

The background of the slide is a soft, misty landscape. It features rolling hills or mountains in the distance, partially obscured by a light fog or mist. In the foreground, there is a calm body of water, likely a lake or a wide river, which reflects the surrounding scenery. The overall color palette is dominated by various shades of teal, light blue, and pale green, creating a serene and ethereal atmosphere.

Navigating the Conflux:

Where Family & Dependency Law Meet

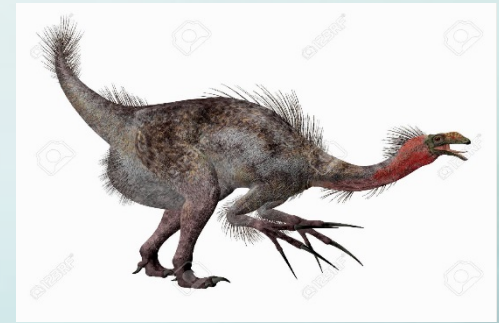
A “Fair and Balanced” Presentation By:
Hon. Jay A. McAlpin (Lane County Circuit Court)
John A Hamilton &
Tracey RH Naumes

Presentation Overview

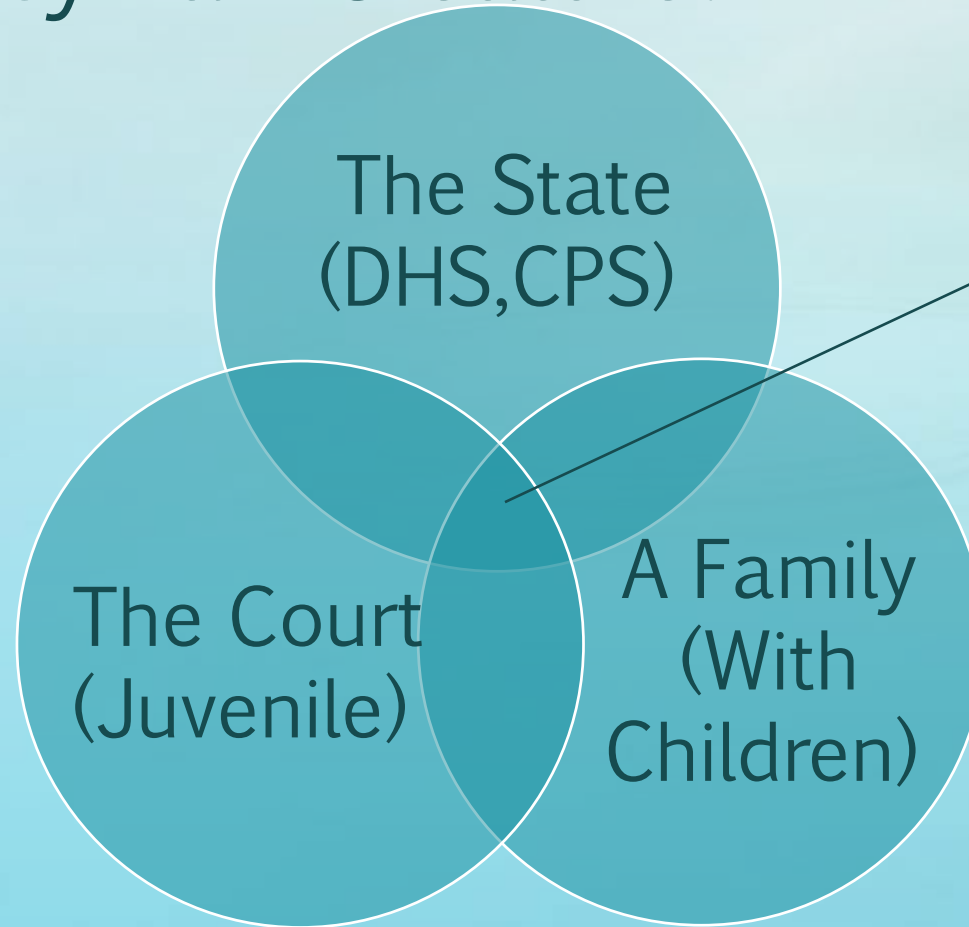


- Dependency Law Overview
 - What it is/who is involved
 - How it relates to Civil and Criminal Law
- Advising a DHS-Involved Parent (Pre Petition)
 - Dealing with DHS
- Advising a DHS-Involved Parent/Third Party
 - Custody Agreements
 - Probate Guardianship
 - Third Party Custody
 - Administrative Appeals
- Advising a DHS-Involved Third Party (Post Petition)
 - Intervention
- Appeals

What IS This Strange Dependency Law Creature?



