

Basics of Neglect and Abuse Files

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COURT PROCESS

- REMOVAL
- PRELIMINARY HEARING
- PRETRIAL
- ADJUDICATION
- INITIAL DISPOSITIONAL HEARING
- DISPOSITIONAL REVIEW HEARINGS
- PERMANENCY PLANNING HEARING
- TERMINATION OF PARENTAL RIGHTS
- POST TERMINATION REVIEW HEARINGS

REMOVAL

WHO CAN FILE?

- ▶ **ANYONE** can file a petition. Does not have to be DHHS.
- ▶ **Can a probation officer or guardian file? YES.**

TWO MAIN OPTIONS TO REMOVE:

1. Ex Parte (emergency removal)

- ▶ **Order = Form JC05b**
- ▶ **Preliminary hearing must commence no later than 24 hours after removal (excluding Sundays and holidays), unless adjourned for good cause.**
- ▶ **If hearing does not occur within timeframe – CHILD MUST BE RELEASED.**

2. Petition (non-emergency)

- ▶ **Must provide at least 7 days' notice to the parties for the preliminary hearing.**



COMMON PETITION ERRORS

Review the sample petition. What errors can you spot?

COURT-APPOINTED ATTORNEYS

- Each Respondent has the right to a court-appointed attorney.
- Must make an affirmative action for the court to provide an attorney. *In re Hall (Sharnetta)*, 188 Mich App 217, 222 (1991).
- The Judge/Referee MUST do an ability to pay analysis on the record. See Example form.
- Grand Traverse County pays court-appointed attorneys \$80 per hour, billed back to the Respondent. This will be increased to \$100 per hour in January of 2027.

- GAL must be immediately appointed and present at the removal/preliminary hearing. Grand Traverse County pays GALs \$3,000 per month.

KEY REMOVAL FINDINGS

TITLE IV-E HIGHLIGHTS:

1. Continuation in the home is contrary to the welfare of the child. This is required in the first court order removing the child from the home.

-THIS CANNOT BE REMEDIED. If not done = child can **never** be funded by Title IV-E during the removal episode.

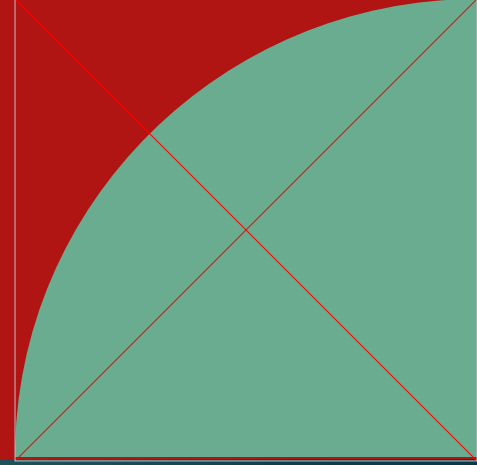
2. Reasonable (or active) efforts have been made to prevent the child's removal from the home.

-Must be made within 60 days of the child's removal.

-Recommended to have this done on the first order removing.

PRELIMINARY HEARING

- Determine if probable cause exists that one or more of the allegations in the petition are true. If so, authorize petition.
- Must inquire about possible relatives who might be available to provide care.
- Review parenting time – Court must permit frequent parenting time unless it would be harmful (even if supervised).
- ****Inquire about tribal membership or eligibility.**
- If child is placed – Agency must prepare an initial service plan no later than 30 days after the placement.



ADJUDICATION - TRIAL

- A court can acquire jurisdiction over a child after findings are made during trial.
 - Each Respondent has a right to a jury trial or bench trial.
 - Referees cannot do jury trials, but they can do a bench trial.
 - Rules of evidence apply.
 - Burden of proof is on the Petitioner = preponderance of the evidence.
 - If child is in placement, trial must occur within 63 days of removal, unless good cause.

ADJUDICATION TRIAL - SERVICE

Summons must be served on respondent AND nonrespondent parent.

