





The Next 60 Days – Trial Preparation, Placement, Services and Parenting Time




Conduct a thorough investigation

- The Dep't often gets it wrong
- The Dep't often misses facts
- Knowledge is power. You can only be a tactician if you know all of the relevant facts
- Your goal is to know more about the case than anyone else in the courtroom – at every stage of the proceeding




Getting information from the Dep't

- Documents you should get in every case.
 - Every prior investigation report in which your client was the alleged perpetrator
 - Every service plan – which must be created within 30 days of removal and updated every 90 days. MCL 712A.13a(8)(a)
 - Every evaluation done of your client and the children. Privileges are abrogated. MCL 722.631.
 - Every report from a service provider in the Dep'ts possession.
- Get your clients to sign a release to expedite your receipt of the documents.




Tools - Formal Discovery

- MCR 3.922 – items discoverable as of right
 - “all written or recorded statements and notes of statements made by the . . . respondent that are in possession or control of petitioner or a law enforcement agency.”
 - “all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner.”
 - names of prospective witnesses
 - list of prospective exhibits




Tools – Formal Discovery

- Submit written discovery request in every case.
- In addition to general requests, request specific documents that you know exist.
- Include a specific deadline.
- Include release signed by the client.
- File a copy with the court.
- If the Dep’t doesn’t provide you with all of the information, file a written motion with the Court
- Unless you ask, they have no legal obligation to provide you with anything.




Tools – Informal Discovery

- Pick up the phone and call them up. Call hostile witnesses as well.
- Common witnesses
 - Teachers, relatives, neighbors, doctors, police officers
 - Service providers
 - May need releases from your client.
 - Acquire written documents from them
 - Reports, draft affidavits, witness statements




Tracking down witnesses

- Info from your client
- Info from the DHHS worker
 - Contact info in the service plan
- Internet
 - Google
 - Peoplesearch.net
 - Lexis-Nexis
- Use the parents' attorney community




Learn about witnesses

- Criminal History
 - Michigan Dep't of Corrections – OTIS
 - I-CHAT
 - Licensing Information – some examples
 - Health Professional License Lookup
 - Foster Care and Group Home License Check




Compelling testimony and the production of documents

- Subpoena power
 - MCR 2.506
 - Attorneys can sign subpoenas
 - Witness may request judicial subpoena
 - Can subpoena documents (accompany with release)
- Can subpoena witness to any hearing
- Make sure you subpoena all witnesses for evidentiary hearings
- SCAO subpoena form – MC 11 available at <http://courts.michigan.gov/scao/courtforms/general/mc11.pdf>
- FOIA public documents like police reports




When you first get a petition

- Develop an investigation plan
- Who do you need to talk to?
- What info do you need?
- What documents do you need?
- What steps will you take to access the information?
- In what way, if any, do you need the court's assistance to get information?




Exercise

- Review the factual allegations in the petition
- Break up into groups of 3
- Develop an investigation plan
 - What you want to know, from whom, how will you get it?
- Report back to the group




Placement and parenting time




Placement and parenting time are always critical issues

- “I just want to see my kid.”
- “It’s killing me not to get to see her.”
- “I don’t even know where he is!”
- “I want them to be with family.”
- “One hour per week? That’s it? That’s all I get?”
- *Seek to keep the child in the home if possible, maintain connection, avoid alienation and despair, and move case toward reunification.*




PLACEMENT




Placement considerations

- The best option, if at all possible, is to have the child remain at home.
 - Service planning may be the key to success.
- An out-of-home placement needs to support a child’s connections to family, friends, school, and other supports.
- A placement that does this keeps parents engaged in the case.
- A placement that supports the child eases the transition to placement and back to home.
- Foster parents are sometimes supportive of family.
- Relative caregivers may be more likely to be supportive. But not always.




DHHS Child Welfare Philosophy regarding placement

- *Ideally, maintain in home.*
- If not, place siblings together in most family-like setting possible. Least restrictive placement.
- First consider non-custodial parent or extended family. Or close non-relatives.
- If foster family setting, try to keep in same school and maintain other connections.



