dependency law, the philosophy that underlies it and the specific hearing process of the Hamilton County Juvenile Court. It identifies key issues at each stage of the hearing process and provides "nuts and bolts" practice pointers for attorneys who represent the child welfare agency, parents and children or their appointed guardians ad litem. This manual is not intended to serve as an authoritative legal source, but rather, a resource to practitioners.

This manual reflects the belief that it is important that all attorneys who practice in the court have a good understanding of not only the "letter" of child abuse, neglect and dependency law and procedure, but also the spirit and philosophy that underlies the legal mandates. When attorneys understand the goals of abuse, neglect and dependency practice, they are better able to advise their clients as well as advocate for their clients' positions in a manner that will be most persuasive to the court.

This manual has been prepared by the following individuals: Magistrate Paul DeMott; Magistrate Charles Milazzo; Deputy Chief Magistrate Carla Guenther; Assistant County Prosecutor Mark Resler; Tracy Cook, Executive Director of Pro-Kids; Kimberly Helfrich, Executive Director of the Hamilton County Public Defenders Office's-Guardian Ad Litem Division; and Mark Fidler, an attorney in private practice. Portions of the manual have been drawn from the *Ohio Deskbook of Juvenile Court Procedures on Child Abuse, Neglect and Dependency*, a publication that was prepared for the Ohio Association of Juvenile and Family Court Judges by Paula Shrive and Barbara Seibel with assistance from Magistrates Leah Dugan, Darlene Kamine, Eileen Reed, Barbara Kuller and Paul DeMott of the Hamilton County Juvenile Court.

INITIATING COURT ACTION

The Complaint

Child abuse, neglect and dependency cases are initiated by the filing of a complaint. The Public Children Services Agency in Hamilton County that initiates most of the abuse, neglect and dependency complaints is the Hamilton County Department of Job & Family Services [hereinafter agency]. The complaint is the legal document that sets forth the allegations, which if proven, establish the court's jurisdiction over the child. It contains the following:

1. An allegation that the child is abused, neglected and/or dependent, along with the statutory language relied upon;
2. A statement of the specific facts upon which the allegations are based;
3. The names and addresses of the parents, custodians and guardians of the child; and
4. A prayer for relief stating the requested disposition.

The complaint is an important working document. It provides parents with notice of the allegations to which they must respond. At the adjudicatory hearing parents may object to evidence concerning abuse, neglect or dependency that is not properly alleged in the complaint. At the dispositional hearing, the court will not order services that are not related to problems identified in the court's adjudicatory findings, which relate back to allegations in the complaint. Accordingly, the complaint must be drafted sufficiently broad to include all the facts that justify the court's intervention in the family's situation.

Prior to drafting the complaint, agency counsel should investigate what evidence is available to support the allegations. Agency counsel should also advise agency social workers regarding the legal sufficiency of the allegations to establish abuse, neglect and dependency and to support the disposition requested. Agency counsel plays an important role in screening allegations that cannot be supported by admissible evidence and that are not legally sufficient. Agency counsel may be able to improve the agency's case by identifying gaps in evidence and suggesting areas where more thorough investigation could be helpful.

When the agency is seeking pre-adjudicatory removal of the child, a motion requesting interim custody must accompany the complaint. The motion must also include a sworn affidavit stating the facts that justify pre-adjudicatory removal of the child from the home.

Agency Staffings

Child abuse, neglect and dependency proceedings are initiated when an agency worker decides that it is necessary to seek court intervention to protect a child. In Hamilton County, an agency social worker will convene an administrative staffing prior to filing a complaint in Juvenile Court, unless exigent circumstances prevent the worker from doing so. Parents, relatives, service providers, the agency social worker and other interested parties are invited to participate in the staffing. An agency employee who has no case responsibility for the family facilitates these staffings. The purpose of the staffing is to determine whether the agency should seek removal or whether alternatives to removal can be implemented through a safety plan designed to protect the child without court intervention. The result of the staffing identifies the agency's position. It is not binding on the parent. Typically, the staffing will be held before court involvement and prior to the appointment of counsel for parents and a guardian ad litem for the child. If counsel has been appointed prior to the staffing, the guardian ad litem and counsel for parents should participate in the staffing.

Voluntary Agreements for Care

If the agency decides to seek removal, it may request the custodial parent to consent to placement by signing a Voluntary Agreement for Care. Juv. R. 38. By signing the Voluntary Agreement for Care, a child's custodian authorizes a child's placement for up to thirty days. After thirty days, the agency must return the child, file a complaint with a motion and affidavit requesting interim custody or in limited circumstances, seek an extension of the Voluntary Agreement for Care. An extension requires the custodian's agreement and the court's approval. The court can grant one extension up to an additional 30 days. The court will approve such an extension only when the child will likely be reunified during the extension period. O.R.C. 5103.15(A).

The parents may revoke Voluntary Agreements for Care with notice to the agency. Doing so, however, may result in the agency seeking an emergency order of custody from the court.

If involved, counsel for parents should advise their clients on whether to sign a Voluntary Agreement for Care. In some instances, such as when a temporary placement is needed for a short period and reunification is expected prior to the end of the 30-day period, signing a Voluntary Agreement for Care can be less burdensome than insisting upon a court hearing to authorize the child's placement. Moreover, in such cases executing a Voluntary Agreement for Care is not likely to be detrimental to the parents' interests. Counsel should, of course, make certain that the parent fully understands the Voluntary Agreement for Care and its legal effect.

When it is anticipated or likely that placement will extend beyond thirty days, whether to sign a Voluntary Agreement for Care becomes a more complex decision for parents. Even when the parents agree with placement or anticipate that the court would authorize placement of the child after a contested shelter care hearing, they may find it advantageous to insist that the agency initiate court proceedings. By doing so, the case becomes subject to the court's oversight and supervision. Parents can access the court to make certain that the agency meets its obligations to provide timely services and visitation. In addition, time limits are triggered to complete the adjudicatory and dispositional hearings. On the other hand, parents may choose to sign a Voluntary Agreement for Care to gain time before a shelter care hearing to address problems or to better prepare a defense.

Day One Hearings and Emergency Hearings

The court sets aside time on Mondays, Wednesdays and Fridays from 9:00 a.m. to 2:00 p.m. for scheduling of Day One hearings on new complaint filings. Preliminary hearings are scheduled for all non-emergency complaints on the Day One docket. As noted above, the agency is required to file a complaint when a parent has signed a voluntary agreement for care and the child is not returned within 30 days. The first hearing on such cases is scheduled on the Day One docket.

When the agency requests emergency removal of a child, the court will schedule a hearing that day on a Day One docket, if available, or between scheduled hearings on other days. If the need for an emergency removal of a child arises after business hours, any party can seek an ex-parte emergency order by telephone. Juv. R. 6. When an ex-parte telephone emergency order is sought, a court hearing is set the next business day, but not later than 72 hours. O.R.C. 2151.31 and 2151.33(D).

At the emergency hearing or Day One hearing, the agency may seek pre-adjudicatory removal or a court order authorizing the continued placement of the child. Juv. R. 6, 7 and 13. The agency may also seek interim protective orders to protect the child while the child remains at home. O.R.C. 2151.33.

In Hamilton County, the emergency or Day One hearing is a comprehensive, substantive hearing that is scheduled for at least one hour. At the hearing, the court will hear evidence if the case is contested or if the child's custodian is not present. If the case is not contested, the court will still complete a thorough inquiry regarding the case. At the Day One hearing, the court:

- Addresses the status of notice to the parties;
- Serves the parents personally with a summons, the Motion for Interim Custody, the Supporting Affidavit and the Complaint;

- Appoints a guardian ad litem for the child in all cases and counsel for the parents, if requested;
- Decides whether to place the child or authorize the child's continued placement;
- Decides whether to issue interim protective orders when the child remains at home;
- Addresses what services are in place or need to be arranged for the parents and child;
- Determines the least restrictive placement for the child, including whether relatives are available as possible placements for the child or to help in other ways;
- Determines whether the agency made reasonable efforts to avoid placement of the child, to eliminate the need for continued placement of the child or enable the child to return home. In the alternative, the court may find exigent circumstances prevented the provision of services prior to removal. O.R.C. 2151.419(A)(1) and 2151.31(E)(2); Juv. R. 27(B)(1);
- Determines if reasonable efforts are not required. O.R.C. 2151.419(A)(2) and 2151.31(E)(2); Juv. R. 27(B)(1);
- Determines whether it would be contrary to the welfare and best interest of the child to continue in the home. O.R.C. 2151.33(E); 42 U.S.C. 672 § 472(1);
- Decides the terms and conditions for visitation;
- Assesses the costs of education to the responsible school district. O.R.C. 2151.353(B)(3) and 2151.357; and
- Advises the parties of the timeframes contained in the Adoption and Safe Families Act if the child is placed in agency custody.