(Therizinosaurus)



Where the Three Come
Together =
Dependency Law

Applicable Statutes:

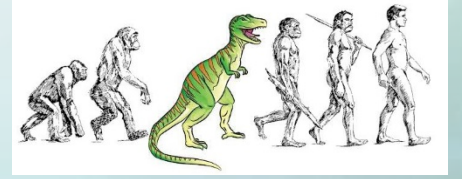
419A (Juvenile Code, General Provisions and Definitions)
419B (Juvenile Code, Dependency)



The Names in the Games

- DHS/CPS = Department of Humans Services/Child Protective Services = the agency that investigates child abuse/neglect
- ICWA = Indian Child Welfare Act = special rules that apply when a child is eligible for enrollment in a Native American tribe
- CW = Caseworker = someone that works for DHS
- SA = Substance Abuse OR Sexual Abuse = big difference, same acronym
- A&D = Alcohol and Drug Treatment = Most common service offered to parents by DHS
- RP/CR = Confidential Reporter = person that originally made reports of concern to DHS (frequently a mandatory reporter)
- PTC/TR/PERM = Pretrial Conference/Trial/Permanency Hearing = the three hearings always set by the dependency court at arraignment
- TPR = Termination of Parental Rights = the final court hurdle on the path to adoption for a dependency case

The Evolution of a Dependency Case



1. Someone Makes a Report
2. DHS Screens the Report
3. DHS Opens an Assessment and CW Conducts an Assessment**
4. DHS Files Petitions
5. Shelter Hearing – Arraignment and Placement
6. Jurisdictional Hearing (Trial) **
7. Implementation of Case Plan**
8. Review Hearings** / Permanency Hearings**
9. Termination of Parental Rights**

** = Times in the case where a family law attorney can have a direct impact

The parties to the case:



Mom +
Attorney



Dad +
Attorney



Child(ren)
+
Attorney



CASA



State
(DHS) +
Attorney

NOT parties to the case (aka also potential clients):

Grandparents

Psychological Parents

Other Relatives

Third Party Caregivers

Court-Appointed Dependency Attorneys

What they get paid by the state to do:

1. Represent moms
(1/3 of the time)
2. Represent dads
(1/3 of the time)
3. Represent kids
(1/3 of the time)

*****ONLY IN THE
DEPENDENCY CASE



What they don't get paid to do:

1. Represent moms/
dads/children in family
law proceedings
2. Represent third parties
3. Administrative appeals

*****THIS IS WHERE YOU
COME IN

A Quick Note about “Non-Parties”

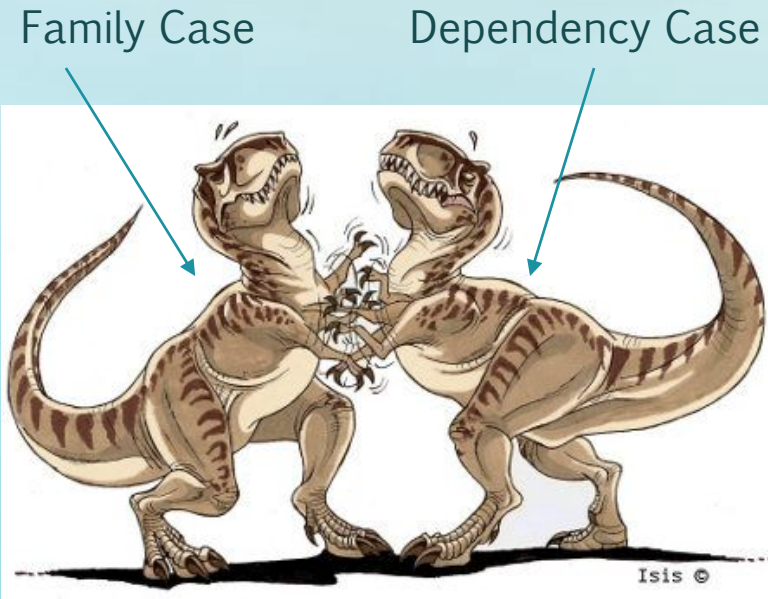
Granted SOME special rights by statute and administrative rule:



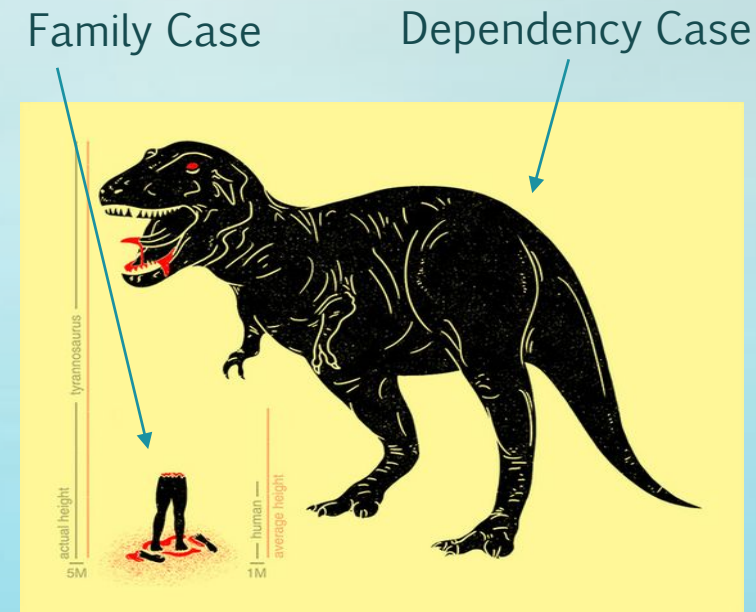
Stay gold, Ponyboy stay gold.

- Placement Preference for Relatives (ORS 419B.192 & 419B.116; OAR 413-120-0730 to 413-120-0760)
- Rights of Relatives and Responsibilities of DHS Regarding Involvement of Relatives (419B.875; OAR 413-010-0300 to 413-010-0340; 413-070-0060 to 413-070-0087)
- Right to request intervention/rights of limited participation (more on this later) (419B.116)
- Grandparent Rights to Notice and Visitation (419B.875 & 419B.876)
- Foster Parent Bill of Rights (ORS 418.648)

