

INTRODUCTION TO REPRESENTING CHILDREN IN ABUSE & NEGLECT CASES

LEGAL AID CENTER Since 1958
■ ■ ■ ■ *of Southern Nevada*

What we will cover today:

- How to represent children of all ages and abilities;
- The child welfare system in Clark County;
- Abuse/neglect law and terminology;
- Common issues arising during an abuse/neglect case;
and
- Resources and support for Pro Bono CAP attorneys.

REPRESENTING CHILDREN: LEGAL FRAMEWORK

- The child is a *party* to the case. NRS 432B.420(2) provides:
 - The court shall appoint an attorney to represent the child.
 - The child must be represented at all stages of the case.
 - The child's attorney has the same authority and rights as an attorney representing any other party to the proceeding.
- Nevada Rules of Professional Conduct apply.
- Not a *guardian ad litem*: NRS 432B.500 explicitly excludes the child's attorney from acting as the GAL.
 - ∴ Client-directed representation

HOW SHOULD I ESTABLISH AN ATTORNEY/CLIENT RELATIONSHIP?

Few fixed/specific formulas for communicating with children:

- Environment: where should we meet?
 - Where they can talk comfortably. See their home.
 - At school?
 - But, not alone behind closed doors.
- Context: What should I say? How do I explain my role?
 - Give them your name, and how to find your name if they forget.
 - Use appropriate, direct, simple language.
 - Explain how you are different from the other people in their lives: advocate, counselor, but not necessarily their friend. “You’re my boss.”
 - Explain confidentiality.

WHAT IF MY CLIENT CAN'T TALK?

- Determine whether your client has diminished capacity. Can be limited in time or to a particular issue. **NRPC 1.14**
- Still follow a client-directed model of representation.
- Maintain a normal client-lawyer relationship to the extent reasonably possible.
 - Duties of competence, diligence and confidentiality still apply.
- Make a good faith effort to determine the child's needs and wishes.
 - Investigate the removal, the child and the family.
 - Learn about the child's medical needs and stage of development, and what is being provided in response.
- Advocate for services and decisions in line with the child's legal rights:
 - Right to be safe, healthy and have needs met.
 - Right to permanency as quickly as possible.
 - Right to be connected and/or placed with family, including siblings and parents, unless a court says otherwise.
 - Right to minimal placement disruptions, including services to avoid disruptions or a removal.
- Can speak through behaviors – all behavior is communication.
 - Observe the child's body language, behaviors and gestures in a variety of settings.

TYPES OF PLACEMENT:

- Shelter
- Relatives Within the 5th Degree of Consanguinity
 - Preference (NRS 432B.550(6)(b)) -- Broader interest in family unity and typically more supportive of parent-child relationship
 - Can become licensed
- Fictive Kin: known/familiar to the child, but not related
- Foster care should be the last resort. Studies show that children who are removed from their families are far more likely to have detrimental life outcomes, than children who are returned to or remain with their natural families and communities.
- Parental placement

AGENCY APPROVED HOMES

- DFS Licensed Foster Homes
- Private Agencies/Higher Level of Care (HLOC) Therapeutic Homes
 - SAFY, Olive Crest, Eagle Quest, Bamboo Sunrise
 - Provide intensive services and case management
 - Group Homes – St Jude's
- DJJS (Dual Status Youth) placements
 - Nevada Homes for Youth
 - Spring Mountain Youth Camp
 - DCFS/delinquency placements: Caliente Youth Center, Summit View

STRENGTHENING THE RELATIONSHIP

- Be flexible. Prepare for not getting everything you need out of the first meeting. Or second.
- Have a plan for the adults in the child's home; they may be useful or harmful.
- Plan for multiple, short meetings. May need to repeat your name, your role, and options available to the client.
- Use active listening techniques.
- Let conversation begin with topics that your client wants to discuss.
- Avoid assumptions. Your client is the expert on their life.