Private attorneys are assigned to the day one docket, and they can be appointed to represent parents or custodians at this initial hearing. Fees can be assessed to the Public Defender if the party meets income qualification. If the party does not meet income qualifications, they can retain their own attorney or request that the day one attorney be appointed to represent them at a fee established by the Office of the Public Defender.

Ohio Revised Code section 2151.33 and Juvenile Rule 13 provide that a court may place a child into protective custody prior to adjudication to protect the child's best interest. In Hamilton County, the court has construed this standard to require a showing that there is probable cause to believe the child is at "imminent risk of serious physical or emotional harm." O.R.C. 2151.331 and 2151.314. This requirement recognizes that at an emergency hearing, the parents must respond on short notice with little opportunity to consult with counsel, subpoena witnesses or prepare a case. A child's removal from home is frequently traumatic for the child and parents. Many family difficulties (e.g. loss of income, forced relocation and feelings of inadequacy) are created or

exacerbated by removing a child. As a practical matter, after a child has been removed, it frequently becomes more difficult to help the family resolve its problems. Accordingly, due process and fundamental fairness dictate that a child should be removed at an emergency hearing or Day One only with a showing that delay would place the child at imminent risk of serious harm.

In determining whether a child is at imminent risk of serious harm the court will consider all relevant factors. These include:

- the age and behavior of the child;
- the child's physical and mental abilities, particularly as these relate to the child's ability to protect himself;
- the nature and extent of harm suffered by the child;
- the child's need for medical or psychiatric attention;
- the parents' physical, mental and emotional condition;
- any previous history of abuse or neglect of the child;
- the willingness of the parents to participate in protective or remedial services and their ability to benefit from such services;
- sources or levels of stress; and
- personal and community resources available to support the family.

The key issue at the emergency or Day One hearing is whether imminent risk of serious harm to the child is present. Chronic conditions may exist that would justify removal or continued placement, if proven after the full adjudicatory hearing, but not support removal on an emergency basis. The court will limit evidence regarding chronic conditions that may be detrimental to a child, but fall short of the "imminent and serious harm" standard.

In addition, the court must address whether the agency has made reasonable efforts to prevent placement. O.R.C. 2151.419. Under federal law, a favorable reasonable efforts finding is necessary for the agency to receive federal funds to subsidize the child's placement. Ohio law, however, permits a court to order removal even when the agency has not made reasonable efforts. Nevertheless, if the agency has not made reasonable efforts, the Court will often consider alternatives to placement such as supportive services to reduce the risk of harm to the child.

The court may consider options to protect the child other than removal by issuing interim protective orders. Juvenile Rule 13 (B)(2) gives the court broad authority to issue orders to protect a child within the home. The court may restrain or control any party's conduct if such conduct is not in the child's best interests. In addition, the court may issue an order to remove an abusive parent or other person from the home rather than the child. The court can order that specific services be provided by the agency and engaged in by the parents. The court may require specific actions by the agency and parents. For example, to prevent removal of a child, the court may require that the child be placed in protective day care to provide the parent with respite and allow

daily monitoring of the child's condition. The court may order a parent to reside with a responsible relative who can assist with the care and supervision of the child. All parties should explore creative interventions that will allow a child to remain safely with a parent. O.R.C. 2151.33.

In some cases, the child can be protected with immediate remedial services. Counsel for parents can be especially effective for their clients by preparing a specific and realistic plan to reduce risks to the children with supportive services. All parties should become familiar with the range of services available that will reduce the risks. These include, but are not limited to, random drug testing, drug/alcohol assessment and treatment, parenting and psychological assessments, individual and family counseling, psychiatric care, mental health case management, protective day care, parenting classes, family aide services, behavioral management services, and emergency housing assistance. In addition, two especially useful in-home intensive services to prevent removal are Family Preservation and Camelot Care.

The agency has access to family preservation services, which provide intensive, home-based services for families and entail visits by a social worker to the home several times each week, as well as 24-hour on call support. The Family Preservation unit works intensively with parents on any problems that create risk to children. To access this service, the parent must express a willingness to voluntarily participate in the service at the time of the agency staffing. Family preservation services are not available for cases in which untreated substance abuse is a significant issue.

The agency also has services through Camelot Care, a private provider, which provides services similar to family preservation services. Camelot Care generally works with families and older children who have severe emotional or behavioral problems. The social worker assigned to the family can arrange counseling, med-somatic care for the child and parent, behavior management services and provide other needed assistance. Camelot Care can also be used to stabilize a child in an agency placement and thereby avoid a disruption for the child.

If the court determines that the child must be removed from the home or authorizes continued placement of the child, willing relatives may be available to take the child into their home. Placement with relatives often reduces the trauma to a child caused by removing a child from the home by allowing the child to live with a familiar person rather than a stranger. Relatives typically facilitate more frequent and longer visits between parents and the child. Finally, relatives often serve as a concurrent plan by assuming legal custody or adopting the child if reunification efforts fail.

The court is required to place children with a suitable relative, if one is available. O.R.C. 2151.314 (B)(2). In many emergency cases, the agency will

not have had the opportunity to complete background investigations of the relatives. If a relative appears appropriate, but background checks have not been completed, counsel for parents may request an order that the child be placed with the relative by a certain future date, unless the agency finds evidence of unsuitability and reports this to the court. Counsel for parents may also request an expedited pretrial hearing to address possible relative placements. In many circumstances, the agency can complete a preliminary investigation the same day as the emergency, which will permit the child to be placed with appropriate relatives and avoid an interim placement through an agency provider.

If relatives are not available to assume physical custody, they may still provide valuable help in a case. Frequently, relatives supervise visits for parents, thereby allowing longer and more frequent contact between parents and the child. In some cases, relatives who are not willing to provide long-term care, often provide brief respite care to allow time for supportive services to be implemented for the parents.

The rules of evidence do not apply at pre-adjudicatory hearings. Juv. R. 7(F)(3). Thus, the parties can present hearsay testimony and documentary reports. The court, however, will exclude irrelevant testimony, and counsel may argue as to the weight that should be afforded to the admissible evidence. In some circumstances, the court will sustain objections to hearsay because it is too unreliable. In addition, the court will require a party proffering hearsay to establish an adequate foundation as to its source.

Although hearsay evidence is permitted at pre-adjudicatory hearings, it is not admissible at the adjudicatory hearing when the formal rules of evidence apply. Agency counsel should bear this in mind when seeking pre-adjudicatory removal. It accomplishes little to remove a child based on hearsay evidence, if the agency will not be able to prove its case at the adjudicatory hearing when the rules of evidence apply. This problem may arise, for example, when a child has made statements regarding abuse, but subsequently recants.

A critical issue for defense counsel is to determine whether to contest placement of the child. Counsel should carefully review with parents the allegations in the complaint and motion for interim custody to determine what allegations are in dispute. Counsel should discuss with parents the likelihood of prevailing against the agency and make certain that the parents understand the issues that will be addressed in the hearing.¹

¹ If counsel determines that a parent does not understand the proceeding due to incompetence, counsel should request the appointment of a guardian ad

Contesting an emergency or Day One hearing is not always the best strategy for parents to pursue in a child abuse, neglect and dependency case. There may be a strategic advantage to limiting the court's exposure to evidence at the emergency or Day One hearing that may not be admissible in later hearings when the rules of evidence apply. In addition, as a practical matter when the agency can present clear evidence of imminent risk, contesting placement may unnecessarily aggravate tensions between the agency and a parent and exacerbate a parent's denial of problems.

