

Dependency-Neglect Proceedings

Prepared by Judge Joyce Williams Warren

for training of new Juvenile Division Circuit Judges

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How a Case Begins--the Child Maltreatment Act:

Any person with reasonable cause to suspect child maltreatment or that a child has died as a result of maltreatment, or who observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, may immediately notify the child abuse hotline. Ark. Code Ann. §12-12-507(a).

There are also mandated reporters, and Ark. Code Ann. §12-12-507(b) lists those persons. **Judges** are among those mandated reporters.

“Child maltreatment” is defined, in §12-12-503(6), as abuse, sexual abuse, neglect, sexual exploitation, or abandonment.

Per Ark. Code Ann §12-12-507(h), the child abuse hotline shall accept telephone calls or other communications alleging that a child is **dependent-neglected** as defined in § 9-27-303(17), and shall immediately refer this information to DHS. § 9-27-303(17) defines **“dependent juvenile”**, and, per § 9-27-303(18)(B), **“dependent-neglected juvenile” includes “dependent juveniles”**.

Calls on “dependent children” are not logged in the hotline. Per Ark. Code Ann. §12-12-507(h), the child abuse hotline shall accept telephone calls and other communications alleging dependent-neglected juveniles and shall immediately refer this information the DHS.

Upon receiving initial notification of suspected child maltreatment, DHS shall cause an investigation to be made. Ark. Code Ann. §12-12-509(a)(1).

All investigations shall begin within seventy-two (72) hours. Ark. Code Ann. §12-12-509 (a)(2)(A). **However**, the investigation shall begin within twenty-four (24) hours if the allegation is severe maltreatment, excluding an allegation of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago and the alleged victim does not currently have contact with the alleged offender; or the allegation is that the child has been subjected to neglect as defined in Ark. Code Ann. §12-12-503(12)(B). Ark. Code Ann. §12-12-509(2)(B).

The investigating agency shall immediately notify local law enforcement of all reports of severe maltreatment. Ark. Code Ann §12-12-507(e)(2)(C).

DHS must provide notice of any report of child maltreatment within five (5) business days to:

- (A) legal parents of any child in foster care who is named as the victim or offender;
- (B) attorney *ad litem* of any foster child named as the victim or offender;
- (C) attorney *ad litem* of all other children in the same foster home if the maltreatment occurred in the foster home; **and**
- (D) the prosecuting attorney on an allegation of severe maltreatment.

Ark. Code Ann. §12-12-509(2)(C.)

Upon initiation of the investigation, **the primary focus of the investigation shall be whether or not the alleged offender has access to the children and whether or not the children are at risk such that children need to be protected.** Ark. Code Ann. §12-12-509(2)(E).

In each investigation, an investigative determination shall be made **within thirty (30) days**, regardless of whether the investigation is conducted by DHS, the Crimes against Children Division of the Department of Arkansas State Police, or local law enforcement. Ark. Code Ann. §12-12-509(d)(1).

An investigation involving at out-of-home alleged offender that is determined to be true may be extended up to thirty (30) additional days to allow an investigator to ascertain the names and conditions of any minor children of the alleged offender, whether the minor children of the alleged offender have been maltreated or are at risk of maltreatment, and to the extent practicable, whether children previously or currently under the care of the alleged offender have been sexually abused or are at risk of sexual abuse. Ark. Code Ann. §12-12-509(d)(3).

Note: This procedural requirement shall not be considered as a factor to alter the investigative determination in any judicial or administrative proceeding. Ark. Code Ann. §12-12-509(d)(2).

The agency responsible for the investigation shall complete **a written report of the investigation** within this same **thirty (30) day time period.** Ark. Code Ann. §12-12-514(a).

An investigation involving an out of home alleged offender that is determined to be true may be extended up to thirty (30) additional days to allow the investigator to ascertain certain additional information. Ark. Code Ann. §12-12-509(d)(3).

After the investigation is completed, DHS shall determine whether the allegations of child maltreatment are true or unsubstantiated. A **determination of true must be supported by a preponderance of the evidence.** Ark. Code Ann. §12-12-512(a)(2)(A)(ii)(a).

In every determination of true, DHS shall provide notice of the determination to each subject of the report. **An unsubstantiated determination** is entered when the allegation is **not supported by a preponderance of the evidence**, and such a report shall be confidential and disclosed only to certain persons, agencies or authorities. Ark. Code Ann. §12-12-512(a)(1)(A)(i).

Note: The report, exclusive of information identifying the person making the notification, shall be admissible in evidence in any proceeding related to child maltreatment. Ark. Code Ann. §12-12-514(e).

If the investigation determines that the child maltreatment allegations are true, DHS may open a **protective services** case or can file a dependency-neglect petition. If DHS does open a protective services case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or to prevent the removal of the child from the home. If at any time during the protective services case DHS determines that the child cannot safely remain in the home, it shall take steps to remove the child. Ark. Code Ann. §12-12-519(c)(1),(2), &(4).

If the report of child maltreatment is unsubstantiated, DHS may offer **supportive services** to the family. The family may accept or reject the supportive services at any time. Ark. Code Ann. §12-12-519 (d)(1)&(2).

DHS shall not release data that would identify the person who made a report to the child abuse hotline unless a court of competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report. Ark. Code Ann. §12-12-506(e)(1).