TESTIMONY BY A CHILD

- Motion to testify by alternative method (NRS 50.500)
 - Child witnesses under the age of 14
 - Stipulation or motion (Form on lacsnpobono.org>>Programs & Resources>>CAP)
 - Alternative method does not include all of the following
 - Testify in person in an open forum
 - In the presence of the judge
 - Allowing all the parties to be present
- 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
- Pre-Trial Meeting

A FEW NOTES OF CAUTION

- Sibling groups and avoiding potential conflicts of interest.
- Placements and parents who attempt to interfere with the attorney/client relationship.
- Mandatory reporting requirements for attorneys, but with exceptions.
- Confidential nature of information, but most hearings are open to the public.
- Do not make promises you cannot keep. Be honest.

SO, WHERE DO I START?

- File the Notice of Appearance
 - Detailed instructions in the Placement Letter
 - Free e-filing available
- Submit your Ex Parte Order
- Contact the caseworker
- Set up an appointment to meet with your client ASAP
- Add upcoming court hearings to your calendar

THE CHILD WELFARE SYSTEM

CPS/Child Protective Services: investigate claims of abuse/neglect

DFS/Department of Family Services: Clark County's child welfare agency

DCFS/Division of Child and Family Services: subpart of the State of Nevada's Department of Health and Human Services

Service Providers: private agencies/companies that provide mental health treatment, substance abuse treatment, parenting and other supports

Law Enforcement: first line of intervention

Educators/medical personnel: first line of intervention, also supportive

Family/fictive kin

WORKING WITH CASEWORKERS:

- Send introduction email
 - Ask for all upcoming court dates, as well as any scheduled team meetings for the case.
 - Remind caseworker to contact you for any changes in the case – including changes in placement.
- Contact the supervisor if unresponsive
 - Caseworker contact list and supervisor list provided with your file
- Be persistent! Be nice! Follow up.
- Ask for the report if you have a hearing coming up

HOW DOES THE CASE START?

Call to CPS Hotline:

- Is the child in danger or in need of protection?
- Can a plan be put in place to keep the child at home?
- Is there time to get a warrant, or is immediate action needed?

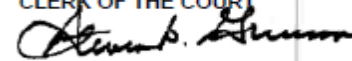
Removal (**Protective Custody**):



- Preliminary Protective Hearing (NRS 432B.470 & NRS 432B.480)
 - Hearing must be held within 72 hours of removal
 - Findings, next dates.
 - Is there reasonable cause to believe that it is contrary to the welfare of the child to remain in his home?
 - Did CPS/DFS make reasonable efforts to keep the child in his home?

REMOVAL

Electronically Filed
2/13/2019 9:55 AM
Steven D. Grierson
CLERK OF THE COURT



1 Clark County
2 Department of Family Services
3 121 S. Martin Luther King Blvd
4 Las Vegas, Nevada 89106
5 (702) 455-7200

6 **EIGHTH JUDICIAL DISTRICT COURT**
7 **FAMILY DIVISION – JUVENILE**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of:

J-17- [REDACTED] 759-PC

10 [REDACTED]
11 Date of Birth: [REDACTED]
12 A Minor 12 years, 01 Months of Age

COURT CASE NO. [REDACTED]
DEPT.: DEPENDENCY 2 Dept O
REMOVAL DATE/TIME:
01-31-2017 11:00 PM

13 [REDACTED]
14 Date of Birth: [REDACTED]
15 A Minor 10 Years, 1 Month of Age

16 **PRELIMINARY PROTECTIVE HEARING REPORT**

17 Date of Hearing: 02-15-2019
18 Time of Hearing: 09:00 AM
19 Courtroom: ~~HM ROYS - #23~~ Sullivan # 21
20 Attachment(s): None

21 **CONCERNING:**

22 Father: [REDACTED]
23 DOB: [REDACTED]
24 Address: [REDACTED]
LAS VEGAS NV 89142
Arrest Record: No criminal history identified
Attorney: N/A
Diligent Search: N/A

Mother: [REDACTED]

WHERE ARE OUR CASES HEARD?