In many cases, the parents' interests are best served by cooperating with the agency to address problems that justify agency intervention. In such cases, in addition to representing their client's interests, counsel for parents can serve their clients by helping them to understand their need for services and how they can benefit from them. Counsel for parents can then assist parents in working with the agency to develop the most appropriate plan to achieve timely reunification. If counsel for parents work to develop a trusting relationship with their clients and communicate effectively with them, they can be more effective than anyone else in helping clients understand the court proceedings and case plan requirements. Counsel for parents can thereby increase the likelihood that parents will complete necessary services to preserve or reunify the family.

If the emergency hearing occurs with short notice, counsel for parents may request a rehearing in a short time to allow parents to subpoena witnesses, identify relatives and/or arrange services such as family preservation. Juvenile Rule 7(G) provides that any party may file a motion requesting the release of a child from shelter care and requires that such motions be heard within 72 hours. O.R.C. 2151.33(D). The court will schedule a Day Seven hearing within one week if notice cannot be provided to the parents or custodians at the time of the Day One hearing.

If a child is removed from the home, the court will address issues of visitation. Visitation is critical to maintain the relationship between the parent and child and is especially important for infants and young children. The court and all parties should consider:

- whether visits need to be supervised;
- whether visits, supervised or not, can occur in the parent's home; and
- whether relatives can provide necessary supervision.

The use of responsible relatives to supervise visits allows more frequent and lengthy visits than can be offered with limited agency resources. At a minimum, the court will order the agency to provide visits for two hours per

litem for the parent. O.R.C. 2151.281.

week under agency supervision, unless a compelling reason exists to prohibit all contact between the parent and child.

The guardian ad litem for the child is appointed at the emergency or Day One hearing. Because the guardian ad litem is appointed at the initial hearing, he or she is placed in a difficult position of making recommendations to the court without the opportunity to conduct an independent investigation. The guardian ad litem should do what is best under the circumstances to present an informed recommendation to the court. Prior to the hearing, the guardian ad litem should speak with parties and witnesses, review reports and documents that are available and examine witnesses during the proceeding.

The court will explain the role and responsibilities of the guardian ad litem at the Day One hearing. Counsel for parents should also take time to emphasize the importance of the guardian ad litem's role. Counsel for parents should make their clients aware that the guardian ad litem functions independently from the agency and can significantly influence the outcome of the case. The parents can benefit from the establishment of a positive, working relationship with the guardian ad litem.

At the Day One or emergency hearing, counsel for each party fulfills a critical role by holding the agency accountable to its obligation to provide reunification services and visitation in a timely manner. To this end, counsel for parents should make certain that reunification services are addressed at the pre-adjudicatory hearing and help devise a detailed case plan identifying which services the parents could benefit from and precisely how and when the agency will provide these services. If necessary, counsel for parents can request additional pre-adjudicatory hearings to address problems in service delivery.

All counsel should be keenly aware that litigants in child welfare cases must work cooperatively after court hearings to accomplish a successful outcome for the child. Therefore, it is important that all parties treat each other with dignity and respect and that they make every effort to minimize animosity and distrust between the parties. All counsel must approach litigation differently from other types of cases in which an ongoing working relationship between the parties is less crucial.

At the conclusion of the hearing, the court will issue a written entry. Counsel for all parties should review the entry with their clients to answer any questions and to make certain that every party understands their obligations under the court orders. Counsel should set a meeting date with their clients to prepare for the adjudicatory hearing.

ADJUDICATORY HEARINGS

The adjudicatory hearing is a formal hearing in which the rules of evidence apply. At the adjudicatory hearing the court determines whether the allegations in the complaint are true and whether they are legally sufficient to establish that the child is abused, neglected and/or dependent. All parties must be served with the summons and complaint prior to proceeding with the adjudication. The adjudicatory hearing is followed by the dispositional hearing in which the court addresses the appropriate placement for the child and the services to the child and family that address the problems identified in the adjudicatory findings. The court is required distinguish between the two stages and may not combine them. The adjudicatory hearing must always precede disposition.

As in any type of litigation, thorough preparation for the adjudicatory hearing is essential to effective representation. Prior to the adjudicatory hearing, counsel for parties should:

- Submit requests for discovery and respond to requests (see Juvenile Rule 24);
- Review with their clients the factual allegations in the complaint in advance of the hearing to ensure adequate time for investigation, preparation and the development of a strategy to present the client's position on adjudication;
- Review the agency case file and reports;
- Review school records and reports from persons providing services for the child, as well as other sources of information regarding the child's needs;
- Identify and interview witnesses;
- Prepare witnesses and exhibits to be presented; and
- Discuss possible settlements with opposing counsel and draft possible stipulations.

The agency's case file is a critical document. It will contain caseworker dictation, which summarizes the agency's contact and involvement with the family. It will also contain reports from service providers, results of evaluations and frequently, medical and school records. Counsel for all parties should review it.

The guardian ad litem must be prepared to address adjudicatory issues. The guardian ad litem is a party to a child abuse, neglect and dependency case and has the right to call witnesses and to examine witnesses called by other parties. If the guardian ad litem is a social worker, an attorney must represent the guardian ad litem at the adjudicatory hearing.

In addition to being prepared to address adjudicatory issues, the child's

guardian ad litem should begin gathering information necessary to advocate for the interests and needs of the child in a comprehensive manner. The guardian ad litem should meet with the child, and the child's caregiver. The guardian ad litem should contact counselors, teachers, and other persons having significant information regarding the child's needs. In addition to reviewing the agency case file, the guardian ad litem should review medical and school records. The guardian ad litem should speak with relatives and supportive community members who can provide information and serve as resources to meet the child's needs.

In most cases, the adjudication is not contested. The parties reach a negotiated agreement by stipulating to facts alleged in the complaint with modifications agreed to by the parties. Attorneys for the parties negotiate findings that are the most favorable to their client's interests.

Agreement can be reached concerning all or part of the complaint. If no agreement is reached or if only a partial agreement is reached, a contested hearing is held and the parties offer evidence regarding the disputed allegations.

A contested adjudication is a formal hearing in which the rules of evidence apply. Counsel for the parties present sworn testimony and witnesses are subject to cross-examination. The agency has the burden of proving the allegations in the complaint by clear and convincing evidence. O.R.C. 2151.35. The agency must file a case plan with the court prior to this hearing.

The adjudicatory hearing is critical because the adjudicatory findings determine the problems that must be addressed to preserve or reunite the family. The case plan services ordered by the court must be logically related to the problems identified in the adjudicatory findings. The court will measure in case review hearings the progress the family is making in eliminating the abuse or neglect identified in the adjudicatory findings. A decision as to when and whether the child can be returned will relate back to the adjudicatory findings. Finally, if the parents do not successfully address the problems that led to the child's placement, the adjudicatory findings are foundational to a decision by the court to terminate parental rights. Because of the critical importance of the adjudicatory findings, their accuracy should not be bargained away.

Attorneys for parents should not agree to allegations in the complaint concerning material facts that the parents legitimately dispute or which are not supported by admissible evidence disclosed through discovery. In a later proceeding, such as a hearing to terminate parental rights or a hearing to award legal custody, parents will not be permitted to dispute facts agreed to at the adjudicatory hearing. In addition, parents may be resistant to participate in services they do not believe they need, if they are inappropriately pressured to agree on adjudicatory facts they dispute.

At the same time, counsel for parents should not advise their client to contest facts when the parents' position is untenable. In many cases it is better for parents to stipulate to facts cast in language most favorable to their position, rather than have detailed and damaging testimony presented to the court that the parents cannot effectively rebut. In such cases, counsel serves the parents' interests by assisting them in gaining a more realistic perception of their situation.

Counsel for the agency and guardians ad litem should likewise be careful not to bargain away the accuracy of the adjudicatory facts. An attorney who does so may undermine the court's authority to order parents to complete critical services and may make it more difficult for the court to consider an alternative disposition if the reunification efforts are not successful. Counsel for the agency and the guardian ad litem should consider what findings would be necessary in the record, if reunification is not successful and an alternative permanent plan such as termination of parental rights and adoption is sought.