Protective custody --Seventy-two (72) hour hold:

A police officer, law enforcement official, juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of DHS may take a child into protective custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or guardian, whether or not additional medical treatment is required, if the child is subject to neglect as defined under §12-12-503(12)(B) and DHS assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother; **OR** if the child is dependent as defined in Ark juvenile code of 1989, §19-27-301 et seq, **OR** if the child's circumstances and conditions are such that continuing in his/her place of residence or in the care of his/her parent, guardian, custodian, or caretaker presents an immediate danger of severe maltreatment. Ark. Code Ann. §12-12-516(a)(A)(B)(C).

HOWEVER, the protective custody shall not exceed seventy-two (72) hours; **except**, if the expiration of the seventy-two (72) hours falls on a weekend or holiday, the protective custody may be extended **through the next business day** following the weekend or holiday. Ark. Code Ann. §12-12-516(a)(2).

The person who takes protective custody of a child shall notify DHS so that a child protective proceeding may be initiated within the required seventy-two (72) hour time period. Ark. Code Ann. §12-12-516(c).

DHS can determine whether it is appropriate to return the child to the parent or guardian within than seventy-two (72) hour time period. The emergency ex parte petition must be filed within seventy-two (72) hours of the time the protective custody was taken of the child. If the court does not issue an emergency ex parte order of custody, the child must be returned to the parent, guardian, or custodian.

A school, residential facility, hospital and any other place that a child may be located shall not require a written court order for DHS to take a seventy-two (72) hour hold under this section or under § 9-27-313. Ark. Code Ann. §12-12-516(a)(2).

Note: After DHS has removed the child, the child shall be placed in a licensed approved foster home, shelter, or facility, or an exempt child welfare agency as defined at § 9-28-402(12). No one, including DHS, the Department of Arkansas State Police, or local law enforcement, shall allow the child to be placed in a nonapproved or nonlicensed foster home, shelter, or facility.

DHS cannot authorize a child to be placed in the custody of a relative or any other person after the child had been removed from the home. The Court has exclusive authority to place the child in the custody of a relative or any other person, and, the court must have a written approved home study before it can place the child in the custody of someone other than the person from whom custody was removed. **However, DHS can place the child in the provisional foster home of a relative once that relative's home is approved as a provisional foster home. VERY IMPORTANT: Do not confuse such placement with a change of custody, because the child who is in a relative's provisional foster home is still in DHS' custody.** For that relative's home to be a provisional foster home, DHS must assess the home (not a full blown home study), determine the home to be safe and appropriate, and the relative must then complete DHS' training to become a licensed foster home within six (6) months.

Ex parte order for emergency custody:

The court shall issue an ex parte order for emergency custody to remove a child from the custody of a parent, guardian, or custodian in any case where there is **probable cause to believe** that:
[Ark. Code Ann. § 9-27-314(a)(1) & (3)]

- (a) immediate emergency custody is necessary to protect the health or physical well-being of a juvenile from immediate danger; **or**
- (b) prevent the juvenile's removal from the state; **or**
- (c) a juvenile is a dependent juvenile.

In the ex parte order for emergency custody, the court shall also determine the appropriate plan of placement for the juvenile. Ark. Code Ann. § 9-27-314 (a)(1).

The emergency order shall include:

[Ark. Code Ann. § 9-27-314(b)]

- (1) notice to the juvenile's parents, guardian, or custodian of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;
- (2) right of the parent, guardian, or custodian to be represented by counsel ;
- (3) right of the parent, guardian, or custodian to obtain court-appointed counsel, if indigent and the procedure for obtaining appointed counsel;

- (4) the location and telephone number of the court and the procedure for obtaining appointed a hearing; **and**
- (5) appointment of an attorney *ad litem* for the child [Ark. Code Ann. § 9-27-316(f)(1)]
- (6) “Contrary to the welfare findings”-**For example:**“It is contrary to the welfare of the child to remain in the home of the parent/guardian/ custodian and that immediate removal is necessary to protect the health and safety of the child.”

Very important to note: According to the ASFA regulations, when a child is placed in DHS’ custody, a court finding that “continuation in the home is contrary to the welfare of the child” must be made at the **first** court ruling on the child’s removal, even if temporary. If it is not made at this time, the child’s “**stay in care**” is ineligible for Title 1V-E. In other words, it cannot be remedied by a finding at a later hearing, unless the child has returned home and a new placement in foster care is necessary. This finding must be detailed and specific. Affidavits, nunc pro tunc orders, or orders simply referring to a state law requiring such findings for removal do not meet this requirement.

NOTE: In the **initial order of removal**, the court must find whether it is contrary to the welfare of the juvenile to remain at home; whether the removal and reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; **and** whether the removal is in the best interests of the juvenile; [Ark. Code Ann. § 9-27-328 (b)(1) (A)(B)(C)]

AND

within sixty (60) days of removal, the court must find, *inter alia*, whether efforts made to prevent the removal of the juvenile were reasonable, based on the needs of the family and the juvenile. Ark. Code Ann. § 9-27-328 (b)(2)

Where the court finds that DHS’ preventative or reunification efforts have not been reasonable, but further preventative or reunification efforts could not permit the child to safely remain at home, the court may authorize or continue the child’s removal but shall note the failure by DHS in the record of the case.

In all cases of removal, of a juvenile from the home of his /her parent, guardian, or custodian by the court, the court **shall set forth in a written order** the evidence supporting the decision to remove, the facts regarding the need for removal, and the finding required by this section. The written findings and order shall be filed by the court or by a party or a party’s attorney as designated by the court within thirty (30) days of the date of the hearing at which removal is ordered or prior to the next hearing, whichever is sooner. Ark. Code Ann. § 9-27-328 (e)(1)(A)(B)(C) & (2).

