

Timing

Ethical obligations of attorneys

Input from and expectations of all stakeholders

Record and findings to be made

Findings to be made by the court

Everyone's over-arching obligation is the same and is mandated by statute: move the case and the child/family toward predictability, stability and permanence

Maintain the sense of urgency EPP cases require

1. TIMING

- a. C.R.S. §19-3-702 Permanency Hearing – in order to provide stable permanent homes for children in as short a time as possible. It shall be held as soon as possible following the dispositional hearing but no later than 12 months after the date the child is considered to have entered foster care and no later than every 12 months thereafter
 - i. Set within 90 days after dispo – typically around 5 months after filing of case
 - ii. “entered foster care” on date originally placed out of home
 - iii. Notice is required and is provided by the court to all parties and physical caretaker of the child §19-3-702(2)
 - iv. Court may require the County to show cause why a motion to terminate should not be filed §19-3-702(2.5). Reasons can include:
 1. Parents have maintained regular visitation or parenting time and child would benefit from continued relationship
 2. Termination criteria have not yet been met
 3. Child is 12 or older and objects
- b. C.R.S. §19-3-703 Permanent Home – in an EPP case the child must be in a permanent home no later than 12 months after the original placement out of home unless the court determines that placement in a permanent home is not in the child's best interests at that time
 - i. Set court review 2-3 months after PPH
 - ii. Set PHOM hearing 2-3 months thereafter
 - iii. Can be combined with another PPH

2. ETHICAL OBLIGATIONS OF ATTORNEYS

- a. Rules of Professional Conduct 1.3 – Diligence
 - i. Pursue your client's interests despite opposition or obstruction; use all lawful means to vindicate the client's cause or endeavor and to act with reasonable promptness
 1. ACA – interest of the state in assuring that families' and children's needs are adequately met

2. GAL – making sure the child is safe and permanently receiving appropriate care from a fit parent or adult
3. RPC – assuring that the client has every opportunity to parent the child and that necessary services/treatments are being provided for parents to become fit and able to care for the family without intervention of the County

b. RPC 1.4 – Communication

- i. Keep the client advised
- ii. Reasonable consultation about the means by which the client’s objectives are to be accomplished
- iii. Keep the client advised of significant developments affecting the timing or substance of representation
- iv. Make sure you are aware of the culture of the court

3. INPUT FROM AND EXPECTATIONS OF STAKEHOLDERS

a. County

- i. Report to be delivered to all parties, counsel, court no less than 7 days in advance of PPH– statute requires three working days §19-3-702(2); Judge requires **seven**
- ii. If assigned caseworker cannot attend court, send supervisor or informed coverage worker
- iii. Appear at least 10 minutes before the hearing time
- iv. Assure that FEM has occurred in advance of PPH
- v. If recommendation will be OPPLA-emancipation, assure that PRT has been held in advance and internal meetings/forms have been completed
- vi. Be prepared to recite the date the child was first placed out of the home

b. GAL

- i. Complete independent investigation to determine best interests
 1. Visitation
 2. Treatment plan compliance
 3. Placement options
 4. Child’s progress in care, at home, in treatment, at school
 5. Child’s interactions with parents, siblings
- ii. Visit with/consult with the child
- iii. Advise child of ability to appear in court
 1. If she/she wishes to appear, prepare the child for the appearance
 2. If he/she does not wish to appear, convey the child’s preferences to parties/counsel and court

****GAL has final decision as to whether the child appears in court****

- iv. Communicate position to other parties/counsel in advance of hearing

- v. If you will be requesting any particular orders, make sure other parties/counsel are aware in advance of the hearing being called

c. RPC

- i. Meet with client in advance of court hearing
- ii. Discuss recommendations of GAL and County
- iii. Be prepared to make record regarding likelihood the child can return home within 6 months and how that can be accomplished
- iv. Make a record about visits
- v. Discuss compliance with treatment plan
- vi. If contested permanency planning hearing will be requested, talk to other parties regarding docket time needed so clerk can start looking for dates

d. CASA

- i. Report to be delivered no less than 7 days before hearing
- ii. Be ready to discuss recommendations if needed
- iii. Present child's wishes or preferences

4. RECORD AND FINDINGS TO BE MADE

- a. That child is present and/or has been consulted about the permanent plan in an age-appropriate manner
 - i. Should be done by CW, CASA and GAL
 - ii. GAL to be prepared to make record about manner, timing of consultation
 - 1. If child not consulted, why not
 - 2. Child's preferences, if any
 - 3. Reasons why a child does not appear in court
- b. If recommendation is being made for an OPPLA plan, the court must find compelling reasons therefor §19-3-702(4)
 - i. Record must be made in open court OR can be contained in the Family Services Plan(s)
- c. Date child entered foster care and number of months since opening of case that child has been placed out of home
- d. Whether there is a substantial likelihood the family can be reunited within 6 months §19-3-702(3)
- e. Potential permanent plans §19-3-702(4) – separate and individual for each child
 - i. Return home/remain home
 - ii. Perm placement with relative or non-relative
 - iii. Adoption by relative or non-relative
 - iv. OPPLA
 - 1. LTFC
 - 2. Emancipation

- f. Good cause exists to not pursue termination

Permanency order is not appealable. *In re HR*, 883 P.2d 619 (Colo.App. 1994)

5. NEXT STEPS

- a. Set court review in 60-90 days (around month 7 or 8)
- b. Set Permanent Home hearing in 60-90 days (around month 10 or 11)
- c. Permanent Home staffing at least 30 days in advance of hearing date
- d. PHOM hearing can be combined with a subsequent PPH hearing

PERMANENT HOME PROTOCOL – all EPP cases filed on or after October 1, 2014

More training on that from Judge Meinster will conclude today's presentations