In addition to determining whether allegations in the complaint are true, the court must decide whether the allegations are sufficient to establish abuse, neglect or dependency. Agency social workers use a risk-analysis tool and a safety assessment measurement to analyze which cases require agency intervention. Counsel should be aware, however, that it is possible for a child to be in an environment with a high level of risk, but not fall within the statutory definitions of an abused, neglected or dependent child.

The definitions of abuse, neglect and dependency are set for in the Ohio Revised Code:

§ 2151.03 Neglected child defined; failure to provide medical care for religious reasons.

A. As used in this chapter, "neglected child" includes any child:

- (1) Who is abandoned by the child's parents, guardian, or custodian;
- (2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
- (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- (5) Whose parents, legal guardian, or custodian have

placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

B. Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child.

[§ 2151.03.1] § 2151.031 Abused child defined.

As used in this chapter, an "abused child" includes any child who:

A. Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

B. Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

C. Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death, which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code;

D. Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

E. Is subjected to out-of-home care child abuse.

§ 2151.04 Dependent child defined.

As used in this chapter, "dependent child" means any child:

A. Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

B. Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or

custodian;

C. Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

D. To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

Timeframes for Adjudication

Juvenile Rule 29 provides that the adjudicatory hearing on a complaint must be held within thirty days of its filing. Upon a showing of good cause, however, the court may continue the adjudicatory hearing for ten additional days to allow a party to obtain counsel or for a reasonable period beyond the thirty days, to obtain service on all parties or to obtain any necessary evaluations. If a continuance is granted, the adjudicatory hearing shall not be held later than sixty days after the filing of the complaint. The failure of the court to hold the adjudicatory hearing within these time frames does not provide a basis upon which to attack the jurisdiction of the court or the validity of any order.

At the conclusion of the adjudicatory hearing, the Court may proceed to the dispositional hearing, if all parties consent and a case plan has been filed. In most cases, the parties waive bifurcation. In some cases, however, counsel for parents may request bifurcation requiring the continuance of the dispositional hearing on a later date. This would be appropriate when counsel for parents believe that problems may be addressed during the period of the continuance that would place the client in a more favorable position at the dispositional hearing. Counsel for the agency or guardian ad litem might also request bifurcation in order to complete needed evaluations or when the actions or inaction of the parents over the intervening period might effect the requested disposition. Juv. R. 34.

DISPOSITIONAL HEARINGS

If the child is found to be dependent, neglected, or abused at the adjudicatory hearing, a dispositional hearing is held. Ohio law mandates that there be a separate hearing concerning the disposition of the case within thirty days of a finding of abuse, neglect or dependency. Disposition must be completed within ninety days of the filing of the complaint.

The adjudicatory hearing takes place first because the court cannot consider dispositional issues concerning the nature of state's intervention with the family until it determines at the adjudicatory hearing that there is a legal basis for state intervention. No matter how well intentioned the intervention might be, the state is not permitted to intervene in a family over a parent's objection without first obtaining a court finding of abuse, neglect or dependency.

Moreover, the adjudicatory hearing and the dispositional hearing have significantly different evidentiary requirements and address different issues. The formal rules of evidence do not apply at the dispositional hearing except in complaints with a prayer for relief of permanent custody. The child's best interest is the focus of disposition. The complaint's prayer for relief may request any of five possible dispositional alternatives: protective supervision; legal custody to a person; temporary custody to an agency; permanent custody to an agency; and planned permanent living arrangement. The court will determine which of the requested dispositions will be in the child's best interests. The court may also dismiss the case even if the allegations of the complaint are proven at the adjudication.

Finally, at disposition the court will approve or modify the case plan, which was filed prior to the adjudicatory hearing. Juv. R. 34(F). This is one of the most significant issues of disposition. The agency, in its case plan, sets forth what steps will be taken to protect the child and preserve the family unit or find the child a permanent home.

At the dispositional hearing, the court will consider statutory priorities in the following order. O.R.C. 2151.412(F)(1) and (G). Whenever possible, the child should be maintained in or returned to the home, with protective supervision and supportive services. If removal or continued removal is necessary, the child should be placed in the most family-like setting possible, consistent with the child's best interests, welfare, and special needs. Efforts to reunify the family generally should precede requests for awards of relative custody or termination of parental rights, except in those instances when reunification efforts would be futile. Relative custody should be considered before permanent custody to an agency.

Ohio law is structured to move children towards permanency in a timely

manner. Permanency is achieved when a child is placed permanently with a family that will raise the child as a family member without ongoing court involvement. Permanency can be achieved by successful reunification with a parent, the award of legal custody to an individual or by adoption. Permanency is not achieved when a child remains in agency care on a long-term basis.

To move cases towards timely permanence an award of temporary custody is time limited. Temporary custody expires within one year from the date the child was first placed in substitute care or the complaint was filed, whichever is sooner. Temporary custody can be extended for two six-month periods based on specific required findings. At the end of the one-year period (if grounds for extension are not present) or at the end of the extension period, the child must be returned home or the agency must pursue an alternative disposition intended to achieve a permanent placement. O.R.C. 2151.415(D).

In addition, Ohio law requires public children services agencies to seek permanent custody and termination of parental rights whenever a child has been in substitute care for a period of more than 12 months in a consecutive 22-month period, unless the agency documents in a case plan compelling reasons why a grant of permanent custody is not in the child's best interest. By statute, the 12 month time period begins when the child is adjudicated abused, neglected or dependent or sixty-days after the child was removed from the home, whichever comes first.

These provisions are designed to prevent children from remaining in legal limbo with no decision regarding a permanent placement. These statutes attempt to prevent the agency from delaying difficult decisions regarding permanency and put parents on notice that they have a limited time in which to resolve the issues that led to the placement of their child. Thus, the harm to children that comes from loss, separation and uncertainty is minimized. All parties must be aware of these time limits and the need for cases to move forward towards a timely resolution.

Dispositional Alternatives - Protective Supervision

An order of protective supervision permits the child to remain in the home in the custody of his parent or guardian, subject to court ordered conditions or limitations. The court may impose conditions concerning the child, or any party. These conditions can include but are not limited to:

- Ordering a party to vacate the child's home;
- Ordering the parent, custodian, or party to prevent a particular person from having contact with the child;
- Ordering that the agency and guardian ad litem have access to the home and child;
- Ordering that specific services designed to minimize risk to the child be

implemented and restraining the conduct of a person as it relates to the child's best interest. O.R.C 2151.353(C); Juv. R. 34(E).

An order of protective supervision must provide for its termination within one year after the earlier of the date on which the complaint was filed or, if applicable, the child was first placed into substitute care. Additional six-month extensions of the order may be requested at a later time at a dispositional review hearing. O.R.C. 2151.353(G). The court schedules the date of the first review hearing at the hearing when the dispositional order of protective supervision is made.

Protective supervision is the least restrictive of the dispositional alternatives. It is the preferred disposition under Ohio law whenever the court believes that the child could safely reside in the home with court ordered supervision.

When parents are contesting an agency request for placement, counsel for parents should prepare an alternative plan for protective supervision to present to the court. Counsel for parents should analyze the risks to the child identified in the adjudicatory findings and be prepared to argue how protective orders can adequately address and minimize those risks. In doing so, counsel for parents must also work with their clients to make certain that they are willing to cooperate with the protective orders. Counsel for parents should make clear to their clients that they will be in a far worse position if the court issues protective orders, and later removes the child due to non-compliance.

Dispositional Alternatives - Legal Custody to a Parent or Other Person

The court may award legal custody of a child to either parent, and may also award legal custody to any other relative or non-relative of the child. This legal status vests in the custodian:

- the right to have physical care and control of the child and to determine where and with whom the child shall live; and
- the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education, and medical care.