Filing of the petition:

Dependency-neglect proceedings begin by the filing of a petition. A petition can be filed on an **emergency** basis, requesting that the court order ex parte removal of the child from the custody of the parent, guardian, or custodian **or** on a **non-emergency basis** (commonly referred to as a **twenty (20) day petition**, because the parent, guardian, custodian **and** juvenile(s) 10 years old or older have to be served with at least twenty (20) days' notice before the adjudication hearing can be held).

Only DHS or its designee, a law enforcement officer, or prosecuting attorney may file a **dependency-neglect petition seeking ex parte emergency relief**. Ark. Code Ann. § 9-27-310(b)(2).

Any adult or any member ten (10) years old or older of the immediate family alleged to be in need of services may file a **dependency-neglect petition that does not seek emergency relief**. (Ark. Code Ann. § 9-27-310(b)(3)).

The dependency-neglect petition **shall be supported by an affidavit of facts**. Ark. Code Ann. § 9-27-311(d)(2)(A).

VERY IMPORTANT TO NOTE: There is such a thing as AN EX PARTE ORDER that is an order for LESS THAN CUSTODY. Ark. Code Ann. § 9-27-314(a)(2)

In any case in which there is probable cause to believe that an emergency order is necessary to protect the juvenile from severe maltreatment, **the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile if the alleged offender** has a legal right to custody or visitation with the juvenile, has a property right allowing access to the home where the juvenile resides, **or** is a juvenile. Severe maltreatment is defined in §12-12-503(16) as:

- (a) sexual abuse,
- (b) sexual exploitation,
- (c) acts or omissions which may or do result in death,
- (d) abuse involving the use of a deadly weapon as defined by § 5-1-102,
- (e) bone fracture,
- (f) internal injuries,
- (g) burns,
- (h) immersions,
- (i) suffocation,
- (j) abandonment,
- (k) medical diagnosis of failure to thrive, **or**
- (l) causing a substantial and observable change in the child's behavior or demeanor.

RIGHT TO COUNSEL FOR CHILDREN AND PARENTS/GUARDIANS/CUSTODIANS IN DEPENDENCY-NEGLECT CASES

Each party in dependency-neglect cases should have access to competent legal representation. In Arkansas, this fact has been recognized as so important and fundamental that the state Supreme Court has adopted Administrative Order 15 setting out qualifications and standards of practice for attorneys appointed by the circuit court to represent **children and indigent parents** in dependency-neglect cases. **The attorneys must meet all qualifications before the circuit court appoints them to such cases.**

The Administrative Office of the Courts (AOC) provides the initial and continuing training for these attorneys, maintains current lists of the qualified attorneys, and expends the state-authorized funds for the attorneys' compensation.

Attorney *ad litem* for the child:

Ark. Code Ann. § 9-27-316(f)(1) provides for mandatory appointment of an attorney *ad litem* who shall meet all standards and qualifications established by the Arkansas Supreme Court to represent the best interests of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency neglect case, **whichever occurs earlier**. The statute also contains some mandatory obligations and responsibilities of the attorneys *ad litem* in the representation of their clients.

Attorney for the parent, guardian, or custodian:

In **all** proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian **shall be advised** of the right to be represented by counsel at all stages of the proceedings and the right to appointed counsel if indigent. **This notification of right to counsel shall be done in the dependency-neglect petition or the ex parte emergency order and the first appearance before the court.** Ark. Code Ann. § 9-27-316(h)(1)(A).

When the first appearance before the court is an emergency hearing to remove custody pursuant to § 9-27-315, parents or guardian shall be notified of the right to appointed counsel if indigent in the emergency ex parte order. Ark. Code Ann. § 9-27-316(h)(4)(B).

Upon a request by a parent or guardian and the court's determination of indigency, the court shall appoint counsel for the parent or guardian in all proceedings to remove custody or terminate parental rights of a juvenile. Ark. Code Ann. § 9-27-316(h)(2).

After the court reviews an affidavit of financial means completed and verified by the parent or guardian and determines if there is an ability to pay, the court **shall** order financially able parents or guardians to pay all or part of reasonable **attorney's fees and expenses** for their court-appointed representation. Ark. Code Ann. § 9-27-316(h)(3)(A).

NOTE: The statutes that refer to removal of juveniles and those that refer to the right to counsel for the persons who had custody of the juvenile before removal are not consistent, in that some of those statutes state "parent or guardian" and others state "parent, guardian, or custodian".

Be mindful that the important issue is the person(s) from whom legal custody of the juvenile was removed.

The court shall appoint counsel sufficiently in advance of the court appearance so the attorney can have enough time for preparation and consultation with the client.
Ark. Code Ann. § 9-27-316(h)(4)(A).

The statute also mandates that the parent or guardian's attorney have access to all relevant records concerning the juvenile's case, including, but not limited to, school records, medical records, juvenile court records, and DHS records to which the parent or guardian is entitled to under state and federal law. Ark. Ann. Code § 9-27-316(h)(5).

THE CIRCUIT COURT BENCHBOOK FOR THE JUVENILE DIVISION CONTAINS CHECKLISTS AND SOME TIPS FOR EACH TYPE OF DEPENDENCY-NEGLECT HEARING, REFERENCES TO STATUTES AND SOME CASES, AND OTHER PERTINENT INFORMATION TO HELP GUIDE YOU. ON THE FOLLOWING PAGES, I HAVE SOME SUGGESTED TIPS FOR SEVERAL TYPES OF HEARINGS IN DEPENDENCY-NEGLECT CASES.

