

Courtroom 101

Rights of the Parties in Dependency Cases

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Balance of power
Fundamental Fairness of all the
parties balanced with safety, best
interest, and permanency
timelines

Agenda

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Role of the Court
Due Process
Parties
Permanency Time Limits
Hearings and Trials
CRB Role
Questions and Answers

Role of the Court

- What is a dependency case?
- Are hearings public in Oregon?
- Are records public in Oregon?
- Who has access to records?

CRB Volunteers – Visit Courts Regularly

Due Process

- Constitutional system – 5th and 14th Amendments
- balance of power – protection of fundamental rights
- Notice
- Full and fair hearing
- Representation by counsel
- Right of association with family

Parties

- Child
- Parents
- DHS
- CASA
- Tribe
- Intervener with limited or full rights

Fathers

- Legal
- Stanley Putative
- Pagan Putative

DHS: Randolph Jones Letter; Absent Parent Search

Permanency Time Limits that can conflict with Constitutional Rights

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- 24 hour Shelter Hearing
- 60 Day Jurisdiction Deadline
- 12/14 month Permanency Deadline (and 15/22 federal guideline)
- 6 month TRP Trial Deadline

Shelter Hearing

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- Decisions require evidence
- Affidavit vs. Petition
- Testimony
- Indian Child Welfare Act – expert testimony requirement
- Notification: parties; grandparents; foster parents

Shelter Hearing

- Reasonable or Active Efforts
- Substitute Care – determine current need
 - Imminent risk of physical injury or emotional harm
 - Dangerousness to others; not remaining within reach of the court

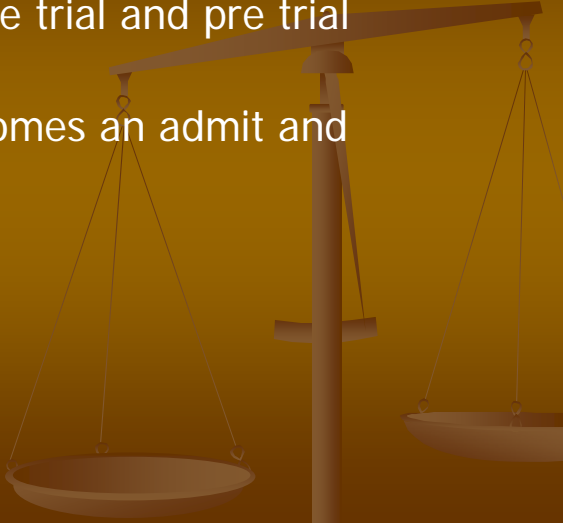
Shelter Hearing

- Diligent efforts – efforts, not results
 - Relative and Sibling placement
- Visitation Plan
- Appointment of counsel
- Setting next court event and date

Settlement Conference

- Judicially Supervised
 - May object to trial judge
 - Objective is to settle
 - Based on realistic analysis of the facts that can be proven
 - Often requires compromise
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Pre Trial Conference

- Time to schedule trial and pre trial hearings
 - Sometimes becomes an admit and disposition time
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Readiness Appearance

- Last formal opportunity to settle
- Possible admit petition allegations and set disposition
- Possible prima facie hearing

Jurisdiction Trial

- Also called “adjudication”
- State must prove sufficiency of an allegation to receive adjudication
- Threat of harm must be current
- Burden of proof is Preponderance (except ICWA which is Clear and Convincing)

CRB: Remember to compare Petition with adjudicated conditions

Disposition

- Report to the court from DHS
- Opportunity for everyone to be heard
- Reasonable or Active Efforts Finding
- Diligent Efforts Finding
- Substitute care justification
- Jurisdictional nexus for all ordered services
- Visitation plan required

Disposition

- Primary Permanency Plan designation
 - Reunification, Adoption, Guardianship, APPLA, and soon- place with a fit and willing relative
- There can only be a concurrent plan when the primary plan is reunification
- Date to achieve permanency