- Must be **personally** served at least 7 days before trial.
- If personal service is impracticable, court can order:
 1. Registered mail = at least 14 days before trial if MI resident; 21 days in not MI resident
 2. Publication = at least 14 days before trial

Seven days' notice written regular for all other parties.

ADJUDICATION - PLEA

- A court can acquire jurisdiction over a child after each parent has a trial or enters a plea.
 - A no contest plea is helpful when there are pending criminal matters.
 - Pleas can be accepted by a Referee or Judge.
 - A plea can be taken at any time after the authorization of the petition.
 - A plea by one respondent parent does not extend court jurisdiction to an unadjudicated second parent.

Adding Nonrespondent Parent


A nonrespondent parent **MUST** receive an adjudication hearing before the court can interfere with his or her parental rights.

If a nonrespondent parent is being added as an additional respondent to a petition that has been authorized against the first respondent parent:

1. If the first respondent parent has gone through the adjudication process = **allegations** against the second respondent shall be filed in an **amended** petition.
2. If the first respondent parent has **NOT** gone through the adjudication process = **allegation** against the second respondent shall be filed in a **supplemental** petition.

INITIAL DISPOSITIONAL REVIEW HEARING

- ▶ First hearing after the court takes jurisdiction over the child.
- ▶ When in placement = not more than 28 days after adjudication.
- ▶ Court reviews the case service plan and gives the parties an opportunity to review and controvert the reports. Case service plan must be updated every 90 days as long as the child remains in placement.
- ▶ The initial parent-agency treatment plan (PATP) is presented and reviewed. Court orders compliance.
- ▶ Rules of evidence do not apply.
- ▶ Order of Disposition is entered.



A review hearing must be held within 182 days of the date the child was removed.

EVEN IF ADJUDICATION HAS NOT BEEN COMPLETED



DISPOSITIONAL REVIEW HEARINGS

-- 7 days' written notice --

FIRST YEAR:

- 182 days after removal
- Every 91 days after that

AFTER FIRST YEAR:

- No later than 182 days from the immediately preceding review hearing conducted during the first year.
- Every 182 days after that until case is closed.

Timing of review hearings = Title IV-E Requirement

PERMANENCY PLANNING HEARING

--14 days' written notice --

- ▶ In general, must be held within 12 months after REMOVAL, and every 12 months thereafter.
- ▶ Must be held within 28 days after a determination that reasonable efforts are not required.
- ▶ **TITLE IV-E REQUIREMENT.**
- ▶ Rules of Evidence do not apply.
- ▶ Can be combined with a review hearing.

APPROVED PERMANENCY GOALS

- ▶ Reunification
- ▶ Adoption
- ▶ Guardianship
- ▶ Placement with a fit and willing relative
- ▶ APPLA (must document a compelling reason for determining that it would not be in the child's best interest to pursue other plans.)
 - APPLA = Another Planned Permanent Living Arrangement
 - No permissible uses of APPLA for any child under age 16.

PERMANENCY PLANNING – ADOPTION

If a child is not returned home following the permanency planning hearing, the agency **MUST** initiate termination if the child has been in foster care for 15 of the last 22 months.

Exceptions:

1. Child is placed with relatives.
2. Compelling reason that termination is not in the child's best interests.
3. Reasonable efforts for reunification, when required, have not been made.

TERMINATION TRIAL – NOTICE REQUIREMENTS

Summons must be served on and respondent AND nonrespondent parent.

- Must be **personally** served at least 14 days before trial.
- If personal service is impracticable, court can order:
 1. Registered mail = at least 14 days before trial if MI resident; 21 days in not MI resident
 2. Publication = at least 14 days before trial

14 days' notice written regular for all other parties.

TERMINATION OF PARENTAL RIGHTS -- NON-AGGRAVATED CIRCUMSTANCES

- ▶ Cannot be jury trial. Bench trial only.
- ▶ Court must find clear and convincing evidence that a statutory basis exists and that termination is in the best interest of the child.
- ▶ Rules of Evidence do not apply.
- ▶ Must be held within 42 days of filing of supplemental petition.
- ▶ Court must issue an opinion and order within 70 days of the termination trial.
- ▶ Party may “not object” or consent to termination. If this is done, the court is not required to state a statutory bases of the termination of parental rights.