Family Courts and Services Center
601 N. Pecos Road (Pecos & Bonanza)

Judicial Officers with Dependency Cases:

Stephanie Charter (Dept. Y, CR 14) *North*

David Gibson, Jr. (Dept. L, CR 10) *East*

Cynthia Giuliani (Dept. K, CR 13) *South*

Margaret Pickard (Dept. V, CR 12) *Central*

Frank Sullivan (Dept. O, CR 9) *4 & Under, Mental Health*

Robert Teuton (Dept. D, CR 11) *West, Sex Abuse, ICWA*

William Voy (Dept. A, CR 18) *East*

IF THE CHILD MUST REMAIN IN PROTECTIVE CUSTODY, THEN:

HOW THE CASE STARTS:

- Petition for Child Protection filed under within 10 days of Preliminary Protective Hearing. (NRS 432B.490)
- Alleges facts supporting the reasons for Protective Custody of the child (NRS 432B.510).
- Parents respond to the petition at the plea hearing.
- Other concerns discussed at plea hearing: discovery, putative fathers, possible testimony by child.
- Often continued to allow counsel to negotiate; parents can start services without it affecting any findings on the allegations.

COURT: TIPS FOR NEW VOLUNTEERS

- Reach out to our Pro Bono team, the Judge's law clerk or JEA before the date of your hearing for a BlueJeans link to appear by video.
- Cases are listed under mother's name on docket.
- Feel free to observe other hearings to
- Check in with the Marshal and identify yourself as a pro bono volunteer
- Decide where to stand
- Prepare to review and discuss placement, visits, relatives

WHAT IF THE PARENTS DENY THE ALLEGATIONS IN THE PETITION?

- Set for an Adjudicatory Hearing (NRS 432B.530), held within 30 days of petition unless waived.
- DFS/DA must prove allegations by a *preponderance of evidence*. All relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value.
- Look at circumstances at the time of removal.
- If DFS/DA does not meet its burden, then petition is dismissed.

FORMAL CUSTODY STARTS

- Court has found that the child is “in need of protection” at the time of removal.
- Court sets Dispositional Hearing (NRS 432B.530(5)), held within 15 working days of adjudication.
- At the “R&D” hearing:
 - Case plans are reviewed and approved.
 - Child is made a ward of the court.
 - Court reviews placement (NRS 432B.550).
 - Court appoints an education decision maker (NRS 432B.462).
 - Court sets a permanency goal – almost always starts with putting the family back together (“reunification”).

DISPOSITION REPORT:

Electronically Filed
12/8/2021 11:57 AM
Steven D. Grierson
CLERK OF THE COURT



1 STEVEN B. WOLFSON
2 DISTRICT ATTORNEY
3 NEVADA STATE BAR NO.001565
4 Candice Saip
5 Deputy District Attorney
6 Juvenile Division
7 Nevada Bar No. 14166
8 601 North Pecos
9 Las Vegas, Nevada 89101
10 (702) 455-5320
11 Attorney for the State of Nevada

8 EIGHTH JUDICIAL DISTRICT COURT
9 FAMILY DIVISION - JUVENILE
10 CLARK COUNTY, NEVADA

11 In the Matter of:

12 [REDACTED]
13 Date of Birth: [REDACTED]-2021
14 A Minor, 0 Years and 01 Month(s) of Age

COURT CASE NO.: J-21 [REDACTED] P1
DEPT.: L

DISPOSITION REPORT

17 **Date of Hearing:** 12-08-2021

18 **Time of Hearing:** 01:30 PM

19 **Courtroom:** JUDGE GIBSON - CR #10

20 **Attachment:** A. Proposed Case Plan

21 [REDACTED]
22 B. Proposed Case Plan
23 [REDACTED]