SUGGESTED TIPS WHEN REVIEWING AFFIDAVITS/SIGNING EX PARTE ORDERS FOR EMERGENCY CUSTODY

1. **Check the affidavit** to see when the seventy-two (72) hour hold was taken on the juvenile so you will know if the petition for ex parte custody is presented to you within the required time period. DHS will sometimes file ex parte petitions for emergency custody that are not filed in a timely manner. You must make your own decision about whether you will sign an emergency order based on a petition that is not timely filed.
2. **Do not allow** DHS' attorney presenting you with the ex parte petition (or whoever presents you with the petition) to give you additional facts that are not contained in the affidavit.
3. **Be sure to address the issue of reasonable efforts in the ex parte petition.** The petition may not have information that is sufficient for you to determine whether this is the first contact DHS has had with the family, whether DHS has had prior contact with the family, what services have been provided to the family that were relevant to the family before removal, and whether those efforts made to prevent removal were reasonable based on the needs of the juvenile and family. All this information is essential to the court's finding that reasonable efforts to prevent the juvenile's removal have or have not been made.

If you cannot make the determination, from the affidavit, that reasonable efforts have or have not been made to prevent the juvenile's removal, it is a very good practice to make that determination at the probable cause hearing, as it may be too late at the adjudication. Remember, the issue of whether reasonable efforts have been made must be decided within sixty (60) days from the date the juvenile was removed from the home, and, if the Court finds good cause to have the adjudication hearing past thirty (30) days from the probable cause hearing, the adjudication may be held after the sixty (60) day deadline for the reasonable efforts determination.

NOTE: Do not confuse this sixty (60) day time frame limit for reasonable efforts determination with the sixty (60) day time limit for the adjudication to be held; the adjudication must be held within sixty (60) days from the probable cause hearing—not sixty (60) days from the date of the juvenile's removal from the home.

The better way to ensure that this reasonable efforts determination is made at the probable cause hearing (if not made in the ex parte petition for emergency custody) is to blot out the standard language such as:

“This is the first contact DHS has had with the family and this contact arose during an emergency where the juvenile could not safely remain in the home, so reasonable efforts are deemed to have been made.”

and **replace** that with language to this effect:

“The Court will address the issue of reasonable efforts at the probable cause hearing.”

You must, of course, remember to address this issue when the probable cause hearing is held. Otherwise, you may overlook it, and that is not good.

4. **It is a best practice, whenever possible, to appoint an attorney, in the ex parte order for emergency custody, for the parent, guardian, or custodian from whose legal custody the juvenile was removed.** If possible, try to determine from the information in the ex parte petition and affidavit, the person(s) from whom legal custody of the juvenile was removed, so you will know for whom you are appointing an attorney, and whether you need to appoint one or more attorneys.

SUGGESTED TIPS REGARDING APPOINTMENT OF ATTORNEYS FOR INDIGENT PARENTS/GUARDIANS/ CUSTODIANS FROM WHOM CUSTODY OF THE JUVENILE WAS REMOVED

1. **Per Arkansas Supreme Court Per Curiam, effective 9/25/08, you must determine indigency by using the 2008 U. S. Health and Human Services Poverty Guidelines.**
2. **As noted earlier, it is best practice to appoint attorneys at the earliest stage in the proceedings for the parents/guardians/custodians from whom custody was removed. In emergency situations, the earliest time for that appointment is in the ex parte order for emergency custody (which is before the probable cause hearing that will be held), even though the parent/guardian/ custodian has not asked for an attorney and you do not have information about the financial status of those parents/ guardians/custodians so that a determination can be made about indigency.**

Whenever possible and practical, include the attorney's name in the ex parte order for emergency custody.

In cases that begin with the filing of a twenty (20) day petition, the time to appoint an attorney is after the petition has been filed and the hearing date has been set. At the probable cause hearing, have the parent/guardian/ custodian fill out an affidavit of indigency (affidavit of financial means) for the purpose of continuing the appointment of their attorney, if the parent/guardian/ custodian wants a court- appointed attorney and is indigent. You must tell them that you appointed an attorney for them before the hearing and you made such appointment even though you did not know if they wanted an attorney or if they were indigent and qualified for a court-appointed attorney. If they want a court-appointed attorney and they say they are not able to hire one, then have them fill out the affidavit of indigency (make sure it is notarized) so you can determine if they are indigent. Then, if they are indigent, you can continue the court-appointed attorney to represent them.

If they are not indigent, then you can inform them that they have a right to an attorney but not one appointed by the court, since they are not indigent, and then you can relieve the court-appointed attorney. Even if you have found them to be indigent and they say they

will have trouble hiring an attorney, you can decide if you want to continue the court-appointed attorney to represent them and then order that parent/guardian/custodian to pay all or part of reasonable **attorney's fees and expenses** for their court-appointed representation.

3. **If you cannot or do not want to appoint the attorney in the ex parte order for emergency custody**, you can devise and use a form order for appointment of attorneys for parents/guardians/custodians and sign that order immediately after making the appointment. Mail or fax the appointment order to the appointed attorney or advise the appointed attorney that he/she can get a copy of the appointment order from the file when he/she comes to copy the file. Also give notice of such appointment to DHS' attorney, the attorney *ad litem*, and any other attorneys of record; this can be done by fax, mail, or any other form of notice.
4. **If a parent/guardian/custodian does not want an attorney but is indigent**, you cannot force the appointment of an attorney; however, be sure to go through the appropriate procedure before you allow that parent/ guardian/custodian to waive the right to an attorney and represent him/herself.
5. **When you receive a case that is transferred from another judge or jurisdiction**, set up some system to remind you to sign an order appointing an attorney *ad litem* for the juvenile and the parent/ guardian/custodian (if appropriate).