CPS Policies and Procedures re: keeping child at home

- PSM 714-2: Reasonable efforts required to prevent out-of-home placement if child not at imminent risk of harm.
 - Services may include 24-hour emergency caretaker, homemaker, counseling, financial aid, respite care, parent aide, in-home family services, substance abuse treatment, and vocational training.
- PSM 715-1: A court order removing the perpetrator from the home can make it safe for the child to remain in the home (712A.13a).



CPS Policies and Procedures re: other placement (PSM 715-2)

- Request to remove child must be due to immediate threat to child's health or welfare.
- If not emergency, must make reasonable efforts to prevent removal.
- Fostering Connections Act (P.L. 110-351) requires reasonable efforts to place siblings together.
- Must evaluate placement with non-custodial parent within 24 hours.
 - CR/Crim history; home visit; risk assessment; assessment of needs and strengths.
 - CR and Crim history don't necessarily disqualify the parent.
- Must get parent's and child's input on potential relative placements.
 - Fostering Connections requires efforts to find and notify relatives.

Relative placements (FOM 722-03B)

- Fostering Connections (42 USC 620 et seq) – relatives must be notified within 30 days. Consistent with MCL 722.954a.
- Preference for relative placement if:
 - Meets safety requirements (safety screen DHS-588)
 - Meets needs of child
 - Keeps sibs together
 - Lives close to where child was living at time of removal, unless in best interests of child to be placed with a relative elsewhere
- Need background clearances (CPS/CR/Criminal)
- Home study within 30 days of placement
- NOT required to pursue licensure
 - Will need a waiver; must meet safety standards.

Foster Care Policies and Procedures re: placement (FOM 722-3)

- Must consult parent unless contrary to child's best interests. The parent's opinion and recommendations regarding the importance of each criteria should be given considerable weight but the final decision remains with the department
- FC worker, parent, and foster parent should meet to discuss child's needs
- If possible, foster parent should have phone access to parent to consult as needed.
- Permanency plan must guide placement.
- If plan=reunification, placement must facilitate and support return home.
- Preference for fit and willing relative placement.
- Must evaluate/consider needs of child, including educational, special needs.

FOM 722-3 continued

- Prefer close to family, within school district.
- Fostering Connections requirements re: sib placements, relative search and notice
- Most family-like, least restrictive setting.
- Must consider placement that maintains connections to relatives, friends, teachers, etc.

FOM 722-3 continued


- You and your client are entitled to notification by DHHS of placement decisions.
 - Within 5 days of notice, can request in writing the evidentiary basis for decision.
 - Can ask LGAL to investigate and determine whether placement is in child's best interests.
 - If LGAL feels that placement is not in child's best interests, must petition court within 14 days for review hearing.
- Unrelated caregiver must be licensed.
 - But DHHS believes that under 712A.13a(5), court can order placement.

Legal considerations in placement

- 712A.1(3): Liberal construal of juvenile code. Prefer care in own home. Place in care as nearly as possible equivalent to the care that should have been given by parents.
- 13a(3): If released to parents, court may set reasonable terms and conditions necessary for child's well-being.
 - Always look to this concept during early stages of case to try to get the child back in the home if removed.
- 13a(4): Court may order a perpetrator out of the house upon authorization of the petition if presence is found to present substantial risk of harm to the child.
 - To keep child at home, 13a(5) requires finding that conditions of custody are adequate to safeguard the child from the risk of harm.

Legal considerations cont'd


- MCR 3.965(C)(2): substantial risk of harm, no provision can keep child safe, reasonable efforts.
- 13a(12): Most family-like setting available consistent with child's needs. Also MCR 3.965(C)(3)
- 18f(1): Agency must report on likely harm to child if still separated from parent and if returned. Also MCR 3.975(F)(1)(e) & (f)
- 18f(3): Case service plan requires most family-like setting available, closest to home as consistent with child's best interests and special needs. Must state reasons for selected placement.



Legal considerations cont'd


- 18f(5): If placed outside of home, service plan must be updated and revised every 90 days.
- 19(8): At review hearings, court must determine necessity and appropriateness of placement.
- 19a(5): At PPH, *if reunification would not cause substantial risk of harm, court shall order it.* Also MCR 3.976(E)(2)

PARENTING TIME




Parenting time considerations

- Frequency and quality of parenting time are the best predictor of successful reunification!
- Quality visitation eases anxiety for the parent and child.
- Parenting time is absolutely critical to keeping your client engaged and moving forward.
- Avoid the agency office if at all possible.




