



BASICS OF REPRESENTING CHILDREN IN ABUSE & NEGLECT CASES





CHILDREN'S ATTORNEYS PROJECT

- Legal Aid Center of Southern Nevada represents children who have been abused and/or neglected and placed in foster care. We ensure they have a voice in court.
- We represent parents whose children have learning disabilities in securing federally required services and accommodations so their children can succeed in school.



Children's Attorneys Project (CAP)

20 Full-Time Staff Attorneys
Over 300 Pro Bono Volunteers

Just over 85% of the kids in the system are
represented

The rest have no one to speak for them



The Role of a Children's Attorney

- ❖ Giving Child Victims a Voice
- ❖ Attorney vs. GAL
- ❖ What the Child Wants vs. Best Interest
- ❖ Attorney vs. Big Brother/Sister



CHILD PROTECTION ACT -- NRS 432B

A. Abuse/Neglect Of Child (NRS 432B.020)

- ❖ Physical or mental injury
- ❖ Sexual abuse or exploitation
- ❖ Negligent treatment/maltreatment

B. Negligent Treatment (NRS 432B.140)

- ❖ Abandonment
- ❖ Without proper care, control, supervision
- ❖ Lacks subsistence, shelter, medical, education



AGENCIES/ATTORNEYS

A. Department of Family Services (DFS)

- ❖ Investigate
- ❖ Submit for petition
- ❖ Case management
- ❖ Represented by District Attorney

B. Children's Attorneys Project (CAP)

- ❖ Represent the wishes of the child

C. District Attorney – Juvenile (DA)

- ❖ File petitions
- ❖ Represents DFS

D. Parent's/Contract Attorney

- ❖ Represent parents

E. Court Appointed Special Advocates (CASA)

- ❖ Best interest of child



COURT STRUCTURE

Hearing Masters

Issue: findings and recommendations, not orders

1. Holly Roys – Dependency 2 (Courtroom 23)
2. David Gibson – Dependency 3 (Courtroom 20)
3. Jon Norheim – Dependency 1 (Courtroom 14)

District Court Judges

1. Frank Sullivan – Dept. O (Courtroom 21)
2. Cynthia Giuliani – Dept. K (Courtroom 22)
3. Robert Teuton – Dept. D (Courtroom 11)



OBJECTION TO HEARING MASTER'S FINDINGS - EDCR 1.46

1. Inform the hearing master of your intention to object to the findings and request that you are provided with a written copy of the findings/recommendations.
2. 5 days after receiving the written findings/recommendations, you must file a written objection to the district court judge.



Expediting Orders When Before a Hearing Master

- Following a decision by the Hearing Master, an inquiry should be made on the record as to whether the parties are willing to waive their right to object to the decision.
 - If the Hearing Master forgets to ask, you can ask that the parties be canvassed.
 - If the parties all waive, then the recommendation will immediately be treated like a final order. If not, you must go through the recommendation and order process.
 - When submitting a formal written order, it can be noted in the findings that the parties waived objection on the record.
- Any Objection from a Hearing Master's decision involving placement of a child or other emergency situation, shall, if all parties agree, be heard the same day by the duty Judge.
- If the parties don't agree to a same day Objection Hearing on a placement decision, upon the timely filing of an Objection, a hearing before the on-duty District Judge will be set within two (2) judicial days from the notice of the Objections.



Abuse & Neglect Court: Tips for New Volunteers

- Case listed under mother's name on Docket
- Welcome to go early and observe other hearings
- Check in with the Marshal and indentify yourself as a pro bono volunteer
- Where do CAP attorneys stand?