If you can determine, from the case file, that a parent/guardian/custodian who has a right to an attorney is involved, and there is information about the address or phone number, you should determine if that parent/guardian/custodian wants an attorney and is indigent. It is very important to devise a procedure to provide parents/guardians/custodians with affidavits of indigency and instructions about when and how they should return the affidavits to the court if they want a court appointed attorney, so you can review the affidavit, make a determination about indigency, and, if appropriate, appoint an attorney well in advance of the adjudication hearing.

Even though some parents/guardians/custodians may have received the affidavit of indigency before the adjudication hearing, some of them return the affidavit late or not at all. Even so, you have made every effort to do what you can to have that person represented as early as possible.

6. **Establish some system to remind you** to appoint an attorney *ad litem* for a juvenile on a twenty (20) day petition **and** to remind you to address the issue of the appointment of an attorney for the parent/guardian/custodian from whom the juvenile was removed. **You can follow the same procedure in tip #4.**
7. **Establish a procedure to get affidavits of indigency** to parents/guardians/custodians (from whom custody was removed) and have them return those affidavits to court well in advance of the adjudication hearings so that the adjudication hearing will have a greater chance of actually taking place on the scheduled date.

SUGGESTED TIPS FOR PROBABLE CAUSE HEARINGS

1. **Check to see if the parent/guardian/custodian** has been served with a copy of the petition and ex parte order for emergency custody. Also note that the **juvenile who is ten (10) years old or older must be served with the petition.**

Because of the short time frame in which the probable cause hearing must be held (within five [5] business days from the filing of the ex parte order for emergency custody), it is not always possible for service to be accomplished by the date of the probable cause hearing. If parties are present who have not been served, this is a time when service can be accomplished.

2. **Remember to advise parents/guardians/custodians** of their right to be represented by an attorney at all stages of the proceedings and their right to a court-appointed attorney if indigent.
3. **Have court personnel give an affidavit of indigency** to the parent/guardian/custodian (from whom custody was removed) at court, before the probable cause hearing begins, so the financial information will be available to you during the hearing and you can make a determination about court-appointed attorneys. If this cannot be done before the hearing, make sure an affidavit is given to the parent/guardian/custodian during the hearing, so you can determine whether the court-appointed attorney will continue the representation (if you appointed an attorney in the ex parte order for emergency custody) or whether you must appoint an attorney before the adjudication hearing. **Another method is to provide attorneys for parents/ guardians/custodians with copies** of the affidavit of indigency so they can provide it to their clients once they are appointed as counsel.
4. **After you have determined that the parent/guardian/custodian requesting a court-appointed attorney** was the person who had legal custody of the juvenile before the juvenile was removed and placed in DHS' custody, the trial court assistant may be able to call an attorney so the attorney can be appointed before the probable cause hearing ends. The attorney's name, address phone number can be given to the parent/guardian/custodian before he/she/they leave court, with instructions for them to call the court-appointed attorney or with instructions for any other arrangements that need to be made. One way to include this information for the parent/guardian/custodian is to add it to the Order to Appear for the adjudication hearing.
5. **Remember that the parents/guardians/custodians who are not represented by attorneys** have the right to sit at the counsel table, have copies of any proposed exhibits, cross examine any witnesses, call witnesses to testify, and to testify on their own behalf.
6. **Use a checklist (Preliminary Information Sheet - an example of which is on the last page of the Probable Cause Tip)** to enable you to make sure (as much as possible) that pertinent and accurate information is gathered so that some problems and glitches can be prevented during later stages of proceedings in the case.

One question on the checklist concerns whether the juveniles are members of any Indian tribes. It is very important to ask for information about this issue because ASFA regulations make it clear that the Indian children must meet the same requirements as other dependent children. States must comply with the **Indian Child Welfare Act (ICWA)**, and nothing in the ASFA regulations supersedes ICWA.

PLEASE NOTE: Connie Hickman Tanner (from AOC) created a detailed questionnaire for parents/guardians/custodians to fill out and have notarized so you can have all this information provided to you in writing at the probable cause hearing.

7. **Require DHS to make every reasonable effort to notify** noncustodial parents and putative fathers of the time, date, and place of the adjudication hearing.
8. **Always announce your findings and orders from the bench.** Whenever possible, have a written order (which includes the time and date of the adjudication hearing) that is filed and distributed to parties before they leave the courtroom so they have written documentation as soon as possible about the specifics of the court's orders. This also helps DHS give any providers the specific orders so that referrals and services can begin as soon as possible, if you have ordered any services.

You may want to use a form order for this purpose. You can fill in the form yourself, direct DHS' attorney, any other party's attorney, or a court staff to fill in the form order or you can have someone type the entire order. You must decide what method is most appropriate for your circumstances.

If you cannot or do not provide written orders at the conclusion of the hearing, you should provide a short form order and have it completed and filed so DHS can use it to make referrals to providers for services when necessary.

9. **Include, in your orders,** the time and date for the staffing to be held to develop the case plan, **and** the date by which the case plan must be filed (within thirty (30) days from the date of the juvenile's removal from the home.
10. **At the conclusion of the hearing,** set the date and time of the adjudication hearing and give Orders to Appear to all parties present before they leave the courtroom.