More about parenting time

- Review FOM 722-6!
- Go for frequency, duration, and least restrictive setting.
 - Go for settings that normalize family interactions.
- If it must be supervised, advocate for DHHS to designate a relative, friend, the foster parent, or someone else that is supportive and could supervise outside of the agency office.
- Get input from your client about desirable and practical locations, frequency, and supervisors.
 - Does your client need concrete assistance, like transportation?
- Keep tabs on how visits are going.




Parenting time continued

- Parenting time can change! Always revisit it!
 - Increase frequency and duration
 - Move outside the agency
 - Loosen restrictions/move to unsupervised
 - To the extent that DHHS has discretion, press them out of court to exercise it in your client's favor
- Troubleshoot and reframe "negative" reactions
 - Strong emotional reactions may be a sign to increase, not decrease, parenting time.
- If parents or kids have specific difficulties, can some visits happen in therapeutic settings?




Legal considerations in parenting time

- 712A.13a(11): Frequent parenting time. If time may be harmful even if supervised, visits may be suspended, and court shall order child to have psychological eval or counseling or both to address parenting time issues. Also MCR 3.965(C)(6)(a).
- 18f(3)(e): incorporates 13a(11) re: suspension and requires at least weekly visits. Visitation must be based on the child's best interests. *In re Laster*, Docket No. 315028 (2013)



Legal considerations cont'd

- 18f(4): Review must include discussion of appropriateness of parenting time.
- 19: Review hearing must examine compliance with parenting time. If didn't occur or not frequent, must determine reasons. Also MCR 3.975(F)(1)(c).
- 19a(12): PPH must include any evidence offered about appropriateness of parenting time.
- 19b(4): If TPR petition filed, court *may* suspend parenting time. Also MCR 3.977(D).




Summary – Placement and Parenting Time

- Placement and parenting time decisions are at the heart of the case.
 - Risk of parental disengagement is high if these determinations are made poorly.
- Proximity of placement, maintaining routines and connections, and facilitation of parent-child bond via placement cooperation are key.
- Advocate to maximize parenting time frequency and duration, minimize restrictions, and normalize setting and activities.
- Look to DHHS policies, statutes, and court rules.
 - Draw on *In re Rood* regarding requiring DHHS to follow its policies.
- Policies at <http://www.mfia.state.mi.us/olmweb/ex/html/>




Services and Conferences




Authority Guiding Advocacy for Services

- Federal and state mandates, including “Reasonable Efforts” requirements, case law, state regulations, policies, and consent decrees must be driving considerations for service plan development and implementation.
- Use this legal framework to support advocacy regarding every service plan provision and every service implementation concerning your Client.



DHHS must follow its own policies

- Agency’s failure to comply with its own policies is deemed failure to comply with statutory “reasonable efforts” mandates.
- *In Rood*, 483 Mich 73; 763 NW 2d 587 (2009).



DHHS GENERAL POLICY REQUIREMENTS RE:SERVICES
Planning (FOM 722-6)

- Casework services are directed toward resolving the presenting problem or conditions which resulted in a child's removal from his/her home.
- Efforts to resolve the presenting problem(s) must be documented in the service plan presented to the court to facilitate the determination of reasonable efforts.
- In most cases, the goal of the service plan will be reunification.


DHHS GENERAL POLICY REQUIREMENTS RE:SERVICES Planning (FOM 722-6) cont.

- The goals of the service plan, which are established with the involvement of the child's family, are safety, child well-being and permanence.
- The agreed upon services provided to the family must facilitate movement towards these goals.
- Once the presenting problem which led to the child's removal has been appropriately resolved, and the safety of the child is ensured, the child must be promptly returned to parental care.
 - Remember, DHHS is required to provide services aimed at resolving the problems that led to removal.
 - See also MCL 712A.18(1) – dispositional plan created “in view of facts proven and ascertained.”

Remember to SEEK and CITE!


Advocacy for Services: Who, What, Where, and When?