CONCERNING:

24 Father:	[REDACTED]
25 DOB:	[REDACTED]-1988
26 Address:	[REDACTED] LAS VEGAS, NV 89119
27 Phone Number:	725-[REDACTED]
Email:	Unknown

OVERSIGHT OF THE FAMILY AND AGENCY:

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

- Within 6 months of removal & every 6 months thereafter
- DFS submits written report before hearing
- Review placement, sibling contact if separated
- Evaluate progress of parents/family/child
- Reasonable efforts findings

B. Annual Review Hearings(NRS 432B.590)

- DFS submits written report before hearing
- Placement, progress of family, reasonable efforts
- Evaluate permanency plan:
 - Reunification – must have compelling reasons to keep
 - TPR/Adoption
 - Guardianship
 - OPPLA (Foster Care/Independent Living)

ISSUE SPOTTING FOR CHILDREN'S LAWYERS:

- Sibling connections
- Use of reasonable efforts
- Mental health and behavioral needs
- Reaching permanency

PROTECTING THE SIBLING BOND:

- NRS 432B.550(6)(a): Rebuttable presumption -- best interests to be placed together
- If siblings are not placed together, ask about:
 - 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
- Nevada's Foster Youth Sibling Bill of Rights – NRS 432

“REASONABLE EFFORTS”

- Court is required to make reasonable efforts findings at various stages of 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. It means DFS loses federal funding for that child until the reasonable efforts finding is restored.
- DFS can ask the court to make a finding that reasonable efforts are not required.
- Failure to make reasonable efforts (provide services) can delay reaching the permanency goal.

CHILDREN'S MENTAL HEALTH

- Up to 80% of children in the dependency system have significant emotional, developmental, or behavioral needs requiring mental health services.
- Many clients start therapy while they are still in protective custody.
- Despite their disproportionate needs, most dependent children do not receive a comprehensive evaluation unless their situation reaches a crisis point.
- Your job is NOT to diagnose or treat mental illness, but to recognize when your client may need to be evaluated for treatment and if an evaluation is needed, to make sure the client receives it.
- Instead, make sure that professionally recommended treatment is provided (assuming your client is in agreement – remember we are client directed).
- Ask who the PLR (Person Legally Responsible) for your client's medications is.

STAYING INVOLVED AND INFORMED:

CFT: Child and Family Team meeting

- Collaborative meeting of family, service providers, DFS personnel
- Develop or discuss case plan goals and progress for parents
- Discuss wellbeing and needs of the child, including placement and visits
- Lawyers and clients should be invited and attend

TTM: Treatment Team Meeting

- Some, not all, mental health service providers hold regular meetings with people involved with the child (frequency depend on agency)
- Discuss diagnoses, treatment plans, medication, services and placement upon discharge
- Lawyers, placement, family members should be able to participate

HOW DOES A CASE END?

- Reunification
- Guardianship
- TPR/Adoption
- Aging Out/OPPLA

Question: When should a CAP Attorney withdraw?

REUNIFICATION

- Occurs when the conditions for return are met
- May involve the provision of safety services in the home
- 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
- Case can close with reunification only as to one parent (“550 Order”) or as to both (“straight termination”)

GUARDIANSHIP

- Two types: NRS 432B.466-.468 vs. NRS 159A
- The permanency goal must be guardianship
- 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 159A
- If the child is 14 or older, must consent in writing
- Child must appear in court at the guardianship hearing (regardless of age)
- 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

WHAT IF THE PROPOSED GUARDIAN NEEDS FINANCIAL HELP?