Review Hearings

- Limited Reviews
 - No written reports needed
 - No written court order issued
 - No testimony
 - No rulings made to change plan, change placement, or permanency goal
 - Focus is on parental progress and agency compliance and sometimes to solve a specific conflict (for example disagreement over visitation plan)

Permanency Hearings

- Annual Review: 14 months after removal or 12 months after disposition, whichever first
- Requested by any party
- Children in substitute care 15/22 months
- 90 days after permanent foster care removal
- 30 days after adoption disruption

Permanency Hearing

- Evidence must be identified that supports findings of court:
 - Reports from DHS and CASA
 - Sworn testimony
- Can be a contested hearing
- Required to change permanency goal

Permanency Hearing

- Plan designation
- Reunification – preferred plan
- Concurrent plan – when required
- No concurrent plan to a concurrent plan
- DHS must recommend plans and dates of achievement

CRB: Recommendations prior to permanency hearing are very important

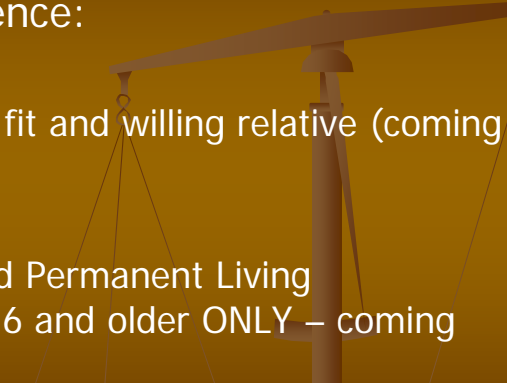
Annual Review

- Permanency plan is reviewed
- Must designate plan and date of achievement
- Diligent Efforts finding
- Reasonable/Active Efforts finding
- Grandparents
 - Notice, opportunity to be heard
 - Written visitation requests

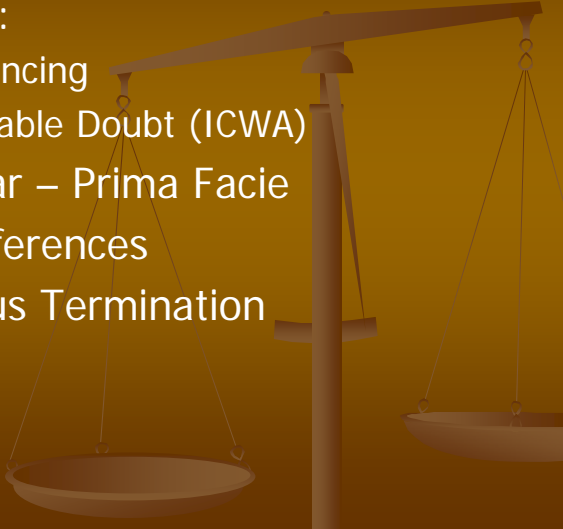
Annual Review

- Child – notice and right to appear
- Caretakers – notice and right to be heard
- Parties vs non-parties
 - Parents, Children, DHS, CASA, tribes, interveners
 - Grandparents, foster parents
- Education findings
- Visitation findings
- ILP

Concurrent Plans

- Order of preference:
 - Adoption
 - Placement with fit and willing relative (coming soon)
 - Guardianship
 - Another Planned Permanent Living Arrangement (16 and older ONLY – coming soon (PFC/PCS))
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Termination of Parental Rights

- Burden of Proof:
 - Clear and Convincing
 - Beyond Reasonable Doubt (ICWA)
 - Failure to Appear – Prima Facie
 - Settlement Conferences
 - Relinquish versus Termination
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CRB Role

- CRB – review timelines
- Similarities/Differences with court
- Use of Court Orders in preparation for CRB Review
- CRB Findings and Recommendations
- Court role after receipt of CRB Findings and Recommendations

Q and A and Comments