All rights and responsibilities of legal custody are subject to any residual parental rights, privileges, and responsibilities, including but not necessarily limited to,

- the privilege of reasonable visitation,
- the right to consent to adoption,
- the privilege to determine the child's religious affiliation, and
- the responsibility for support. O.R.C. 2151.011(B) and 2151.353(A)(3); Juv. R. 2 and 34(D)(3).

The court will order an investigation of any person who is being considered as a potential custodian. In determining whether an award of legal custody is in the child's best interest, the court will consider all relevant factors, including:

- The wishes of the child's parents regarding his custody;
- The wishes of the child regarding his custody;
- The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly effect the child's best interests;
- The child's adjustment to his home, school, and community;
- The mental and physical health of all persons involved in the situation.

When custody is awarded to a relative or other individual, the court shall issue orders regarding visitation and support.

An award of legal custody to a person is considered as the preferred disposition when the evidence indicates that placement with the child's parents will not be feasible within a reasonable time, and an appropriate relative or non-relative is willing and able to provide a permanent home for the child. The intent of an award of legal custody is to provide a permanent placement for a child. O.R.C. 2151.42(B). Counsel for parents should explain to the parents the effect of the court granting legal custody to a relative or non-relative. Placement and visitation arrangements are addressed because an award of legal custody contemplates an ongoing relationship between the parent and child.

When reunification with a parent is not possible, an award of legal custody may offer advantages over permanent custody with a plan for adoption. When the court grants legal custody the court does not terminate parental rights. When the court grants legal custody, ongoing contact between the parent and child as well as other extended family members continues. Additionally, the child may be placed with a familiar person. These advantages, however, may be diminished or negated if the continued relationship between the child and parent would be harmful to the child or if the child has little or no pre-existing relationship with the relative or prospective custodian.

After the court awards legal custody, a parent can later seek to regain custody. In many cases, the legal custodian will be in agreement with a remand of custody. In such cases, the court will order the agency to complete a custody investigation to assist the court in determining whether the child can be safely returned. If the parties are in agreement and the change is in the child's best interests, the court will approve a remand of custody.

If a party contests a change in custody, the parent petitioning the court for the change must allege and prove that there has been a substantial change of circumstances regarding the child or the child's legal custodian and that a

change of custody is in the child's best interest. It is not sufficient to demonstrate that there has been a change of circumstances regarding the parent's situation. In determining the child's best interests, the Court will consider among other things:

- the length of time that has passed since the legal custody was granted and the adjustment of the child in the current home;
- the circumstances that caused the placement of the child outside the home, and the ability of the parent to provide adequate care for the child;
- the desires of the custodial party;
- the desires of the child, with due respect to the child's maturity; and
- the extent to which the parent has attempted to maintain contact with the child, and if the relationship is beneficial to the child.

Counsel for parents should inform their clients that a person who has been awarded legal custody may later file a petition in the county probate court where the child resides to adopt the child. If the parent consents or if the parent has had no contact with and has not provided support for the child for a period of at least one year immediately preceding the filing of the adoption petition, the county probate court may approve the adoption of the child by the legal custodian.

Dispositional Alternatives - Temporary Custody

When the court removes a child from the care of a parent or legal custodian on a temporary basis with a plan to work toward the goal of reunification, the court will place the child in the legal status of temporary custody.

When the court awards temporary custody to an agency, a case plan must be filed by the agency and approved by the court at the dispositional hearing. The case plan becomes a critical issue at the dispositional hearing. In later hearings, the court will measure the extent of the parents' compliance with the case plan to determine whether the child can be reunified or whether an alternative permanent plan should be pursued. The case plan should clearly delineate the problems that must be addressed for reunification to occur, the services that will be provided to address the problems, the responsibilities of the parties and the time frames for implementing these services. O.R.C. 2151.353(A)(2); Juv. R. 34(D)(2).

Parents may object to provisions in a case plan on the basis that the problems and services identified do not reasonably relate to the problems identified by the court at adjudication or that the services are otherwise not reasonable or appropriate. Counsel for parents should be careful to evaluate whether the case plan services are so overly burdensome as to be unrealistic. In addition, all parties should work to avoid a "cookie cutter" case plan by making certain

that the plan is tailored to the specific needs of the family.

All parties should recognize that a parent is more likely to comply with a case plan, if the parents have played an active part in developing it. Accordingly, counsel for parents should insist that their clients have a meaningful role in developing the case plan. When possible, the parents' preferences should be honored concerning the types of services and the service providers. The parents' work schedules and other obligations should be considered. Objections held by the parents should be presented and every effort should be made to accommodate legitimate concerns.

Any party can suggest additional or alternative services that are more appropriate to meet the needs of the parents and child. The court has the authority to order that the agency provide specific types of services that are reasonable and necessary to address the family's needs.

When a case plan is approved, its provisions become court orders. The parents can be found in contempt of court for a willful failure to complete case plan services. Likewise, the agency must meet its obligations under the case plan and can be found in contempt of court for failing to do so.

When granting a temporary custody, the court must set forth in its order a provision for termination. The termination must occur within one year after the earlier of the date on which the complaint was filed or the child was first placed into substitute care. O.R.C. 2151.353(F); Juv. R. 14. At the dispositional hearing where temporary custody is granted, the court must schedule a date for an annual dispositional review hearing prior to the one-year termination date. Upon the motion of any party, or upon the court's own motion, the court may grant up to two six-month extensions of agency temporary custody based on specific criteria. O.R.C. 2151.415(D). Otherwise any party may file a motion at any time to request that the court modify or terminate the order of temporary custody.

The philosophy underlying Ohio law is that it is the responsibility of courts, agencies, and parents to resolve the issue of a safe and permanent home for dependent, neglected, and abused children as quickly as possible. A timely decision on the permanent plan for a child minimizes the emotional damage experienced by a child resulting from separation, uncertainty, and loss. The provision for termination of temporary custody within one year is consistent with this philosophy.

Dispositional Alternatives - Permanent Custody

The legal status of permanent custody vests in the agency all parental rights, duties, and obligations, and divests the parents of any and all parental rights, privileges, and obligations, including but not necessarily limited to,

- the privilege of reasonable visitation,
- the right to consent to adoption,
- the privilege to determine the child's religious affiliation, and
- the obligation to pay support.

If the agency files a complaint or motion for permanent custody and the child is in school or age six years or older and demonstrates verbal skills, the court will address the following issues at a pretrial hearing:

- Hear and decide if there is evidence to support that the child consistently expressed a desire to return home by making an affirmative inquiry of all parties; and
- Determine whether the child needs the appointment of independent counsel if the court finds the child consistently expressed a desire to return home. The court will take into account the maturity of the child and the possibility of the child's guardian ad litem serving as counsel for the child. In re: Williams, 101 Ohio St. 3d 398 (2004).

The formal rules of evidence apply during a dispositional or post dispositional hearing for permanent custody, and the burden of proof is a clear and convincing standard. O.R.C. 2151.414(B). When permanent custody is granted to an agency, the permanent plan for a child almost always is adoption. From the parents' perspective, this is the most severe disposition that can be granted by the court. In most cases, the agency does not seek permanent custody as the initial disposition, but pursues this alternative when attempts to work with parents toward reunification have failed. Ohio law, however, permits the agency to seek permanent custody as an initial disposition when the facts warrant it and, indeed, requires the agency to seek permanent custody under certain circumstances.

Mandatory Filings for Permanent Custody

Ohio law requires the agency to seek permanent custody as its initial disposition or seek a modification of the disposition to permanent custody when conditions described below exist, unless the agency documents in its case plan compelling reasons that permanent custody is not in the child's best interest. A mandatory filing is triggered, if any of the following conditions exist:

- The child has been in temporary custody for 12 or more months of a consecutive 22-month period;
- The parent from whom child was removed was convicted of any of the

following in which the child, the child's sibling or another child residing in the home was victim: Aggravated Murder, Murder, or Voluntary Manslaughter, Felonious Assault, Aggravated Assault, Assault, Child Endangering, section (B)(2), Rape, Sexual Battery, Corruption of a Minor, Gross Sexual Imposition or Sexual Imposition

- The parent from whom the child was removed repeatedly withheld medical treatment or food when available, unless the withholding was for treatment through prayer alone per the tenets of a recognized religious body;
- The parent has placed the child at substantial risk of harm two or more times due to alcohol and drug abuse and after a journalized case plan or court order has required treatment, the parent has rejected or refused to participate in treatment two or more times.
- The parent has abandoned the child.
- The parent has had parental rights involuntarily terminated regarding a sibling. O.R.C. 2151.419(A)(2); 2151.414; and 2151.413(D).

