

CHAPTER FOUR – HOW A CASE MOVES THROUGH THE JUDICIAL PROCESS

As stated above, if DFS obtains custody of a child at a time other than business hours, *ex parte* custody is granted by an on-call judicial officer. A petition reflecting the allegations must be filed with the Family Court by 12 noon the next business day. If custody is requested during regular business hours, the Court may enter an *ex parte* order if requested, or it may deny the *ex parte* and schedule the case for a preliminary protective hearing (formerly known as a probable cause hearing). The applicable Family Court Rules are located at Tab 18.

Preliminary Protective Hearing

The first hearing on the petition before the Family Court is known as a Preliminary Protective Hearing. *See Family Court Civil Rule 212*. A Preliminary Protective Hearing (“PPH”) must be held within ten days of the dependency/neglect petition being filed. At that hearing, the petitioner (usually DFS) must establish that probable cause exists to believe that a child continues to be in actual physical, mental or emotional danger or there is a substantial imminent risk thereof OR that the child is abused, neglected or dependent. Hearsay evidence is admissible.

If the Court determines that custody of the child continues with DFS, the Court will provide the preliminary protective hearing order to the parties with notice of the date and time for the Adjudicatory Hearing. The Court may also order that certain services be put in place for the family, order that the parents complete certain tasks before the next hearing, order

paternity testing, require visitation with parents and/or siblings, and/or ask for a prompt exploration of relatives. Where an alleged father has been identified, paternity testing should be routinely requested.

Adjudicatory Hearing

An Adjudicatory Hearing must be scheduled within 30 days of the Preliminary Protective Hearing. Family Court Civil Rule 213 governs this procedure. DFS must show by a preponderance of the evidence that a child is dependent, neglected or abused as those terms are defined in 10 *Del. C.* § 901, and that it is in the child’s best interests for custody to be with DFS. The definitions are included at Tab 25. Hearsay evidence is not admissible.

Again, the Court may order the parties to do a variety of tasks and/or engage in services. Visitation between the child and his or her family will also be addressed.

Dispositional Hearing

The next Court review is a Dispositional Hearing. *See Rule 214*. At this hearing, the Court determines if the appropriate services for the family have been implemented and/or approves the case plan for the family and for the child. This hearing must take place within 20 days of the Adjudicatory Hearing; however, in some instances it may be combined with the Adjudicatory Hearing if all parties have developed and agreed on an appropriate case plan and goal. The minimal requirements for a case plan are found at *Family Court Civil Rule 220*. Should DFS not be agreeable to an attorney’s involvement and/or assistance in developing the case plan, issues of

disagreement should be handled at the Dispositional Hearing.

Review Hearings

Review hearings usually take place every 3 months. At the review, the assigned Judge will inquire of all parties whether progress is being made on the case plan(s) and/or what is preventing progress on same. The Judge will also want to hear how the child is doing, and what services are being provided to meet the child's needs.

Internal DFS Permanency Committee

Once a child has been in care for nine months, DFS policy requires that the child's permanent plan be reviewed (if it has not been reviewed earlier). A committee comprised of DSCYF administrators and supervisors reviews each case. A DFS Deputy Attorney General should be present for all reviews. Input is received from CASAs or Attorney GALs regarding recommendations for the child; however, DFS does not permit anyone to attend the entire committee meeting. At the conclusion of the meeting, the committee decides what the permanent plan for the child should be. If the permanent plan is changed from reunification, DFS must then seek court approval. See "Permanency Hearing".

Child Placement Review Board

The Child Placement Review Board (formerly the Foster Care Review Board) is controlled by 31 Del. C., Ch.38. The Board was created to be an independent monitor of the child welfare system with the task of reviewing child placements to ensure the best interests of children are being met. The Board reviews every child

in care at 9 months, and then every year thereafter. The GALs, the parents, the foster parents, and the DFS workers should appear at the Board reviews. The Board should send its findings and recommendations to the parties. The parties then have 30 days to submit objections to the findings before the recommendations are submitted to the Family Court.

Permanency Hearing

Once a child has been in the custody of DFS for a period of 12 months, the Family Court must hold a permanency hearing to determine what the goal for the child should be. See Rule 216. Any party, or the Court *sua sponte*, can request a change of goal any time after a child enters care. Only DFS can file for an actual permanency hearing. This becomes most important with cases where TPR grounds exist upon entry into care and/or where DFS does not have to provide reunification services to the family.

If termination of parental rights is determined to be the goal, a petition must be filed with the Family Court within 15 months of the day the child entered care.

Termination of Parental Rights

If termination of parental rights is the chosen goal for a child, DFS must prove by clear and convincing evidence one of the enumerated grounds set forth in 13 Del. C. § 1103. DFS must also prove by clear and convincing evidence that termination is in the child's best interests. A copy of the TPR statutory grounds is included at Tab 20. An example of an Answer to a TPR petition as well as a blank voluntary consent form are located at Tab 8.

Adoption

Once a TPR has been granted, and all appeals have been exhausted without success, an adoption petition may be filed. Many times children are adopted by their foster parents(s). In such cases, an adoptive home study of the foster parent(s) is usually completed by an outside agency. This process can take up to six (6) months; however, it can begin long before a TPR petition is even filed thereby shortening the timeframe for permanency. Once the home study is completed, DFS presents home studies for the children to their Permanency Committee for approval. See Tab 26 for the OCA home study tool to help compare possible family resources for a child. After a family is approved for adoption, subsidy paperwork and the legal petition is prepared. The petition is filed with Family Court, and is usually assigned to the Judge who granted the TPR. If the adoptive parents so desire, an adoption hearing will be scheduled. An example of an Answer to an Adoption Petition as well as a sample Open Adoption agreement are located at Tab 9.

Other Court Proceedings

Visitation: At any time during a case, a petition for visitation may be filed by a parent or relative. 13 Del. C. § 728 governs visitation. In short, a parent is entitled to visit with their child unless the Court determines that visitation would endanger the child's physical health or significantly impair his or her emotional development.

Guardianship and Permanent Guardianship: 13 Del. C., Ch. 23 addresses guardianship and permanent guardianship. See Tab 21. Guardianship is a temporary arrangement for a child

wherein the guardian is custodian of the child, but also may makes decisions regarding medical, education, etc. However, a parent can always come back and petition for return of the child. Despite this, the Delaware Supreme Court has determined that regular guardianship constitutes permanency for a child. *CASA v. DSCYF, et al.*, No. 59, 2003 (Del. 2003).

Permanent guardianship allows a guardian to permanently raise a child without the ability of the parent to petition for return of the child. Permanent guardianship also provides for visitation and/or contact with the biological parent as long as that contact is in the child's best interests. Federal subsidies are no longer available in Delaware for guardianships or permanent guardianships, and therefore guardianships and permanent guardianships are rarely subsidized by DFS.

Relative Custody: If a relative files for custody of a child in DFS care, and the parent is still not able to care for the child, the relative must show that it is in the best interest of the child to be in their custody instead of DFS'. The Court is discouraging the filing of these custody petitions and is instead asking relatives to file for guardianship.

Motions to Rescind Custody: When DFS believes that one or both parents are now able to provide adequate care for their child or children, they typically file a motion to rescind custody. If no one objects to the motion, the Court may simply sign the order without a hearing. All parties, including the GAL, should be noticed on the motion.