Family Law Case Orders v. Dependency Case Orders



Inaccurate

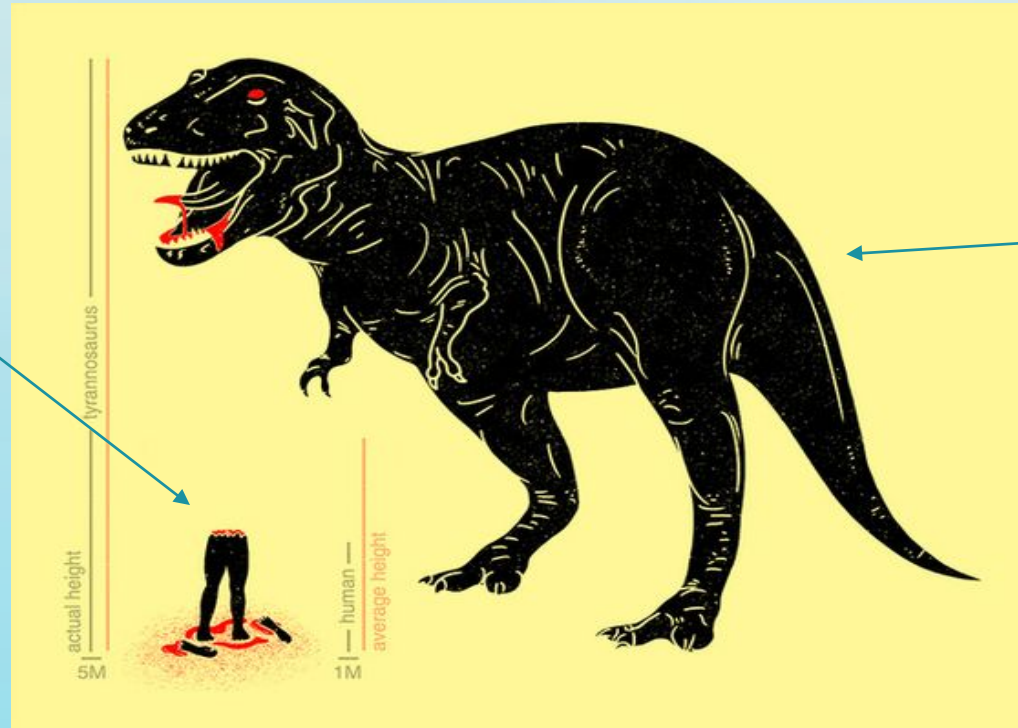


Accurate

Dependency Law Overview: Relationship to other cases

Dependency Case

Criminal Case



Also Accurate

Advising a DHS-involved Parent (Pre-Petition): Dealing with DHS

- What to do when DHS comes knocking
- When to shut up and lawyer up
- The pros and cons of cooperation
- How to talk to the caseworker

DHS is at my door, what do I do?



Not this...



Or this...

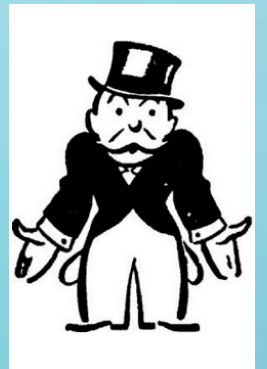
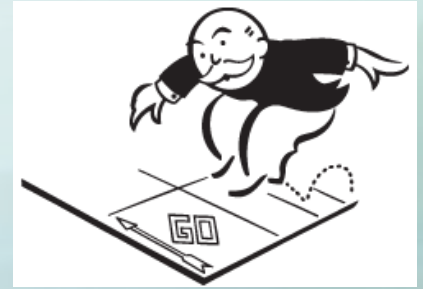
- If DHS is at a client's door, DHS has already screened the case, opened a case, and is conducting an assessment
- The client has two options:
 - 1. Cooperate (let DHS have whatever they want)
 - 2. Not Cooperate (stonewall)
 - Secret Option No. 3 = Sort of Cooperate (Get an Attorney Pre-Petition)

Quick Note:

- If the allegation DHS is investigating
 - = a prior conviction of sex abuse...
 - = current sex abuse...
 - = current physical abuse of a child...

**DO NOT COOPERATE, DO NOT PASS
GO, DO NOT SIGN ANYTHING, ADVISE
CLIENT TO RETAIN AN ATTORNEY**

**** These cases have the potential to become serious criminal cases**



To Cooperate or Not to Cooperate? Pre Petition

Cooperation Benefits

- Cooperation up front can alleviate DHS's concerns and lead to the case being unfounded and closed or to a voluntary case plan
- Cooperation is advisable if the client truly has nothing to hide or if the client needs/wants help (especially substance abuse)

Cooperation Drawbacks

- Cooperation can bolster DHS's allegations or lead to accompanying criminal charges
- Cooperation can be invasive, uncomfortable, and disruptive to the family unit

**One phone call to the caseworker can inform your entire strategy regarding cooperation

To Cooperate or Not to Cooperate? Pre Petition

Non-Cooperation Benefits

- Vindication of the parent's right *not* to cooperate (parents do NOT need to let DHS into their home without a court order)
- Sometimes DHS will simply drop the case and close the assessment as “unable to determine” (rare)

Non-Cooperation Drawbacks

- Upset DHS and lead to petitions or pick up orders (removal)
- DHS may resort to more invasive techniques, like interviewing the children at school without notice, or speaking to third parties about the parent to gather information

**One phone call to the caseworker can inform your entire strategy regarding cooperation

Calling the Caseworker

- Provide a release
- Assure the Case Worker of your role and goals (stroke that power ego)
- Ask what the allegations are
- Ask what concerns the case worker still has
- Ask what they'd like to see to resolve their concerns
- Talk to your client and see what information they are willing to turn over to assuage DHS's concerns
 - Treatment provider letter NOT a release
 - Statements of independent observers
 - Voluntarily enrollment in services or safety planning



Family Lawyer Tools: Pre/Post Petition



Custody Agreement b/t Parents

- Usually Pre Petition Only
- ORS 125.055

Probate Guardianship

- Pre/Post Petition
- ORS 125.055

Third-Party Custody

- Pre/Post Petition
- ORS 109.119

Administrative Appeals

- Pre/Post Petition
- OAR 413-010-0700

Intervention

- Post Petition Only
- ORS 419B.116
- Has been generally denied

Adoption

- Pre/Post Petition
- ORS 109.300s
- Not covered here

Custody Agreements



In General: Custody Agreements between Parents

- Resolving custody issues can sometimes resolve the dependency case

Why would you want to do this?