Ohio law does not define what circumstances create a compelling reason to not file for permanent custody. Generally, the circumstances that permit an extension of a temporary custody or the granting of planned permanent living arrangement would constitute a compelling reason not to seek permanent custody.

Determination The Child Cannot Or Should Not Be Placed With The Parent

When the agency seeks permanent custody of a child, the court is required to consider all relevant evidence and must determine, by clear and convincing evidence, that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, and that granting permanent custody to the agency is in the best interest of the child. O.R.C. 2151.414(B). If one or more of the following exists as to each of the child's parents, the court is required to enter a finding that the child cannot or should not be placed with either parent²:

- Notwithstanding reasonable case planning and diligent efforts by the agency, the parent has failed to remedy the conditions that caused the child to be placed.
- Severe and chronic mental illness, retardation, disability or chemical dependency renders the parent incapable of providing a home within one year of the court date.
- The parent committed abuse, or caused or allowed neglect between the original complaint and the filing for permanent custody.
- The parent failed to regularly support, visit or communicate when

² These statutory findings are paraphrased. The exact language of the statute can be found at O.R.C. 2151.414(E)

able, or has demonstrated an unwillingness to provide an adequate permanent home.

- The parent is incarcerated for an offense committed against the child or a sibling.
- The parent was convicted of any of the following and the child or a sibling was a victim:
 - Endangering Children, Section (A) or (C)
 - Failure to Provide for Functionally Impaired Person
 - Aggravated Menacing
 - Parent Abuse or Neglect
 - Kidnapping
 - Abduction
 - Unlawful Restraint
 - Child Enticement
 - Importuning
 - Voyeurism
 - Public Indecency
 - Compelling Prostitution
 - Promoting Prostitution
 - Procuring
 - Prostitution
 - Disseminating Matters Harmful to Juveniles
 - Pandering Obscenity
 - Pandering Obscenity Involving a Minor
 - Pandering Sexually Oriented Material Involving a Minor
 - Illegal Use of a Minor in Nudity Oriented Material
 - Aggravated Robbery
 - Robbery
 - Aggravated Burglary
 - Burglary
 - Abortion Without Informed Consent
 - Contributing to the Unruliness or Delinquency of a Minor
 - Domestic Violence
 - Carrying a Concealed Weapon
 - Weapon under a Disability
 - Improper Discharge of Firearm at Habitation or School
 - Corrupting Another with Drugs
 - Placing a Harmful Object in Food
 - Involuntary Manslaughter and a sibling was the victim and the offending parent poses an ongoing danger to a child or sibling.
- The parent from whom the child was removed was convicted of any of the following
 - Aggravated Murder, Murder or Voluntary Manslaughter and the victim is a sibling or another child resident at the time.
 - Felonious Assault, Aggravated Assault or Assault and the victim is the child, sibling or another child resident at the time.
 - Child Endangering, section (B)(2) and the victim is the child, sibling or another child resident at the time.
 - Rape, Sexual Battery, Corruption of a Minor, Gross Sexual Imposition or Sexual Imposition and the victim is the child, sibling or another child resident at the time.
- The parent has withheld available food or medical treatment, excepting medical treatment by prayer alone per tenets of a recognized religious body.
- The parent has placed the child at substantial risk of harm two or more times due to alcohol and drug abuse and after a

journalized case plan or court order has required treatment, the parent has rejected or refused to participate in treatment two or more times.

- The parent has abandoned the child.
- The parent has previously had parental rights terminated involuntarily.
- The parent is incarcerated and unavailable for 18 months.
- Repeated incarceration prevents the parent from providing care.
- The parent is unwilling to provide basic necessities or prevent abuse or neglect.
- The parent committed abuse or neglect against the child that makes the parent a threat to the child's safety.

Best Interest Finding

In determining whether permanent custody of the child to the agency is in the best interest of the child, the court shall consider all relevant factors, including, but not limited to, the following³:

- The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-four month period;
- The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- Whether any of the factors that require a finding that the child cannot and should not be returned to the parent are present.

Additional Considerations

In making the two prong findings regarding permanent custody, the court may not consider the effect that granting permanent custody to the agency would have upon the parent.

³ See 2151.414(D)

A written report from the child's guardian ad litem must be submitted to the court prior to the time of the hearing. O.R.C. 2151.414(C). The court, upon the request of any party, is required to file a written opinion setting forth its findings of fact and conclusions of law. O.R.C. 2151.353(A)(4). The parents whose rights were terminated cease to be parties to the action upon the issuance of the decision, except that the right to appeal is not eliminated or restricted.

If permanent custody is awarded at disposition, the court must approve a case plan. In most cases the case plan goal will be to place the child in an adoptive home. The case plan should outline the steps the agency will take to implement the permanent plan. In addition, the case plan should outline any special services that are necessary to meet the child's needs.

If the agency files for permanent custody, counsel for parents should meet with them to determine whether to contest the request. The parents' likelihood of defeating the request should be realistically assessed. In most cases, when a case has reached an annual review hearing in which the agency seeks permanent custody, the parents' prospects are bleak.

Parents should be informed that if they contest the permanent custody and do not prevail, their rights with respect to future children who may enter agency care will be affected. When parental rights have been involuntarily terminated, the agency is permitted to bypass reasonable efforts to prevent or eliminate the need for placement of other siblings who subsequently may enter care. In addition, the agency is required to seek permanent custody unless a compelling reason exists not to seek the disposition. Finally, a previous involuntary termination of parental rights is a basis to establish that a sibling cannot and should not be returned to the care of a parent, one of the evidentiary findings necessary to grant permanent custody.

If a parent wants to contest a request for permanent custody, then counsel must prepare with the parent a strategy that includes an alternative permanent plan for the child and evidence to support it.

A trial on a motion for permanent custody is important litigation and counsel should prepare for it with the same diligence as one would in preparing for any other major civil trial. This includes conducting discovery, reviewing the court's prior entries and the legal file, interviewing the client, the agency social worker and other witnesses, reviewing the agency case file and reviewing the records and reports of service providers involved with the family.

Counsel for parents should, when possible, present evidence that adoption is not in the child's best interests. A finding of best interest is necessary to grant permanent custody to an agency and the weaker the agency's case is on this issue, the more likely the court is to consider alternatives. Termination of

parental rights and adoption may not be in a child's best interests when there is little prospect that the child can be placed for adoption or the child does not want to be adopted. In showing that adoption would not be in the child's best interests, it is also helpful to present evidence of a positive relationship between the child and a parent or relative. Preserving sibling relationships may also be a basis for arguing that adoption is not in a child's best interest.

In devising an alternative plan, counsel can consider requesting an extension of the temporary custody to provide parents with additional time to complete services and address the issues that caused placement. Counsel must be prepared to present evidence to support the evidentiary findings necessary to obtain an extension. Parents are more likely to be granted an extension, if they can demonstrate that the impediments to reunification relate to delays by the agency rather than their own non-compliance with the case services. Parents must be prepared to demonstrate how reunification can occur during the extension period when such efforts were not successful during the first year of the child's placement.

Counsel for parents should review with their clients the possibility of securing a relative placement for the child. Some relatives who were not interested in providing care when the child was first removed may be willing to come forward when the situation for the parents become dire with the filing of a request for permanent custody. Relatives can provide a permanent placement for the child that does not require termination of parental rights. Placement with relatives allows the parents to maintain a relationship with the child and, in some cases, to later seek to regain custody. The court will order the agency to complete custody investigations of all interested relatives and counsel for parents should request such investigations.

Finally, counsel should explore whether grounds exist to place the child in planned permanent living arrangement. The statutory grounds for the disposition are narrowly defined. As a practical matter, this disposition is most likely to be considered with older children who do not want to be adopted or who have little prospects for adoption. The Court is not likely to consider this option for young children.

