

**16TH JUDICIAL DISTRICT
PROTOCOL CONCERNING PERMANENCY PLANNING
IN DEPENDENCY AND NEGLECT CASES
IMPLEMENTING
CHIEF JUSTICE DIRECTIVE 98-02**

I. Purpose

1. The following are the steps the 16th Judicial District have initiated to assure compliance with this directive.

2. To develop and implement mechanisms to improve the court's timeliness and the quality of Dependency and Neglect cases.

3. To ensure permanency is considered by the Court within the statutory time lines set out in Title 19-3-101 et seq.

4. When appropriate, the Department of Social Services may develop a safety plan, with the intention of retaining the children in the family home.

5. When appropriate, the Department of Social Services may use a delegation of parental powers for informal non-court related placements outside of the family home.

II. GENERAL

1. In order for clerks and data experts to effectively perform the necessary coding, analyzing and interpretation of reports, all "stakeholders" shall assist the Court throughout each phase of the case. This shall include providing accurate information to improve permanency outcomes and assist in making informed decisions.

2. The County Attorney and GAL shall reiterate on the record that the custodial status of the child so as to allow the clerk an opportunity to enter the appropriate code.

3. The Court shall make findings on the record that the

ultimate placement is in the best interests of the child. The findings will be entered onto the register of actions by the clerk.

4. If the child is placed out of the home the Court shall make findings on the record concerning the custodial placement of the child, reasonable efforts and procedural safeguards, all as required by statute.

5. The caseworker shall provide all known contact information to the Court, Guardian ad Litem and Respondent parents' attorneys.

6. The frequency of contact between the Department Caseworker and Respondent(s) shall be at least once a month.

7. The frequency of contact between the Guardian Ad Litem and a Parent Attorney shall be as often as practical.

8. The Department, with the cooperation of the parties, shall identify and serve process upon the biological parents in all cases. If the identity or location is unknown, service of process shall be by publication.

III. SHELTER HEARING PHASE

1. In most cases, once the Department notifies the Court to secure Temporary Custody and schedules a Shelter Hearing, steps shall be taken to immediately appoint a Guardian ad Litem prior to this hearing. The purpose is to have the GAL present at the shelter hearing.

2. The County Attorney shall attach a brief narrative of the factual basis utilized to support the Emergency Protection Order.

3. Whenever possible, the Department representative (who is requesting an Emergency Protection Order) shall make it known to the issuing judicial officer whether, in the representative's opinion, the Respondent parent(s) may be eligible for court appointed counsel.

4. Chief Justice Directive 04-05 2(e) provides for provisional appointment of attorneys prior to the Respondent(s) filing of JDF 208. Provisional appointments can only be made

with a finding that the appointment is "In the Interest of Justice".

5. If an initial determination is made that a parent is eligible for court appointed counsel, the court granting the Emergency Protection Order shall provisionally appoint Respondent counsel for either or both Respondents. If a provisional appointment is made, contemporaneous with scheduling of the shelter hearing, the Clerk shall notify the Guardian Ad Litem and the provisionally appointed Respondent's attorney(s) of the date and time of the shelter hearing.

6. The Clerk shall maintain a list of all attorneys eligible to be appointed as either Respondents' attorneys or Guardians Ad Litem. Appointment shall be made by rotation. An attorney to be appointed on a particular case must be available to appear at the scheduled court date, or the clerk will appoint the next available attorney on the list.

7. Following the initial appointment, the Clerk shall provide copies of all pleadings to the Respondent(s) counsel and to the Guardian Ad Litem.

8. In exceptional circumstances and with prior court approval, Respondent's counsel and Guardian Ad Litem may appear by telephone for the shelter hearing.

9. At the time of the shelter hearing, the Clerk shall present a JDF form 208 to the Respondent(s) for proper execution and filing (if possible) on that date. The caseworker appearing on behalf of the Department shall provide assistance to the Respondent(s) to insure immediate completion and proper filing of the form.

10. At the time of the shelter hearing, the division clerk or the department's attorney shall present to the Respondent parent(s) the placement affidavit form to the Respondent(s) for proper execution and filing on that date. The caseworker appearing on behalf of the Department or the Respondent's attorney shall provide assistance to the Respondent(s) to insure immediate completion and proper filing of the form.

11. The department will extensively search for both paternal and maternal relatives for possible placement.

12. Whenever possible, the caseworker, Guardian Ad Litem, and Respondent(s) shall develop a working informal treatment plan which will thereafter become the initial basis for the development of the formalized treatment plan.

13. At the time of the Shelter Hearing or as soon after as is reasonably possible, the Department shall provide any Assessment used by the Department to all attorneys of record.

14. At the Shelter Hearing and at other times thereafter, the Court shall make inquiry as to potential kinship placement.