- At first court appearance or Preliminary Hearing:
 - Have copies of any DHHS policies, statutes, regulations, or cases for court and opposing parties to support advocacy. **Seek and Cite!**
 - Have prepared HIPAA and other general confidentiality releases to court for client's signature. Explain need to client.
 - Have a discovery demand to court and serve it. MCR 3.922(A), FOM 722-6, p. 1.
 - At hearing, advocate for adjournment for prevention services toward “reasonable efforts” such as Families First services, if appropriate. FOM 722-6, p. 18
 - Determine names and contact information for all referred and contracted services providers




- Within two weeks but *before* first Pretrial:
- Consult the case expert --- **YOUR CLIENT!**

(More on attorney-client conference later.)



Within two weeks but *before* first pretrial

- Conduct discovery! MCR 3.922(A). Thorough discovery will reveal true strengths and needs of Client and family. See FOM 722-6, p. 1.
- Contact client to determine if s/he has been contacted by foster care worker, level of engagement in plan development, progress, and any concerns regarding plan. R 400.12418(3).
- **Encourage involvement!**



- ◻ At pretrial/First Permanency Planning hearing (required 30-days after removal if Court made finding at Prelim that no reasonable efforts required)
 - Ask court to order compliance with outstanding discovery demands
 - Ask court to order by a “**date certain**” that you be provided copies of the CPS investigative report, ISP, and any other assessments on the family (if not yet obtained).
 - **Move for the return of the children if services have remediated the risk. MCL 712A.19a(5).**

Advocacy for services – at every hearing

- Cross-examine worker for admission that services can be safely provided with children **in the home**. See FOM 722-6, p. 18, regarding facilitation of “home-based services.” Use what worker told you previously, if favorable.
- Cross examine worker on **each** component of the service plan that is objectionable or unduly burdensome. Force justification for each component.
- Ask court to order services/activities that will keep Client involved with children’s care and motivated by increased time between Client and children (if not unduly burdensome to Client). FOM 722-6, p.5.

Advocacy for services – at every hearing (cont.)

- **Move for the return of the children if services have remediated the risk!** FOM 722-6, p.1), MCL 712A.19a(5). Also MCR 3.976(E)(2).
- Ask court to order by a **date certain** that referrals for all ordered services be made.
- **Obtain a copy of the dispositional order.**
- **IMMEDIATELY file motion to modify dispositional order** (court-adopted service plan) if you disagree with it, or if it doesn’t comport with what jurist stated on record.

**CONFERENCES
and Other Out-of-Court Advocacy**

- Many important decisions about a family’s life are made outside court in family conferences.
- However, historically there has been a disconnect between the social work sphere and the legal sphere.


• “In child protection, where evidence that directly impacts legal findings is gathered on an on-going basis outside of the courtroom, out-of court advocacy is critical.” ABA Center on Children and the Law

• Depending on the facts of the case, zealous advocacy might require counsel or advocacy before, during, or after the following:


- meetings with DHHS
- meetings with service providers
- meetings with school personnel/IEP meetings
- assessments
- supervised visitation, or
- mediation

Advocacy for Conferences/Other Out-of-Court Advocacy: Who, What, When and Where?

- At Preliminary Hearing ask court to order:
 - that you be notified of ALL agency conferences pertaining to the case or the child
 - That Client be allowed to attend all conferences/ appointments pertaining to child's care. FOM 722-6, p. 5.
 - Ask worker what agency conferences are required or routine in every case.




- Attend all out-of-court conferences, such as Permanency Planning Conferences, wherever possible. FOM 722-7, pp. 18-19.
 - Don't be "side-swiped" at court by information that conference attendees have but you do not have that can hurt or help your client.
- If you are unable to attend a conference between your client and the agency, prepare your client for the conference *in advance*.




Family Conferences

Hold a "Family Conference" to collaborate with all supportive extended family and other "friendlies" to develop a "family plan." See FOM 722-6, p. 3.




Work with DHHS

Confer with DHHS/agency foster care worker in the development of the service plan.



Work with DHHS

- Let worker know client is ready to voluntarily participate in services. FOM 722-6, p.2; MCL 712A.19a(5).
- PUSH for plan alternatives/terms that are favorable to Client. "Plant seeds" for terms your client wants included in plan.
- **Advocate for services/activities that will keep Client involved and motivated by increased time between Client and children** FOM 722-6, p.5.