- Kinship Guardianship – NRS 432B.621-.626
- Provides on-going financial assistance to the guardian similar to adoption subsidy
- Guardian must be a relative or fictive kin, 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

- Permanency goal is changed to TPR/adoption
- District attorney files a motion. Specific service requirements for parents, attorneys, family & placement (NRS 432B.5901 *et seq.*)
- Substantive law found in NRS 128
- Prove by clear and convincing evidence at trial:
 - Parental fault exists
 - Termination is in the best interests of the child
- Many cases involve presumptions (NRS 128.097, NRS 128.109), shifts burden of proof to parent

TRIALS:

(Adjudicatory or TPR)

- Mediation
- Preparation/Discovery
 - Requesting Discovery
 - Unity Notes
- Which Side to Take
- Opening/Closing Statements
- Questioning & Cross Examining Witnesses
- Presenting Evidence
- Preparing & Protecting Your Client as a Witness

AFTER A TPR TRIAL:

Hopefully, the case ends with a successful adoption.

- Adoptive family is assigned an adoption worker.
- Adoption of children governed by 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.

PUSHING THE CASE ALONG:

No. “Referred for adoption” does not mean that the case is almost over.

Tips to help move things along:

- Within a month after the goal is changed to TPR, make sure the matter was actually referred to the DA for TPR.
- At the time the goal is changed, ask about the status of the Social Summaries.
- By the initial TPR Hearing, matter should have been referred to adoptions.
- Ask who the assigned adoption worker is and communicate with that worker directly regarding any potential stalls.
- Ask for court-ordered specific deadlines for any of the above steps if necessary.

POST-ADOPTIVE CONTACT WITH PARENTS

Occurs with Open Adoption Agreement:

- Contract between natural parents and prospective adoptive parents (NRS 127.187)
 - Can be modified, but only under limited circumstances
 - Breach? Specific enforcement
 - Signed concurrently with a relinquishment
- Incorporated into adoption decree
- Usually drafted by parents' counsel
- What is CAP's involvement?
- Note statutory requirement re: best interest/DFS "approval"

OTHER ISSUES:

- Psychiatric Hospitalization
- Special education needs/discipline issues

Email: specialed@lacsns.org

- Indian Child Welfare Act (ICWA)
- Immigration Problems
- Juvenile Delinquency
- ICPC (out of state parents/family)
- Independent Living

SO, WHAT IS MY JOB?

- Advocate for the child's wishes and legal interests.
- Recognize the bias you bring to the case and check it at the door.
- Visit your child and develop a relationship of trust so they can call you if something goes wrong.
- Show up to every court hearing and team meeting.
- Push the system to get the child in a permanent home.

Resources

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings:

https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol30/september_2011/aba_adopts_modelactonchildrepresentation/

National Association of Counsel for Children's Recommendations for Legal Representation of Children:

<https://www.naccchildlaw.org/news/591981/National-Association-of-Counsel-for-Children-Publishes-New-Recommendations-for-Legal-Representation-.htm>

Child Development:

American Academy of Pediatrics (NB – 21 years):

<https://brightfutures.aap.org/materials-and-tools/guidelines-and-pocket-guide/Pages/default.aspx>

CDC's Developmental Milestones (2 mo – 5 years):

<https://www.cdc.gov/ncbddd/actearly/milestones/index.html>

Resources

Emory School of Law, “Interviewing the Child Client: Approaches and Techniques for a Successful Interview.” *YouTube.com*, hosted by Amy Brennenman, 2010, <https://www.youtube.com/watch?v=OYLWkVHvgOM>

La Rooy, David, “Interviewing Children: Getting More with Less.” *YouTube.com*, 2013, <https://www.youtube.com/watch?v=7my1T4Ghf7A> .

Pendragwn Productions, “Interviewing the Child Client.” *Pendragwn.com*, hosted by Amy Brennenman, 2008, <http://www.pendragwn.com/interviewing-the-child-client>.

True North Child Advocates, “The Art of Building Trust with Your Client.” *Children’s Law Podcast*, June 25, 2019, <https://www.listennotes.com/podcasts/the-childrens-law-podcast-true-north-child-HNLG5Ybyhm4/>