

INTRODUCTION TO REPRESENTING CHILDREN IN ABUSE & NEGLECT CASES



WHO ARE OUR CLIENTS?

We represent abused and neglected children, as defined by NRS Chapter 432B (Protection of Children from Abuse and Neglect).

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

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

Negligent Treatment (NRS 432B.140)

- Subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic
- Abandonment
- Without proper care, control, supervision
- Lacks subsistence, shelter, medical, education

WHO ARE WE?

- Children’s Attorneys Project (CAP): 29 Staff Attorneys and 300+ Pro Bono Volunteers; represent children involved in the child welfare system in Clark County.
- Provide client-directed representation. We are not guardians ad litem, we are not a “Big Brother/Big Sister”. Goal: give them a voice.
- CAP includes the Education Advocacy Program: (1) direct representation of students with disabilities for appropriate education, accommodations and services from CCSD, and (2) train and provide Volunteer Educational Advocates (usually not a lawyer) to act as a surrogate when a parent is unable to advocate directly with a school to meet a child’s behavioral and disability-related needs.

WHO ARE THE PARTIES?

The Clark County Department of Family Services, the parents, the children and the CASA are parties to the case.

Department of Family Services (DFS)

- Child Protective Services (CPS) – investigate reports of abuse
- Ongoing case management – file court reports about case progress

Children's Attorneys Project (CAP)

- Represent the wishes and legal rights of the child

District Attorney – Juvenile (DA)

- File petitions, motions
- Represent DFS

Parents' Attorneys

Court Appointed Special Advocates (CASA)

- Best interest of child

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*

HOW DOES THE CASE START?

Preliminary Protective Hearing (NRS 432B.470 & NRS 432B.480)

- Call to CPS Hotline
- Removal (Protective Custody)
- Hearing within 72 hours
- Findings, next dates

Petition – Abuse/Neglect (NRS 432B.490)

- Filed within 10 days of Preliminary Protective Hearing
- 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

COURT: TIPS FOR NEW VOLUNTEERS

- Reach out to the Judge's law clerk or JEA before the date of your hearing for a BlueJeans link to appear by video
- Case listed under mother's name on docket
- Observe other hearings
- Check in with the Marshal and identify yourself as a pro bono volunteer
- Decide where to stand
- Prepare to review 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.

THE PETITION WAS SUSTAINED. NOW WHAT?

- Set for Dispositional Hearing (NRS 432B.530(5)), held within 15 working days.
- 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.

WHEN DOES THE FAMILY GO BACK TO COURT?

A. Semi-Annual Reviews (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 family/child
- Reasonable efforts finding

B. Annual Review (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)

WHAT ARE REASONABLE EFFORTS AND WHY IS IT IMPORTANT?

- 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.

WHERE ARE OUR CLIENTS PLACED?

- Child Haven (always the first stop)
- 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.

ARE THERE DIFFERENT KINDS OF FOSTER HOMES?

- DFS Licensed Foster Homes
- Private Agencies/Higher Level of Care (HLOC) Therapeutic Homes
 - SAFY, Olive Crest, Eagle Quest, Bamboo Sunrise
 - Provide intensive services, such as:
 - Therapy/Counseling
 - Psychosocial Rehab (PSR)
 - Basic Skills Training (BST)
 - Case Management
- Group Homes – St Jude’s or private agencies
- DJJS (Dual Status Youth) placement

ARE THERE SPECIAL CONSIDERATIONS FOR SIBLINGS?

- 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

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
 - Use video chat apps to communicate unless absolutely necessary to meet in person. Keep video meetings short, but meet frequently.
- Add upcoming court hearings to your calendar

ANY TIPS FOR WORKING WITH A CASEWORKER?

- Send introduction email
 - Ask for all upcoming court dates, as well as TTM and CFT meetings in 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 SHOULD I ESTABLISH AN ATTORNEY/CLIENT RELATIONSHIP?

- Where should we meet?
 - Where they can talk comfortably. See their home.
 - At school?
 - But, not alone behind closed doors.
- What should I say? How do I explain my role?
 - Use appropriate language.
 - Explain how you are different from the other people in their lives: advocate, counselor, but not necessarily their friend.
 - “You’re my boss”
- What about confidentiality?
 - “Secret”*
 - Mandatory Reporter with exclusions (NRS 432B.225)
- Be aware of potential conflicts of interest with siblings

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. **NRS 432B.420 vs NRS 432.500**
- 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 as 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.

THE CASEWORKER SAID MY CLIENT HAS THERAPY. WHAT IS GOING ON?

- 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.

WHAT ARE CFTs AND TTMs?

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

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.
- If your child has severe emotional needs, watch out for overmedication – it runs rampant.

HOW DOES A CASE END?

- Reunification
- Guardianship
- TPR/Adoption
- Aging Out

Question: When should a CAP Attorney withdraw?

WHAT DOES REUNIFICATION LOOK LIKE?

- 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”)

WHAT SHOULD I KNOW ABOUT 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

HOW DOES TERMINATION OF PARENTAL RIGHTS OCCUR?

- 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

WHAT IS MY ROLE DURING TRIAL?

(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

HOW DO I HELP MY CLIENT BE READY TO TESTIFY?

- 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

TPR WAS GRANTED. NOW WHAT?

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.

IS MY CASE DONE?

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.

CAN MY CLIENT HAVE CONTACT WITH HIS BIO PARENTS AFTER AN ADOPTION?

Yes, if there is an agreement for post-adoption contact (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 new statutory requirement re: best interest

ARE THERE ANY ISSUES WHICH MAY AFFECT MY CLIENT?

- Indian Child Welfare Act (ICWA)
- Special Education Needs/Discipline Issues

Email: specialed@lacs.org

- Immigration Problems
- Juvenile Delinquency
- ICPC (out of state parents/family)
- Independent Living
- Psychiatric Hospitalization
- Consent for Surgical Procedures

HOW CAN I BETTER SERVE MY CLIENT?

- Visit your client as soon as possible (common new lawyer mistake)
- Maintain regular contact with client, the caregivers, and the case worker
- Observe the child's interactions with substitute caregivers
- Understand the parent/child relationship
 - Try to observe visits
 - Speak to caregivers about the child's behaviors before and after visits
- Learn your client's environment
- Does your client have any medical needs?
 - Make sure you are aware of all medical needs and follow up after appointments to learn what services and treatment are recommended
 - Understand early childhood development and how abuse can affect your client's development and ensure client is screened for developmental delays and linked to necessary services.
- Examine how your client is doing in school. Do they need to be evaluated for a disability? Do they need extra help?

Q & A