PRELIMINARY PROTECTIVE HEARINGS: *BEGINNING OF A CASE*

- A. Placement of Child into Protective Custody (NRS 432B.390)
 - ❖ Reasonable cause to believe that immediate action is necessary to protect child
- B. Preliminary Protective Hearings (NRS 432B.470)
 - ❖ Within 72 hours of removal
 - ❖ Immediate risk of harm
- C. Findings by Court (NRS 432B.480)
 - ❖ Contrary to welfare to remain home
 - ❖ Best interest of child to be outside of home
- D. Child Could Be:
 - ❖ Released to parents
 - ❖ Remain in protective custody in a shelter or foster home
 - ❖ Placed with relatives or fictive kin



PLEA HEARINGS

Abuse/Neglect Petitions (NRS 432B.490)

- Within 10 days of Preliminary Protective Hearing
- Parents can:
 - Admit (Disposition within 15 working days)
 - Deny (Adjudicatory Hearing within 30 days)
 - Plead No Contest (Disposition within 15 working days)
- Review placement, services, and other issues



ADJUDICATORY HEARING

A. Adjudicatory Hearing (NRS 432B.530)

❖ Within 30 days of petition

B. Preponderance Of Evidence



DISPOSITIONAL HEARINGS

- A. Dispositional Hearing (NRS 432B.530(5))
 - ❖ Within 15 working days
- B. Case Plan Approval
- C. Child is Made a Ward of the Court
- D. Review Placement Of Child (NRS 432B.550)



REVIEW HEARINGS

A. Semi-Annual Reviews (NRS 432B.580)

- ❖ Within 6 months of removal & every 6 months thereafter
- ❖ Review Placement
- ❖ Evaluate progress of family/child (PCPA)
- ❖ Reasonable Efforts Finding

B. Annual Review -- (all of the above and) Permanency Goal Review

- ❖ Reunification
- ❖ TPR/Adoption -- Court must adopt at 12 months unless Compelling Reasons
- ❖ Guardianship
- ❖ OPPLA (Foster Care/Independent Living)



OUT OF HOME PLACEMENTS

A. Relatives Within the 5th Degree of Consanguinity

- ❖ Preference (NRS 432B.550(5)(b)) -- Broader interest in family unity and typically more supportive of parent-child relationship
- ❖ Can become licensed

B. Fictive Kin

- ❖ Known/familiar to the child
- ❖ Can become licensed

C. Foster Care

- ❖ Last resort



Foster Homes

- A. DFS Licensed Foster Homes
- B. Private Agencies/Higher Level of Care (HLOC) Therapeutic Homes
 - 1. Examples: SAFY, Olive Crest, Eaglequest, Bamboo Sunrise Homes, etc.
 - 2. Provide intensive services, such as:
 - Therapy/Counseling
 - Psychosocial Rehab (PSR)
 - Basic Skills Training (BST)
 - Case Management
- C. Group Homes – St Jude’s or private agencies



SIBLING PLACEMENTS

NRS 432B.550(5)(a)

- ❖ Rebuttable presumption -- best interests to be placed together
- ❖ If siblings are not placed together
 - ❖ Inquire regarding:
 - ❖ Reasons siblings not placed together
 - ❖ Efforts to place siblings together
 - ❖ Actions to ensure sibling contact
 - ❖ Request a sibling visitation order
 - ❖ Include language that it will be incorporated into adoption decree
 - ❖ If kids are on separate Petitions (i.e. P1, P2, P3), file in all cases



Reasonable Efforts

- ❖ Court is required per statute to make a reasonable efforts finding at various stages throughout the case
 - ❖ To prevent removal – at preliminary protective hearing
 - ❖ To achieve the permanency plan – at review hearings
- ❖ A finding of lack of reasonable efforts can be requested orally or by formal motion
- ❖ A finding of lack of reasonable efforts means DFS loses federal funding for that child until a reasonable efforts finding is restore. As a result, it gets the attention of DFS upper management very quickly.