AGGRAVATED CIRCUMSTANCES

- ▶ Certain serious circumstances require the DHHS to file a petition requesting termination of parental rights at the initial disposition hearing = aggravated circumstances.
- ▶ Reasonable efforts are not required.
- ▶ Dispositional hearing can be conducted immediately following the adjudicative hearing, but the two cannot be converged such that there is no distinction. The two hearings must be clearly bifurcated.
- ▶ If there are no aggravated circumstances, **EVEN IF THEY FILE A TERMINATION PETITION**, reasonable efforts are required.

RELEASE OF PARENTAL RIGHTS – ADOPTION CODE

- ▶ Upon acceptance of a release of child by parent, open a new AU case, assign a new case number, and record the document on the register of actions.
- ▶ Group files shall no longer be used to maintain these documents. Each child must have a separate AU file.
- ▶ Upon release, the court shall immediately issue an order terminating the rights of that parent to that child. This document is added to the AU file. A copy of this order must be added to the NA file.
- ▶ If the termination of parental rights after release extinguishes all remaining parental rights, the child must be committed to the child placing agency or MDHHS.
- ▶ If all parental rights are not extinguished following the release, and the remaining parental rights are terminated in an NA proceeding under the juvenile code, the court may commit the child to MCI.

POST-TERMINATION REVIEW

-- 7 days' written notice --

- ▶ Review of placement and progress toward adoption or another permanent placement.
- ▶ Unless the child is placed in a permanent foster family or a placement with a relative intended to be permanent, post-termination reviews must occur at least every 91 days for the first year following termination of parental rights.
- ▶ After one year, hearings must be held every 182 days.

ADVICE OF RIGHTS

Form JC 111

- ▶ Form must be given to Respondent after the following:
 1. Any order of removal.
 2. After adjudication.
 3. An initial order of disposition following adjudication.

FORM JC 44

- ▶ Form must be given to Respondent after the following:
 1. Termination of parental rights.

*If termination of parental rights occurs at initial disposition, the court must provide both JC 44 and JC 111

APPEALS

A Respondent has the right to appeal:

1. Any order of removal.
 2. An initial order of disposition following adjudication. *Note: There is no right to appeal an order of adjudication. The appeal must follow the order of disposition. Otherwise, it is an appeal by leave.
 3. An order terminating parental rights.
 4. An order involving an Indian child appealable under MCR 3.993(A)(7).
 5. Any final order required by law to be appealed to the Court of Appeals.
- ▶ Appeal must be filed within 21 days following entry of the order to be appealed.
 - The court has 14 days after Respondent's appeal is filed to appoint an attorney for Respondent.
 - ▶ If the court appoints an attorney, the court will also pay the cost of transcripts.
 - ▶ Filing an appeal does not stay enforcement of a court order, unless the court orders otherwise.

APPEALS CONTINUED

If the court appoints counsel for the Respondent after an appeal of the Termination of Parental Rights, the court must immediately send to the Court of Appeals:

1. A copy of the Claim of Appeal and Order Appointing Counsel (JC 84);
2. A copy of the judgment or order being appealed; and
3. A copy of the complete register of actions.

The court must also file in the Court of Appeals proof that the JC84 was served on the parties.

MISCELLANEOUS NOTICE REQUIREMENTS

- ▶ The statutory requirements for issuance of service of summonses to parents, or notice of the petition and time and place of a hearing to a noncustodial parent, are jurisdictional, which means that if they are not fulfilled, an appellate court may declare **all proceedings in a case VOID**.
- ▶ Absent parent: Issue a summons by personal service for first hearing. Summons is no longer required until adjudication and termination. If done by publication, notice is not required until adjudication or termination.
- ▶ Child over 11 to receive notice in:
 - Termination Hearings
 - Dispositional Review Hearings
 - Permanency Planning Hearings
- ▶ It is the Court's responsibility to issue an Order requesting the Department of Corrections permit an incarcerated party to participate in a hearing.

THANK YOU!!