Dispositional Alternatives –Planned Permanent Living Arrangement

The court may consider placing the child in the disposition of Planned Permanent Living Arrangement with an agency. The agency must present evidence to support the appropriateness of Planned Permanent Living Arrangement, including but not limited to evidence that the agency has tried or considered all other possible dispositions for the child. The court may place a child in Planned Permanent Living Arrangement, only if it finds, by clear and

convincing evidence, that placement in Planned Permanent Living Arrangement is in the child's best interest and that one of the following exist:

- The child has physical, mental, or psychological problems or needs which render him unable to function in a family-like setting, and must remain in residential care; or
- The parents of the child have significant physical, mental, or psychological problems which render them unable to care for the child, and adoption is not in the best interest of the child, and the child retains a significant and positive relationship with a parent or relative or;
- A child sixteen years of age or older who has been counseled on the permanent placement options available to him is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living. O.R.C. 2151.353(A)(5); 2151.415(C)(2).

An order of Planned Permanent Living Arrangement gives the agency the status of legal custodian, and vests in the agency as custodian the same legal rights and duties, subject to the same residual, parental rights, privileges, and responsibilities, as an order for legal custody. The court must approve the agency's case plan at the dispositional hearing where Planned Permanent Living Arrangement is ordered. The court must conduct an annual dispositional review until the child is emancipated or the court otherwise terminates the child's custody arrangement.

The legal status of Planned Permanent Living Arrangement recognizes that some children cannot be successfully reunified with parents and cannot be placed with an adoptive parent or legal custodian. The legislature, however, intended that this status not be granted lightly, without courts and agencies exhausting all other options that might provide a permanent home for a child. In cases where Planned Permanent Living Arrangement is granted, the child will likely be in agency care for more than 12 months in a 22-month period. Accordingly, the agency will usually need to document in its case plan a compelling reason why permanent custody is not in the child's best interest.

Counsel for parents should make their clients fully aware that reunification is no longer the permanent plan for the child when Planned Permanent Living Arrangement is granted. The court, however, can consider changed circumstances at review hearings. Parents may seek a remand of custody upon a showing of changed circumstances and that reunification is in the child's best interest.

DISPOSITIONAL HEARING PROCEDURES

COURT APPROVAL OF CASE PLANS

Ohio Revised Code section 2151.412 provides that when the agency is requesting protective supervision, temporary custody, permanent custody, or planned permanent living arrangement, the agency will file a case plan with the court prior to the adjudicatory hearing. At the time of disposition the court must determine whether to approve the case plan as filed or whether modifications need to be made.

The case plan must address and coordinate both the current placement and the services provided by the agency to the child. In addition, the case plan must address the agency's efforts to ensure that a permanent and safe living situation is provided for the child within a reasonable time. With regard to the current placement, the overall goal of the case plan must be for the agency to place the child in the least restrictive and most family-like setting that is possible. With regard to the agency's efforts to provide a permanent living situation, the overall goal of the case plan must be to secure a permanent placement for the child.

If the court and all parties agree to the content of the case plan, the court will journalize the case plan. The case plan requirements then become orders of the court enforceable through the court's contempt powers.

If the parties do not agree on the case plan contents or if the court does not approve the case plan, the parties shall present evidence with regard to the contents of the case plan at the dispositional hearing. The court will then determine the contents of the case plan, based upon the evidence presented and the child's best interest. Subsequent to this approval, the agency may not change the case plan without following the procedures described in statute.

It is essential that parties and the court carefully consider the contents of the case plan at disposition, since this document is critical to the court process and will likely affect the outcome of subsequent court proceedings. The case plan provides a blueprint for the case. It is the foundation of every subsequent review hearing where the court evaluates progress in implementing the case plan. Later decisions by the court concerning whether to return the child home, to permanently terminate parental rights or to otherwise place the child in a permanent home are based on how successful the parent or guardian was in completing the case plan requirements.

To ensure adherence to the case plan, counsel for all parties should monitor

the parents' progress, the child's progress and the services provided by the agency. Counsel should periodically speak with the client, identify problems that arise in implementing the case plan, and seek to modify any aspects of the plan that are not working.

Case plan Amendments

Frequently, circumstances will change that will require a modification of the case plan. O.R.C. 2151.412 and 2151.416(E). The court must approve any substantive changes to the case plan. Substantive changes include, but are not limited to, changes in the child's placement and the visitation rights of a party. Ohio law provides the process that must be followed to obtain court approval of case plan changes. The process depends upon whether the changes are emergency or non-emergency changes.

Emergency Changes in Case Plan

The agency may in certain emergency circumstances proceed to implement a change in the case plan, prior to obtaining court approval. An emergency change is permitted when the agency has reasonable cause to believe emergency conditions exist, and to believe that the condition places the child in immediate or threatened physical or emotional harm, and that an immediate change in the case plan is necessary to resolve the emergency because:

- The child is suffering from illness or injury and is not receiving appropriate care;
- The child is in immediate danger from his surroundings; or
- A parent, guardian or custodian or other member of the child's household has abused or neglected the child.

In such emergency circumstances, the agency must before the end of the next day after the change is made, give all parties and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency must file a statement of the change with the court and give notice of the filing accompanied by a statement of the change to all parties. Parties then have ten days from the date the notice is sent to object and request a hearing on the change.

If it receives a timely request for a hearing or if the court is unwilling to approve the proposed change without a hearing, the court must schedule a hearing within thirty days after the case plan amendment is filed or the request for hearing is received by the court. If the court approves the change, the agency shall continue to administer the case plan with the change after the hearing. If the court does not approve the change, the court will make appropriate changes to the case plan and journalize the case plan.

If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it will journalize the case plan with the change within fourteen days after receiving the change.

Non-emergency Changes in Case Plan

Any party may propose a change to the case plan by filing the proposed change with the court and giving notice after filing it to all parties. All parties then have seven days from the date the notice is sent to object and request a hearing on the proposed change.

If the court receives a timely request for a hearing or if the court is not willing to approve the proposed change without a hearing, the court must schedule a hearing within thirty days after the case plan amendment is filed or the request for hearing is received by the court.

If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court neither approves nor schedules a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

Counsel for parents and the guardian ad litem should insist the agency honor its obligation to provide them with all proposed case plan amendments. Counsel should inform their clients of the process for obtaining approval of case plan changes and maintain close contact with them to make certain that these requirements are followed.

POST DISPOSITIONAL REVIEW HEARINGS

At the conclusion of the dispositional hearing, the court will set periodic review hearings and an annual review hearing. Periodic review hearings are set at the court's discretion, typically in three to six month intervals until the conclusion of the case. An annual review hearing is required by statute and is set about 30 days prior to the anniversary of the date when the child entered substitute care or the date when the complaint was filed, whichever came first. O.R.C. 2151.417. Because the emphasis and purposes of the periodic reviews and the annual review hearing differs, they will be discussed separately.

In most other types of litigation, the court's role ends or is very limited when adjudication is completed and a disposition is made. By contrast, in child welfare cases, a majority of the hearings and the most important work will typically occur when a case is in review status. Age appropriate youth should participate in review and annual review hearings unless the court determines their participation would be contrary to their best interest.

Periodic Review Hearings

At the dispositional hearing, the court approves a case plan for the family. During a periodic review hearing, the court completes a comprehensive review of the case status and progress in implementing the case plan. The purpose of the hearing is to assess the progress being made toward completing the case plan goals and to make any necessary adjustments to move the child toward a permanent placement as quickly as possible.

Periodic review hearings are informal, problem-solving hearings. In conducting the hearing, the Court is not required to follow the rules of evidence and can accept hearsay and documentary evidence.

In review hearings of children placed in temporary custody, the court will begin and end each hearing with the age of the child, the number of days the child has been placed in agency care and the time remaining in which the court and the parties must secure a permanent placement for the child.

At the review hearing, the court will review the progress of the parents if the case plan goal is reunification or maintenance of the child in the home. Counsel for all parties should obtain information from their clients and reports from service providers regarding the parents' participation and progress in services. Counsel for all parties should be prepared to raise any concerns they have about the parents' progress in services. Any problems that are preventing parents from participating or benefiting from services should be identified and resolved at the review hearing.