Safety Intervention and Permanency System (SIPS)

Purposes of SIPS as an Intervention System

- To identify unsafe children in need of protection
- To enhance caregiver protective capacities and restore caregivers to their protective responsibilities
- To create safe homes
- To achieve child permanency by restoring caregivers back to their protective role



Safety Intervention and Permanency System (SIPS)

Core SIPS Concepts used throughout the life of the case

- Present Danger - An immediate, significant, and clearly observable family condition that is actively occurring or in process of occurring at the point of contact with a family and will likely result in serious harm to a child, therefore requiring a prompt CPS response.
- Impending Danger - A state of danger in which negative family conditions and/or Diminished Caregiver Protective Capacities pose a threat which may not be currently active but can be anticipated to have severe effects on a child at any time in the near future
- Caregiver Protective Capacities - A caregiver's personal (individual) and parenting characteristics that specifically and directly can be associated with being protective of one's children (Enhanced-Safe) or can be associated with contributing to a "state of danger" that a child is routinely exposed to (Diminished - Unsafe).



Safety Intervention and Permanency System (SIPS)

Nevada Initial Assessment (NIA): Used to determine which families DFS should serve and what is the least intrusive and most appropriate approach.

Safety Plan Determination (SPD): Development of the least intrusive situation that ensures child safety as the Permanency Specialists begin and continue their interventions with the family. It describes how *Impending Danger* is manifesting in the family, analyzes the residence, caregivers, and resources which can support and allow an in-home safety plan, determines if an out-of-home safety plan is necessary, and rules in or out the use of relatives or fictive kin.



Safety Intervention and Permanency System (SIPS)

Conditions for Return: Defined behaviors and circumstances that must exist in the home that would allow for an in-home safety plan – managed by CPS -- that is sufficient, feasible and sustainable to control the *Impending Danger* that remains in the home

Protective Capacities Family Assessment (PCFA): A structured intervention that is intended to engage caregivers in a partnership that seeks their involvement in determining what must change, resulting in the development of the individualized Case Plan Goals that target the enhancement of diminished *Caregiver Protective Capacities*.



Safety Intervention and Permanency System (SIPS)

Protective Capacity Progress Assessment (PCPA): A formal intervention that occurs on a scheduled basis following the PCFA and the implementation of the Case Plan (at least every 90 days and before all court reviews), which:

- Measures the caregiver behavior change
- Assesses whether the Safety Plan continues to be necessary
- Ensures that Case Plan Services are working effectively
- Examines Conditions for Return



First Steps

- File the Notice of Appearance
 - Detailed instructions in the Placement Letter
 - Free e-filing available
- Contact the caseworker
 - What is a caseworker?
 - “Suggested Questions for the Caseworker” included with the file
- Set up an appointment to meet with your client



Meeting Your Client

Choosing a Place

See Their Home

Maintaining Confidentiality

Not Alone Behind Closed Doors

At School?

Where They Can Talk Comfortably



Meeting Your Client

Explaining Your Role

How Are You Different From All
These Other People

“You’re my boss”

Age Appropriate Discussion -- “secret”

Preventing Conflicts



Building the Relationship

On-Going Contact

How Often?

They Won't Always Think to Call You


Counselor At Law

Confidentiality vs. Mandatory Reporter



Working With the Caseworker

- Send introduction email
 - Ask for all upcoming court dates and CFT meetings in the case
 - Remind caseworker to contact you for any changes in the case
- Contact the Supervisor if unresponsive
 - Caseworker contact list and supervisor list provided with your file
- Be persistent!



What is a Children's Family Team (CFT)?

What's the Purpose?

Who Attends?

Should I Be Invited?

Should My Client Be There?



Your Task As A Children's Attorney:

- Advocate for the child's wishes and legal interests.
 - Studies have shown that children who are removed from their families are far more likely to have detrimental life outcomes, than children who are returned to their natural families.
 - Foster care is the last resort when determining safe placement for a child.



Better Outcomes for Children Who Stay with Their Natural Families

Recognize the bias you bring to the case and check it at the door.

Remember, the goal of foster care is temporary placement until reunification with a natural parent is possible.



Did you know that children in foster care are...