1. DHS's role is usually more invasive than a Civil Court's
2. Civil Court tends to be more liberal with parenting time than DHS for the noncustodial parent
3. Parenting time can be supervised by a private agency rather than at the DHS Annex

Why wouldn't you want to do this?

1. DHS may be more favorable to your particular client than the Civil Court has been in the past
2. DHS will finance your client or the other parent accessing services
3. DHS will finance supervised visits at the Annex

Pre Petition: Custody Agreements

When to do it:

- If sole allegation against one parent is no legal custody and cannot protect from other parent
- If DHS is more supportive of one parent over the other, custody with conditions of parenting time for other parent can resolve the dependency case

How you know if it will resolve the dependency case:

- Ask the Caseworker

Post Petition: Custody Agreements

When to do it:

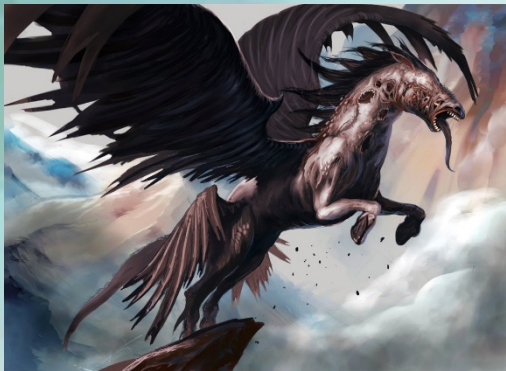
- If sole allegation against one parent is no legal custody and cannot protect from other parent
 - DHS intervention = almost always a substantial change in circumstances WITH competent evidence from a DHS caseworker
- If DHS is more supportive of one parent over the other, custody with conditions of parenting time for other parent can resolve the dependency case

How you know if it will resolve the dependency case:

- Ask the AAG/DA (whoever represents DHS in your county)
- Get the attorneys appointed in the Dependency Case to help you craft restrictions that will satisfy them and their clients

Third Party Custody and Probate Guardianship

The Pegasus v. The Pony



Third-Party Custody v. Guardianship

Two Mechanisms to Achieve Similar Results

Custody

- More difficult to get
 - More difficult to undo
 - Desirable when:
 1. Parents' recovery is unlikely
- AND
2. The parties don't get along

Guardianship

- Easier to get
 - Easier to undo
 - Desirable when:
 1. Parents' recovery is likely
- AND
2. The parties get along

Third Party Custody & Probate Guardianship

Pre Petition

- If DHS is going to file, the CW may agree not to file
- Best case scenario = DHS is cool
- Worst case scenario = DHS is not cool
 - You can still file BUT...
 - If DHS has safety concerns about your client they can prove, DHS will just add your client to the petition and remove the children anyway
 - This will most likely require a contested shelter where you must be prepared to show your client does NOT have safety issues
 - If you lose, DHS is alienated and will exclude your client moving forward

Post Petition

- If DHS has already filed, the AAG may agree to dismiss
- Best case scenario = AAG dismisses
- Worst case scenario = AAG does NOT dismiss
 - Your client is out a bunch of \$
 - The Court here will likely NOT allow your client to intervene and will likely NOT dismiss the case upon motion by another party
 - You have alienated DHS and they will exclude your client moving forward

Third Party Custody & Probate Guardianship

The Waiting Game

- How long does an alternate care provider need to wait to file a Family Law case?

Third Party Custody = 6 months + your client has developed a child-parent relationship

Guardianship = 0 time + your client is willing to serve + it's in the child's best interests for your client to be their guardian

***Watch out for Burk v. Hall, 186 Or App 113 (2003)

Intervention ORS 419B.116

Good in theory, difficult to achieve in practice...