10th DIVISION CIRCUIT COURT-JUDGE JOYCE WILLIAMS WARREN

**PRELIMINARY INFORMATION FOR COURT TO OBTAIN RE: DHS CASES
(AT PROBABLE CAUSE HEARINGS AND AT 20 DAY ADJUDICATIONS)**

1. **Child(ren)'s name(s)** (correct spelling), **DOB**, and **SSN**.
2. Mother's / father(s)' / putative father(s)' **name** (correct spelling), **DOB**, and **SSN**.
3. Mother's / father(s)' / putative father(s)' **address**?
4. Mother's / father(s)' / putative father(s)' **phone number(s)**?
 - (a) Home phone? Work Phone? Message Phone? If yes, what is that number?
5. **Name of any other man** who can possibly be the putative father(s)?
6. Who **had legal custody** of the child(ren) before removal?
7. What is the **highest level of education** for mother/ father(s)/ putative father(s)?
8. Can the mother/ father(s)/ putative father(s) **read and write English**? Any difficulty?
9. Mother / father(s) / putative father(s) have any **mental health diagnoses**?
 - (a) If yes, what diagnosis?
 - (b) Taking **any medication**? If yes, what medication? Is it prescribed medication?
10. (a) Is the child(ren) a member of a **federally recognized Indian tribe**? **OR**
 - (b) Is the child(dren) a biological child of member(s) of a federally recognized Indian tribe **AND** eligible for membership in any federally recognized Indian tribe?

NOTE: FOR ICWA to apply, the child must be unmarried under 18 yrs old and (a) or (b)

(c) IF ICWA may apply, get this information: names and DOB for all parents(including mother father(s) / putative father(s), maternal and paternal grandparents, and putative maternal and paternal grandparents.

11. Are mother and father/ putative father **married to each other**?
 - (a) **If yes**, were parents married to each other when the child(ren) were born?
When where were they married? Still married? If not, when and where were they divorced?
 - (b) **If no**, was mother married to anyone when the child(ren) were born?
 - (1) **If yes**, to whom? When and where? Where does he live? Where does he work?
 - (2) **If no**, has **paternity been established**?
 - (a) Is there a court order finding putative father to be legal father?
 - (b) If yes, in what state or county?
 - (c) Did putative father sign a paternity acknowledgement (any papers at the hospital or later that were notarized admitting he is the father)?
 - (d) If so, does either parent have a copy?
 - (e) Has putative father gone to a child support office to sign any papers admitting he is the biological father?
 - (f) Has putative father been **ordered to pay child support**?
 - (g) If yes, in what state or county?
12. **Address / last known address and /or phone number** of child(ren)'s father(s)/putative father(s)?
 - (a) If address is unknown, are there any relatives of the father(s)/ putative father(s) who may know where he lives or last lived?
13. Does father(s)/putative father(s) **work**? If yes, where? Work phone number? Work address?
 - (a) If unknown, are there any relatives or friends of the father/ putative father who may know where he works? If yes, who are they and what is their contact information?
14. When is the last time mother saw the child(ren)'s father(s)/ putative father(s)? Where?
15. Does father(s) /putative father(s) have **any contact with the child(ren)**?
 - (a) If yes, what type of contact? In person? Phone? Visits? Presents? Letters? Cards?
 - (b) How often? When was the last contact? Where did it occur?
16. **How many children has mother given birth to?** Their names? ages? locations?

SUGGESTED TIPS FOR ADJUDICATION AND DISPOSITION HEARINGS

1. **Check to see if all parties**, including putative fathers, noncustodial parents, and other persons with claims to legal custody have been properly served with the summons/petition and notice of the hearing. This is essential not only for legal reasons but also for the possible contributions these parties can make towards resolution of the case concerning giving pertinent information, providing placement for the child, visiting the child, and giving emotional support and/or child support for the child. Remember that **the juvenile who is ten (10) years old or older must be served with the petition**. Simply put, you need to make sure the Rules of Civil Procedure are followed.
2. **If notice has not been given** to all parties, you may, in certain circumstances need to continue the hearing (**but not beyond the time allowed by law when the case began with an ex parte order for emergency custody----sixty (60) days from the probable cause hearing.**)
3. **In situations where you do not or cannot continue the hearing**, you need to order DHS' attorney to continue efforts to properly serve and provide appropriate legal notice to the party.
4. **Require all juveniles to be present at the hearing** (as the statute requires) and allow their absence only after you approve a written request from their attorney *ad litem*.
5. **Make every reasonable effort to resolve the issue of paternity** at an early stage of these proceedings. Again, it is very important for the reasons set forth in **tip #1**. You should decide whether you will require a putative father to have an order of paternity before he is considered for custody. Some judges require this; others allow custody without a legal finding of paternity, based on the dispositional option of the court transferring custody of the juvenile to a relative or other individual.
6. **Be very stingy with granting continuances**. Remember, **you do not have the authority to hold an adjudication hearing (on an ex parte order for emergency custody) beyond sixty (60) days from the date of the probable cause hearing**. You can grant a continuance, upon good cause shown, after the adjudication hearing is first set within the thirty (30) day time period as required by law. Practically speaking, if a warning order has to issue for a party whose whereabouts are unknown, the court, at the emergency hearing, can determine that good cause is shown for the adjudication hearing to be held beyond the thirty (30) day time requirement.

On a twenty (20) day petition (which is filed as a non-emergency with the requisite twenty (20) days for the defendant to be served before the hearing is held), you are under no statutory requirements to hold the adjudication within a certain time frame. However, keep in mind that you are dealing with children and custody issues and, depending on the facts alleged in the petition, you may still want to be stingy with the granting of continuances. Sometimes, the twenty (20) day petition should have actually been filed as

an emergency, so time may still be crucial.