Work with DHHS (cont.)

Insist that DHHS/agency **engages and consults** Client in the development of the case plan, **including incarcerated and other non-custodial parents**. (FOM 722-6 at 2 and 22, The Absent Parent Protocol at <http://courts.michigan.gov/scao/resources/standards/APP.pdf>, *In re: Rood*, and *In re: Mason*, MCR 2.004.)


Client must sign the plan! FOM 722-6, pp . 2 and 5.

Insist that DHHS/agency consults with extended family members and other "friendlies" in the development of the case plan. Fostering Connections to Success and Increasing Adoptions Act of 2008; FOM 722-6 at 3.




Permanency Planning Conference

- If Permanency Planning Conference has not yet been held, ask CPS worker to schedule one.
 - A permanency Planning Conference "shall be held ... [p]rior to placement, or by the next working day after an emergency placement." *Dwayne B. v. Granholm* consent decree
- Invite key "friendlies" --- relatives, fictive kin/close family friends, clergy, previous services providers --- anyone your client may identify as knowledgeable about family issues and dynamics, strengths, needs, placement options, etc. to attend. **BE SELECTIVE!**




When Confering With DHHS/Agency
Remember “3 Cs –
Consult, Challenge, COMPLAIN!!!”



Out of Court Advocacy


1-2 days before Pretrial –

- **Keep Client focused on reunification, NOT truth of allegations.**
- Call to negotiate with L-GAL and AAG/APA for return of the children, or even dismissal of petition, if services to client have already remediated the risk to the children prior to trial. FOM 722-6, p. 1.
- In anticipation of plea deal at the pretrial, bargain for services that benefit your client
- Meet with Client to prepare Client for trial or plea



Out of Court Advocacy


- Within two weeks but before Pretrial:
 - Determine if services have begun.
 - Talk to Client!
 - Talk to foster care worker.
 - Talk to referred contracted services agency.



Out of Court Advocacy

If no services yet, ask foster care worker why services have not yet been initiated. Adoption & Safe Families Act of 1997 (Public Law 105-89), R400.12418(1) and (4), and FOM 722-6.


- Challenge formulaic, "cookie-cutter" service plans for parents and children. Plan must be tailored to address reasons for removal.
- Advocate for services tailored to specific needs of the client and children, especially to the problem that led to removal or court involvement!
- Obtain a copy of their written service plan, progress report, and recommendation to review before court hearing. MCL 712A.18f
- **Encourage** Client to participate!
- **BE SURE THAT THE RISK THAT LED TO REMOVAL WILL BE ADDRESSED BY PROPOSED SERVICES!** FOM 722-6, p.1.



Out of Court Advocacy

Between Adjudication and Dispositional Hearing

- Contact worker (or AAG/APA) to negotiate for recommendation to return children with "in-home" services. "Reasonable efforts" argument! FOM 722-6, p.18.
- Contact L-GAL and do the same.
- Advocate, if still necessary, for client-centered, tailored services.
- **Report the progress Client has already made!**



Dispositional Hearing

At Dispositional Hearing:

- Ensure that contents of services plan strictly comply with MCL 712A.18f requirements.
- Ask court to order that all referred services by ordered by a "date certain."
- Ask court for short adjournments (fewer than three-month interval between Disposition and DRH) to allow agency to report on status of services and progress of parents.

Dispositional Hearing (cont.)

- Ask court to order that Client be permitted to attend any school conferences, doctor visits, sporting events or performances, etc., child is involved in. *Encourage* Client to attend.
- Ask court to schedule the first Dispositional Review Hearing as a Permanency Planning Hearing (PPH) as strategy for children's return at DRH. MCL 712A.19a(5), MCR 3.976.

SUMMARY:

Services	Conferences
should be client-specific, addressing the client's strengths and needs and the problems that led to removal	are just as important as court hearings, and good parent representation includes advocating for your client at these conferences
can be fought for by remembering to "seek and cite"—ask for what you want and back up your requests with citations to the law (statutes, regulations, court rules, DHHS policy)	will happen with or without your client—so insist on involvement so that your client may meaningfully participate in the case planning