(John and Tracey)

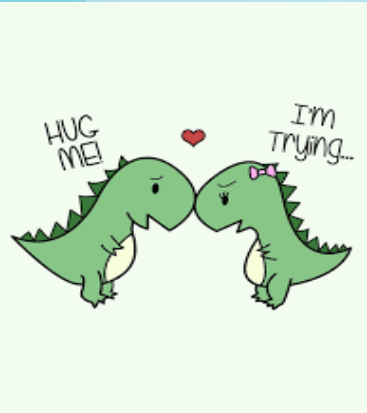
- Hurdles to becoming an intervenor:
 - Must establish caregiver relationship as defined in statute
 - Must show that intervention is in best interests of child
 - Must show that the reason for intervention and specific relief sought are consistent with the best interests of the child
 - Must show that existing parties cannot adequately present the case*
(insert death knell here)

419B.806 Consolidation: The Urge to Merge

*Statute provided in full on following slide

Key Points:

- Mandatory
- Time of Filing = Irrelevant (this used to matter A LOT)
- Judicial Officer Selection Depends
- Order of Hearing Depends and MATTERS
(custody v. third party v. dependency)
- Consistent yet Separate



419B.806

- (1) As used in this section, “consolidated” means that actions are heard before one judge of the circuit court to determine issues regarding a child or ward.
- (2) In any action filed in the juvenile court in which the legal or physical custody of a child or ward is at issue and there is also a child custody, parenting time, visitation, restraining order, filiation or Family Abuse Prevention Act action involving the child or ward in a domestic relations, filiation or guardianship proceeding, the matters shall be consolidated. Actions must be consolidated under this subsection regardless of whether the actions to be consolidated were filed or initiated before or after the filing of the petition under ORS 419B.100 (Jurisdiction).
- (3) Consolidation does not merge the procedural or substantive law of the individual actions. Parties to the individual consolidated actions do not have standing, solely by virtue of the consolidation, in every action subject to the order of consolidation. Parties must comply with provisions for intervention or participation in a particular action under the provisions of law applicable to that action.
- (4) Upon entry of an order of consolidation, all pending issues pertaining to the actions subject to the order shall be heard together in juvenile court. The court shall hear the juvenile matters first unless the court finds that it is in the best interest of the child or ward to proceed otherwise.
- (5) A judge shall make and modify orders and findings in actions subject to the order of consolidation upon the filing of proper motions and notice as provided by law applicable to the actions. Any findings, orders or modifications must be consistent with the juvenile court orders, and persons who were parties to the juvenile court action may not relitigate issues in consolidated actions.
- (6) The judge shall set out separately from orders entered under this chapter or ORS chapter 419C any orders or judgments made in other actions subject to the consolidation order. The trial court administrator shall file the orders and judgments in the appropriate actions subject to the consolidation order. An order or judgment in an individual juvenile court action is final if it finally disposes of the rights and duties of the parties to that action, without reference to whether the order or judgment disposes of the rights and duties of the parties to another action with which the action has been consolidated.

The Moral of the Story:

- It behooves you to treat DHS with respect and make sure they are on the same page as you—they have significant power and they frequently exercise it in retaliation and without the benefit of education and experience
- The AAG/DA's ability to advise and direct DHS is limited—it's usually retroactive and there are a LOT of cases and CWs
- If you are going to alienate DHS,
 1. Make sure you are ready for a fight that you can win;
 2. Prepare your client for the consequences of losing that fight;
 3. Get a hefty retainer.

A Few Notes on Transitioning out of Dependency Jurisdiction to Family Law



Assisting your client in becoming self-directed and not DHS-directed can be INVALUABLE

- Access conflict management tools in the civil realm
- Educate on family law tools available in the event of disagreement
- Resolve custody issues—thinking parenting time v. visitation

A Quick Note on Adoption

- Consent of both parents + no petitions? Consult with an adoption attorney
- No consent? Hire an adoption attorney
- DHS involvement? Hire an adoption attorney with dependency law background

*Adoptions on their own are difficult/complex. Adding the additional complexity of consent issues or DHS involvement requires a great deal of expertise.

Administrative Appeals

How it Feels to Appeal:



(Spoiler alert: Artax dies in the Swamp of Sadness)

When to Appeal

- There is an internal “founded” (reasonable cause to believe that child abuse/neglect occurred) disposition against your client;

AND

- Petitions weren’t filed or, if they were, jurisdiction was never established

Why to Appeal

- An internal founded disposition against your client can impact their professional and personal lives tremendously
- Loss/denial of licensure/certification
- Loss of job
- Inability to be a safety service provider, child care provider, or future foster parent

*Only your client will get notice of a disposition via snail mail, theoretically within 30 days of the adverse agency decision

Administrative Appeals

Procedure OAR 413-010-0700s





**THIS
STHE
END...**