- Three times more likely to end up in the juvenile justice system or have a criminal record.
- 9-10% more likely to have a teenage pregnancy.
- More likely to drop out of school.
- Increasingly prone to homelessness.
- Less likely to maintain employment.
- More likely to earn less money and need welfare.
- More likely to suffer from mental health issues.
- Three times more susceptible to engage in substance abuse.
- Four times more likely to be treated for an STD than the national average.



Representing Preverbal Children

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings dated August 2011.

SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF REPRESENTATION

Section 7(d) Diminished Capacity: The child's lawyer shall determine

whether the child has diminished capacity pursuant to the Model Rules of Professional Conduct. When a child client has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill the duties as outlined in Section 7(b) of this Act. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination.



Representing Preverbal Children

Determining Diminished Capacity

- When determining the child's capacity the lawyer should elicit the child's expressed wishes in a developmentally appropriate manner.
- Criteria for determining diminished capacity include:
 - the child's developmental stage,
 - cognitive ability,
 - emotional and mental development,
 - ability to communicate,
 - ability to understand consequences,
 - consistency of the child's decisions,
 - strength of wishes and the opinions of others, including social workers, therapists, teachers, family members or a hired expert



Representing Preverbal Children

Substituted Judgment

- A substituted judgment determination is not the same as determining the child's best interests.
- When determining a substituted judgment position, the lawyer shall take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or detrimental alternatives available.



Representing Preverbal Children

Balancing Act

- Attorneys must balance several factors to best advocate for their client:
 - Safety
 - Permanency
 - Placement with relatives/fictive kin
 - Relationship with biological parents
 - Relationship with siblings
 - Length of time in current placement
 - Minimize placement disruptions
- In general, a child prefers to live with known people to continue normal activities, and to avoid moving.



How A Case Ends

Reunification*

Guardianship

TPR/Adoption

Aging Out

Question: Should a CAP attorney ever withdraw sooner?



Reunification with a Parent

- ❖ Occurs when the Conditions for Return Are Meet
- ❖ May involve the provision of Safety Services
- ❖ DFS typically continues to assist and provide services to the family post-reunification
- ❖ The Court typically keeps the case open for a period of time to monitor how the family is doing and ensure all safety concerns have been resolved



Guardianship

- ❖ NRS 432B.466-.468 (vs. NRS 159)
- ❖ Requires permanency goal change and statement that guardianship vs. adoption is in the child's best interest
- ❖ Child must be in the care of the proposed guardian for 6 months unless the Court finds good cause to waive
- ❖ Guardian must meet the requirements of NRS 159
- ❖ If the child is 14 or older, must consent
- ❖ DFS provides attorney for the guardian
- ❖ If someone later moves to modify or terminate the order, the Court directs DFS to prepare a report and make recommendations



Kinship Guardianship

- ❖ New program – NRS 432B.621-.626
- ❖ Provides on-going financial assistance to the guardian similar to adoption subsidy
- ❖ Guardian must be a relative and be licensed through DFS
- ❖ Child must reside with the guardian for 6 months AFTER the guardian becomes licensed
- ❖ Court must make a finding that reunification and adoption are not viable permanency options
- ❖ All other 432B Guardianship requirements apply



Termination of Parental Rights

- ❖ Termination of parents rights (NRS 128)
- ❖ District attorney files motion
- ❖ Prove by clear and convincing evidence that it is in the best interest of the child



Role of CAP During Trial

(Adjudicatory or TPR)

Preparation/Discovery/Mediation

Which Side to Take

Opening/Closing Statements

Questioning & Cross Examining Witnesses

Presenting Evidence

Preparing & Protecting Your Client as a Witness



CHILD WITNESS

1. Motion to testify by alternative method – NRS 50.500

2. Kids Court (UNLV)

Kids' Court line 702-895-5933

Schedule online at law.unlv.edu/kids-court

Rebecca Nathanson, Ph.D., 702-895-2080,

Rebecca.Nathanson@unlv.edu

3. Pre-Trial Meeting



ADOPTION

- ❖ Adoption of children/adults (NRS 127)
- ❖ Child must reside in the home for at least 6 months (unless related within the 3rd degree of consanguinity)
- ❖ Adoption subsidy
- ❖ 14 years old and older must consent
- ❖ Ensure sibling visitation order incorporated into adoption decree