15. At the Shelter Hearing, there shall be inquiry by the Court as to the possibility of ICWA applicability. Emphasis shall be made that the tribe makes the ultimate determination of eligibility.

16. If removal of the child is necessary, the Department shall use its best efforts to begin reasonable parenting time with Respondent(s) within forty-eight (48) hours of removal of the child from the parents.

IV. ADJUDICATION PHASE

1. The parties shall inform the Court as soon as practicable, but in no event later than 30 days after the Petition for Dependency and Neglect is filed whether the matter should be set for contested adjudicatory hearing. The hearing shall thereafter be set and conducted within statutory deadlines.

2. A settlement conference may be ordered to provide an opportunity for the parties to reach agreement in a less adversarial manner outside of the court hearing. Any party (by motion) may request a settlement conference.

3. At any other time during the Dependency and Neglect case process, a settlement conference may be requested by the party to have the matter set with the Court.

4. As a matter of process, the department's attorney shall cause to be served on the Respondent(s) (if unrepresented by counsel at the time of the service of petition and summons for dependency and neglect) with a proposed stipulation for

adjudication of the child as a dependent and neglected child on a "no-fault" basis, or such other bases as the parties may agree..

5. Possible pleas that may be entered by a Respondent in anticipation of an adjudicatory hearing are:

- a. Default based upon non-appearance - No plea entered;
- b. Admission to one or more of the stated bases of the Petition;
- c. No fault admission with advisement that there is no limit on the treatment plan;

6. If ordered, the parties shall participate in mediation for all contested Adjudication proceedings (Department shall pay for the mediation).

7. Stipulations for adjudication and Decrees of Adjudication must clearly indicate the name of the party to whom the adjudication shall enter.

V. DISPOSITIONAL PHASE

1. When setting a case over for each subsequent hearing, the parties shall be mindful that statutory time frames continue to run.

2. If a Petition is filed and the matter is set over for further advisement, the clerk shall be so informed.

3. The parties should develop the Dispositional Treatment Plan as soon after adjudication as possible.

4. If there is a non-appearing Respondent at any proceeding, a written default may be entered by the Court.

5. If the dispositional plan provides for a child to be placed out of the area, the Department of Social Services shall have a plan to provide parenting time including transportation arrangements. Parenting time is the right of the child and shall never be withheld as a punishment.

6. In expedited permanency planning cases, services for the family should be frontloaded and in most cases the first review will be scheduled within 30 days of the dispositional hearing.

7. If all children are over six (6) years of age, the dispositional must occur within forty-five (45) days of adjudication. If any child is six (6) years of age or younger the dispositional hearing must occur within thirty (30) days of adjudication. The dispositional hearing may be extended with a showing of good cause.

8. Stipulations for disposition and Decrees of Disposition must clearly indicate the name of the party to whom the Decree will apply.

9. The Court and the parties should be mindful that permanency planning hearings are scheduled within the statutory timeframes. If all children are over six (6) years of age, the hearing must be conducted within one year from the date the children were placed out of the home. If any child is six (6) years of age or younger the hearing must be conducted within 90 days from the date of the dispositional hearing.

VI. CASE PROGRESS

1. Court settings are made with all parties present; therefore, continuances should only occur in rare circumstances.

2. Delay of adjudicatory hearings, dispositional hearings or permanency planning hearing should occur only after a finding by the Court of good cause.

3. All reports, whether from the Department of Social Services or the GAL, must be filed at least five business days prior to any hearing. Continued hearings will not precipitate the need for a new report. Addendums (which update facts) are acceptable.

4. The Court may allow cases to be set on a date other than a normal docket-day to expedite resolution of the case, or to allow for a closed court proceeding in an appropriate case.

5. Before placement of a juvenile delinquent with the department, the court will generally request a social study. The Court, whenever possible, will allow 21 days for the agency to complete the social study. The court can also order the parents to make financial disclosure at the time of the study.

VII. OTHER RESOURCES

1. The 16th Judicial District has developed "A Handbook for Families in Dependency and Neglect Cases. These handbooks are to be given to each Respondent parent (and other interested parties) involved in a Dependency and Neglect case. The handbook is intended to educate Respondent parents, interested parties and agencies by providing information about the people and the process involved in Dependency and Neglect cases. It is also designed to assist parties in keeping track of meetings and hearings. Space is provided for parties to take notes.

2. Each party should be given a handbook at the beginning of the case. Area agencies will be given copies of the handbook for education of the staff and to assist parties when they receive services. Respondent attorneys should have handbooks available to give to clients and to review the information with their clients.

3. The 16th Judicial District handbooks are in English. There is a "state-wide" handbook available in Spanish.