In addition, the need for different or additional services can be identified at the review hearing. In some cases, issues with parents that were not previously identified are brought to the attention of the court. Any disputes regarding such issues should be resolved by an evidentiary hearing at the review hearing or set to a later date for an evidentiary hearing.

The conditions, frequency and duration of visits with the children are reviewed at the hearing. If parents are progressing towards the goal of reunification, visits are frequently expanded as a result of a review hearing. Visits may also be changed from supervised to unsupervised visits. Problems with the parents' attendance at visits or conduct during the visits can be discussed at the review hearing.

The placement and services provided for the child are examined at the review hearing. Counsel for all parties should obtain information regarding the child's adjustment in placement and school, as well as the child's progress in services. Counsel or their clients should solicit information from persons having significant contact with the child. Information sources should include the child's foster parents or placement provider, the child's therapist and other service providers involved with the child, the child's parents, and the child's teachers and other school personnel. Problems with the quality or level of care in the child's placement and school setting should be identified and addressed in the review hearings. Problems with services should likewise be identified and addressed in the review hearing. Additional services that are needed to meet the child's needs should be identified and included in the court's entry.

Finally, the court will review the continued need for placement and the appropriateness of the long-term plan for the children. Issues that need to be resolved to achieve permanency for the child should be identified and a plan of action outlining specific steps to be taken by the parties and time frames for resolving these issues should be set forth in the court's entry. The court can order the agency to hold an administrative staffing to consider a modification of the disposition and permanent plan for the child, if necessary.

The court will seek to hold all parties accountable at a review hearing for their responsibilities in implementing case plan goals. If parents are not engaged in required services, the court can admonish them regarding the importance of their participation and emphasize to them the limited time permitted by statute for achieving reunification. The agency can request, by filing a motion, contempt sanctions for failure to comply with specific court orders or required case plan services. Finally, the agency can re-examine long-term case plan goals and move the court, with proper notice and pleadings, to modify the disposition of the case and the permanent case plan goal.

For parents, the opportunity for reunification may pass, if they do not promptly engage in reunification services to address the problems that led to the child's

placement. Counsel for parents can be much more effective for their clients by guiding them through the reunification process between review hearings than by defending them in court after a motion for permanent custody has been filed.

In some instances, the child welfare agency will have neglected to make appropriate arrangements for necessary services for the child and the parents. Counsel for the parents and the guardian ad litem should request specific court orders to address deficiencies in the agency's response to the family's needs. The court has broad authority to order the agency to provide placement for the child and services for the family that are reasonable and necessary to address the family's needs. In egregious cases, counsel for parents or the guardian ad litem can seek contempt sanctions against the agency for failure to comply with court approved case plans and specific court orders.

Counsel for parties should review the court's entry with their clients at the end of the review hearing. Counsel should discuss with their clients any corrective actions they need to take as a result of problems identified at the review hearing. Counsel should continue to emphasize the limited time provided under Ohio law for achieving reunification.

Between review hearings, counsel should maintain contact with their respective clients. If problems arise between review hearings, parties should first attempt to reach a negotiated resolution. If serious problems arise that cannot be resolved among the parties, any party can file a motion requesting that a review hearing be held. The motion should set forth the relief that is requested so that all parties have appropriate notice of the issues that will be addressed.

Annual Review Hearings (Permanency Hearing)

At the initial dispositional hearing, the court will set an annual review in addition to the periodic reviews described above. Orders of protective supervision and temporary custody expire by operation of law, unless extended, one year from the date the child entered placement or a complaint was filed, whichever comes first. The annual review is set at least thirty days prior to this sunset date. The purpose of the annual review hearing is to comprehensively review the permanent plan for the child and to make a decision regarding permanency for the child.

In advance of an annual review hearing for temporary custody, permanent custody and planned permanent living arrangement, the agency will file a motion requesting a reasonable efforts finding. In addition to addressing the issues described in the section of this document titled "Periodic Review Hearings," the court shall determine whether the agency made or failed to make reasonable efforts, based on the health and safety of the child, to place

the child in a timely manner in accordance with the permanency plan and to complete the necessary steps to finalize the permanent placement of the child. 42 U.S.C. 672 §472. The court must also determine whether the agency made or failed to make reasonable efforts to prevent the removal, to eliminate the continued removal of the child from the home, or to make it possible for the child to return home safely, with a brief description of the services and why those services did not prevent removal or enable the child to return home. O.R.C. 2151.419(A)(1); Juv. R. 27(B)(1). If the child is placed out of the state, the court must address the need for the out-of-state placement/services and why this placement serves the child's best interest. If the child is over 16 years old, the court must make a finding as to the services that will be needed to assist the child in making the transition from foster care to independent living.

At the annual review or permanency hearing, the court will review and/or approve the proposed or current permanency plan for the child that must specify when the child will be safely returned home, when the child will be placed for adoption or legal custody, or why a planned permanent living arrangement serves the child's best interest. O.R.C. 2151.417(A) and (K)(1). The court will determine if any changes to the permanency plan are appropriate. Further, the court will establish time frames for implementing the permanency plan. Finally, the court will issue any orders necessary and appropriate to facilitate the timely implementation of the permanency plan.

Annual Review of Protective Supervision Orders

If the child is under orders of protective supervision, the court must decide whether to terminate or extend the orders. O.R.C. 2151.353(G). Any party who believes that protective supervision should be continued should file a motion requesting an extension. If no motion is filed, the court on its own motion can extend the orders of protective supervision. The court can grant up to a six-month extension of protective supervision. There are no statutory restrictions on the number of extensions that can be granted.

In determining whether to extend protective supervision, the court will consider the following:

- To what extent has the risk of harm to the child been reduced since the granting of the protective supervision orders;
- To what extent have the parents and agency complied with the orders of protective supervision;
- Whether further court involvement is necessary to protect the best interest of the child;
- Whether different or additional protective orders are necessary.

If the parents have failed to comply with protective orders or if the risk to the child remains high after one year under protective orders, the agency should

consider filing a new complaint seeking an alternative dispositional order.

Annual Review of Temporary Custody Cases

Not later than thirty days prior to the annual review hearing, the agency must file and serve upon all parties a motion requesting one of the following:

- 1) An order to return the child to the parents with or without orders of protective supervision;
- 2) An award of legal custody to a relative or other interested individual with or without orders of protective supervision;
- 3) An extension of the temporary custody for up to six months;
- 4) An order of permanent custody;
- 5) An order of planned permanent living arrangement. O.R.C. 2151.415(A); Juv. R. 14(A).

An updated case plan should also be filed with the motion, if further court involvement is requested.

Once a motion is filed, the temporary custody order continues and does not terminate until the court issues a dispositional order, even though the twelve-month termination period may be exceeded.

If legal custody is remanded to a parent, relative or other individual without protective supervision orders, then the court takes no further action. If legal custody is remanded to a parent, relative or other individual with protective orders, the court must set a date for the expiration of the protective supervision within one year of the court date.

If requested, the court can grant a six-month extension of the temporary custody. O.R.C. 2151.415(D). To do so, the court must find by clear and convincing evidence that the extension is in the child's best interest, that there has been significant or substantial progress on the case plan and that there is reasonable cause to believe that there will be family reunification or other permanent plan within the period of the extension. The court's entry must state the date that the extension is to expire and set a follow-up annual review hearing at least 30 days prior to the expiration. The court is permitted to grant only two extensions of the temporary custody. Counsel for the agency, the guardian ad litem, as well as the court itself, should be careful to make certain that an extension is not sought or granted without meeting the statutory requirements.

If grounds do not exist for an extension, and reunification or an award of legal custody is not appropriate, then the agency must seek a modification of the disposition to planned permanent living arrangement or permanent custody.

As discussed above, the legislature intended the disposition of planned permanent living arrangement to be used in only limited circumstances

defined in the statute. Planned permanent living arrangement should not be used to delay a decision regarding the permanent plan for the child.