Beware of Adoption Stalls

Unfortunately


“Referred for Adoption”

Doesn't mean your case is almost over



Post-Adoption Agreements (Open Adoption Agreements)

- ❖ Between natural parents and prospective adoptive parents (NRS 127.187)
- ❖ Incorporated into adoption decree
- ❖ Who drafts it?
- ❖ What is CAP's involvement?



AB350 PROGRAM (Voluntary Jurisdiction)

- ❖ Remain under court jurisdiction- wardship has been terminated
- ❖ No longer under DFS custody
- ❖ 18-21 years old
- ❖ Provides monthly payment directly to youth (\$773)
- ❖ Young adult must make good faith efforts toward goals on transition plan
- ❖ Goals include diploma or GED, college, working
- ❖ Termination of program letter, administrative review and court, or reach age 21



STEP UP PROGRAM (FAFFY)

- ❖ After care program- wardship has been terminated
- ❖ 18-21 years old
- ❖ Provides rental assistance up to \$773 a month
- ❖ Recent approval to have young adult get difference between \$773 and the amount of rental assistance
- ❖ Move-in costs (deposit only) [available to AB350 youth too]
- ❖ Emergency funds
- ❖ Graduation stipend [available to AB350 youth too]
- ❖ Eligible for “aged out youth Medicaid” until 26 years of age



Issue Spotting

Indian Child Welfare Act (ICWA)

Special Education Needs

Email: specialed@lacs.org

Immigration Problems

Juvenile Delinquency



MENTAL HEALTH PLACEMENTS

A. Mental Health Petition (432B.6075)

- ❖ Emotionally disturbed
- ❖ Clear & convincing evidence (NRS 432B.6076) that the child is exhibiting observable behavior such that he is likely to harm himself or others
- ❖ Must be filed no later than 5 days after Child admitted

B. Second Opinion (NRS 432B.6078)

C. Facilities: *Spring Mountain Treatment Center, Desert Willow, Montevista, Desert Parkway*

D. *Person Legally Responsible (PLR)*



IMPORTANT THINGS TO REMEMBER:

- ❖ Visit your child and develop a relationship of trust so they can call you if something goes wrong.
- ❖ Show up to every court hearing.
- ❖ Push the system to get the child in a permanent home – depending on what they want – back to their parents, to relatives, adopted, or in independent living...or with someone they love.
- ❖ The case will take ten years unless you push it. If you don't push the case, it won't get pushed.
- ❖ If your child has severe emotional abuse, watch out for overmedication – it runs rampant.
- ❖ If something doesn't sound right or feel right, or if it's not how you would want your own child to be treated, it's probably wrong.
- ❖ Please attend the support luncheon...you can chat about your case, meet other volunteers, get advice, and have a free lunch!




Common Pro Bono Attorney Pitfalls

1. Not meeting your client(s) right away
2. Not showing up for court hearings, CFTs, TTMS or other meetings regarding your client(s)
3. Not talking to your mentor or asking for help when you need it
4. Trying to be your client's friend instead of his/her attorney
5. Substituting your opinion for your client's/being influenced by your bias



Traps That Can Delay Permanency

1. Unresolved Paternity Issues – often ignored and can cause huge problems later in the case
2. Overlooked/Unexplored Relatives – find and assess them early!
3. DFS Not Providing Reasonable Efforts to Parents – parents have to be given a chance to remedy the problems to get their kids back
4. Assuming because a case worker is supposed to do something or she said she would do something that it is done – always follow up
5. Placement Disruption – help ensure placements your clients prefer are supported



Q & A