Please note: In some circumstances, the issue of appointment of an attorney can require you to grant a continuance of the adjudication hearing on a twenty (20) day petition. It is very important to devise a procedure to provide parents/guardians/custodians with affidavits of indigency and instructions about when and how they should return the affidavits to the court if they want a court appointed attorney, so you can review the affidavit and make a determination about indigency, and, if appropriate, appoint an attorney well in advance of the adjudication hearing. Even though some parents/guardians/custodians may have received the affidavit of indigency before the adjudication hearing, some of them return the affidavit late or not at all; then, you must continue the adjudication hearing so you can appoint an attorney to represent that parent/guardian/custodian if they request an attorney and are indigent.

7. **Set a pretrial conference** about a month before the adjudication of a twenty (20) day petition is scheduled. This is the time for you to get information about any stipulations, agreements, issues about service of the summons/petition and any discovery issues.
8. **Establish some system** to remind you to appoint an attorney *ad litem* for a juvenile on a twenty (20) day petition **and** to remind you to address the issue of the appointment of an attorney for the parent/guardian/custodian from whom the juvenile was removed. **You can follow the same procedure in tip #4.**
9. **Establish a procedure to get affidavits of indigency** to parents/guardians/custodians (from whom custody was removed) and have them return those affidavits to court well in advance of the adjudication hearings so that the adjudication hearing will have a greater chance of actually taking place on the scheduled date.
10. **If the parties have a stipulation or an agreement to a finding of dependency-neglect**, make sure the record is clear about the basis of the finding. Have more specifics than these two examples:
 - (a) the parties stipulate to a finding that the juveniles are dependent-neglected based on the facts in the petition an affidavit being true and correct;
 - (b) the parties agree that the juveniles are dependent-neglected based on paragraphs number 1, 2, and 4 in the petition being true and correct.

The order needs to include more than the language of the two previous examples. The order needs to contain additional language specifying that the dependency-neglect finding is based on abuse, neglect, abandonment, parental unfitness, etc. as well as the specific facts that support the dependency-neglect finding.

This suggested tip is very important, not only because the record needs to be clear and exact about what did or did not happen at the adjudication but also because, in subsequent hearings, the issue may again arise about what facts constituted the basis for

the dependency-neglect finding, what efforts were made to rehabilitate the circumstances that caused the juvenile's removal from the home, and whether the juvenile can safely return home.

11. **When accepting settlement agreements and/or stipulations**, be sure that the details of the agreement are sufficiently clear and specific so you and all the parties will know exactly what the orders mean, and who is required to do what. **For example**, the parties agree that the parents will have psychological evaluations and follow the recommendations of those evaluations.

The order should reflect that the parties' agreement is an order of the court (if you accept the agreement), and you should ensure this particular agreement includes who will make the referrals and who will pay for the psychological evaluations. This may seem very nit picky, but as much clarification that is possible on the front end often saves time and headaches later in the proceedings.

12. **When an agreement or stipulation is presented to you**, make sure **all parties** have reached that agreement or agree to the stipulation. It is very easy to overlook a putative father, a noncustodial parent or a parent who is not represented by an attorney and/or who is not sitting at the counsel table with the other parties. Too often, the attorneys have not even talked to these other parties.

13. **Inform the parent/guardian/custodian that the clock is ticking**...time is passing. Tell them that, in a period of time no later than twelve (12) months from the date their child was removed from their custody (or less time if the court finds it appropriate), you will hold a permanency planning hearing to determine where the child will live on a permanent basis; they have that time period to accept services that will be provided by DHS to help them rehabilitate their circumstances and correct the conditions that caused the child to be removed; if they fail to do so, their child will not be returning home to live with them and will have some other permanent place to live and grow up; and there is also the possibility of termination of parental rights.

14. **Have a system in place** to make sure the foster parents, preadoptive parents, and relative caregivers have an opportunity to be heard. Arkansas law requires those persons have the right to receive notice, and the court shall allow them to have an opportunity to be heard at any review or hearing concerning the child in their care. This right to notice and the opportunity to be heard **does not give these persons status as a party**. Ark. Code Ann. § 9-27-325 (1)(1),(2), &(3).

If they are not called as witnesses, it is important to remember to ask them if they want to say anything. If they are present for the hearing but are not in the courtroom for any or all of the hearing, remember to have them brought in so you can ask if they have anything they want to say. The testimony they may offer is of great importance since the child is living in their home.

It is important to note that neither ASFA regulations nor the Arkansas juvenile code defines "opportunity to be heard"; however, the preamble to ASFA states foster parents

do not have a right to appear at the hearing as long as they can give input to the court, such as a written submission.

15. **Almost always announce your findings and orders from the bench.** Whenever possible, have a written order (which includes the time and date of the next hearing) that is filed and distributed to parties before they leave the courtroom so they have written documentation as soon as possible about the specifics of the court's orders. This also helps DHS give any providers the specific orders so that referrals and services can begin as soon as possible, if you have ordered any services.

You may want to use a form order for this purpose. You can fill in the form yourself, direct DHS' attorney, any other party's attorney, or a court staff to fill in the form order; or you can have someone type the entire order. You must decide what method is most appropriate for your circumstances.

If you cannot or do not provide written orders at the conclusion of the hearing, you should provide a short form order and have it completed and filed so DHS can use it to make referrals to providers for services when necessary.

16. **At the conclusion of the hearing,** set the date and time of the next hearing and give Orders to Appear to all parties present before they leave the courtroom.

