

Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect and Termination of Parental Rights Cases

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Elements of Best Practice Guidelines

- General guidelines include:
 - participating in local training and mentoring
 - understanding relevant laws
 - protecting parents' decision-making rights
 - avoiding continuances
 - communicating with other professionals



Relationship with Agency

- May help to:
 - Expedite resolution of the case,
 - Minimize needlessly contentious relationships between parents and caseworkers, and
 - Facilitate negotiated settlements that ensure protection of child without unnecessarily infringing on family's integrity.

Elements of Best Practices: Relationship with the Client

Relationship with client, includes:

- empower client to direct representation
- duty of loyalty
- provide contact information
- communicate/counsel client regularly
- provide documentation
- awareness of conflicts
- missing parent issues
- incarcerated and mentally ill parent issues
- cultural competency



Elements of Best Practices: Investigation and Discovery

- Investigation includes:
 - conduct thorough investigation
 - interview client before each hearing
- Discovery includes:
 - review agency case file
 - obtain necessary documents
 - use formal discovery methods as needed

Elements of Best Practices

Court Preparation

- Court preparation includes:
 - develop case theory and timeline
 - make all filings timely/ research legal issues
 - engage in case planning
 - advocate for regular visitation
 - engage in settlement negotiations and mediation
 - prepare all witnesses including client
 - obtain expert witnesses and interview opposing counsel's experts

Elements of Best Practices Hearings

- Hearings includes:
 - prepare for hearings, motions and objections
 - present/cross examine witnesses
 - participate in jury selection
 - request closed proceedings if appropriate
 - make opening and closing
 - prepare findings of fact, conclusions of law and orders

Before each factual hearing:

- Discuss matter with your client sufficiently in advance to have time to investigate and prepare the case;
- Conduct a thorough, independent investigation;
- Conduct formal discovery, if needed;
- Interview and subpoena necessary witnesses before the hearing;
- Research pertinent legal issues;
- Continue with the case until its conclusion.

Permanency Hearing

- 12-14 month window
- Stress finality
- Permanent placement for child
 - Return home, adoption, legal guardianship, permanent placement with fit and willing relative, or another planned permanent living arrangement.
- Court can direct the filing of a termination of parental rights action.



TPR Petition must be filed:

- Child has been in foster care for 15 of the past 22 months
- Child is an infant that has been found to be “abandoned” or
- Court determines parent has been convicted of certain crimes.

Agency can opt not to file TPR if:

- Child is in the care of a relative
- Agency has documented compelling reasons why termination is not in the best interest of the child, or
- Reasonable efforts were required to be made and state did not provide necessary services for reunification

Elements of Best Practices

Post Hearing

Post hearings/appeals includes:

- review court orders for accuracy/ review with client
- make efforts to ensure client abides by order
- discuss appeal with client
- file appellate paperwork timely
- request expedited appeal
- communicate results to client

Common Concerns:

Legal Community

- Timing of appointments
 - Timing often varies by county.
- Discovery
- Lack of adequate compensation
- Lack of training requirements
- Lack of institutional support

Common Concerns:

Child Welfare & Parents

- Accessibility of attorneys out of court
- Substitute attorneys
- Over/Under litigious
- Attitudes toward parents