SUGGESTED TIPS FOR REVIEW HEARINGS

1. **Require all juveniles to be present at the hearing** (as the statute requires) and allow their absence only after you approve a written request from their attorney *ad litem*.
2. **Require attorneys to have their calendars with them** so the next hearing date and time can be set in court. If an attorney does not have his/her calendars, instruct that attorney use a cell phone or an office phone in the court building. This almost always eliminates the possibility that the attorney will have a subsequent conflict with the next hearing date.

Note: This does not always work for after-hours court hearings if the attorney's office is closed and there is no secretary or other office personnel available to check that attorney's calendar. But, in the end, especially if a situation warrants it, you can set the hearing date and time and tell the attorney to be there or have another attorney substitute for them at that next hearing.

3. **Do not set these cases for "cattle call"**. Set a separate, specific time and date for each hearing. This is extremely important for several reasons: children, caseworkers, attorneys, foster parents, relatives, therapists, and other persons present for the hearings do not need to sit all day waiting for a hearing that was scheduled to begin at the same time as all the other hearings. It causes unnecessary waste of time that these persons can use to be working, attending school, and/or other things that are important to them.

As you know, the nature of court proceedings sometimes causes the need for people to wait for court hearings which had a separate, specific time set, but are running late. As a judge, you need to be particularly mindful of the inconvenience that "cattle call" poses for all the persons involved, and especially try to avoid setting these types of cases using a "cattle call" method.

4. **Almost always announce your findings and orders from the bench.** Whenever possible, have a written order (which includes the time and date of the next hearing) that is filed and distributed to parties before they leave the courtroom so they have written documentation as soon as possible about the specifics of the court's orders. This also helps DHS give any providers the specific orders so that referrals and services can begin as soon as possible, if you have ordered any services.

You may want to use a form order for this purpose. You can fill in the form yourself, direct DHS' attorney, any other party's attorney, or a court staff to fill in the form order; or you can have someone type the entire order. You must decide what method is most appropriate for your circumstances.

If you cannot or do not provide written orders at the conclusion of the hearing, you should provide a short form order and have it completed and filed so DHS can use it to make referrals to providers for services when necessary.

5. **If the order is not filed and distributed at the conclusion of the hearing**, remember that the statute requires the order to be filed and distributed to the parties **within thirty (30) days** of the date of the hearing or prior to the next hearing, whichever is sooner. A good practice is to require the attorney preparing the order to provide you with the proposed order within a specific time period, (perhaps within one (1) week of the hearing) with copies provided to the parties and/or attorneys for any comments they may have.

6. **At the conclusion of the hearing**, set the date and time of the next hearing and give Orders to Appear to all parties present before they leave the courtroom.

SUGGESTED TIPS FOR PERMANENCY PLANNING HEARINGS

1. **Remember that a permanency planning hearing is not just another review hearing.** It is a hearing to finalize a permanency plan for the juvenile.
2. **Require all juveniles to be present at the hearing** (as the statute requires) and allow their absence only after you approve a written request from their attorney *ad litem*.
3. **Almost always announce your findings and orders from the bench.** Whenever possible, have a written order (which includes the time and date of the next hearing) that is filed and distributed to parties before they leave the courtroom so they have written documentation as soon as possible about the specifics of the court's orders. This also helps DHS give any providers the specific orders so that referrals and services can begin as soon as possible, if you have ordered any services.
4. **If the order is not filed and distributed at the conclusion of the hearing,** remember that the statute requires the order to be filed and distributed to the parties **within thirty (30) days** of the date of the hearing or prior to the next hearing, whichever is sooner. A good practice is to require the attorney preparing the order to provide you with the proposed order within a specific time period, (perhaps within one (1) week of the hearing) with copies provided to the parties and/or attorneys for any comments they may have.
5. At the conclusion of the hearing, set the date and time of the next hearing (if one will be held) and give Orders to Appear to all parties present before they leave the courtroom.

SUGGESTED TIPS FOR TERMINATION OF PARENTAL RIGHTS HEARINGS

1. **Set a pretrial conference** about a month before the termination of parental rights hearing is scheduled. This is the time for you to get information about any stipulations, agreements, issues about service of the summons/petition and any discovery issues.
2. **Check to see if parents, including putative fathers**, have been properly served with the summons/petition and notice of the hearing. Check the actual wording of the warning order to see if all the pertinent information is correct: names, dates, time, and place of the hearing. Also check the warning order to see if it has been published for the statutory time period. Also note that the **juvenile who is ten (10) years old or older must be Served with the petition**. Simply put, you need to make sure the Rules of Civil Procedure are followed.
3. **Require all juveniles to be present at the hearing** (as the statute requires) and allow their absence only after you approve a written request from their attorney *ad litem*.
4. **When the TPR (termination of parental rights) petition** seeks to terminate rights of the mother, legal and/or putative father(s), remember to make sure the **evidence supporting the ground(s) for termination is presented concerning each parent**, whether legal or putative. **Then, you must determine if the evidence is sufficient on one or more of the alleged ground(s) and on the issue of whether termination is in the best interests of the juvenile**. It is a very heavy burden of proof: **clear and convincing evidence of the ground and best interests**.

All too often, DHS (usually the petitioner, although the attorney *ad litem* can file a termination of parental rights petition) concentrates on one parent, usually the one from whom custody was removed, and fails to present information concerning the other parent or putative parent whose rights are also sought to be terminated.

5. **If you grant the termination of parental rights petition** and think it is appropriate for the juvenile to have a final visit with the parent(s) and/or relatives, you may want to set an appropriate time period by which the final visit is to be held.
6. **You may or may not want to announce your ruling from the bench, and if you do rule from the bench**, you may not want to say any more than you find the evidence, which is clear and convincing, sufficient or insufficient to grant the petition. Then you may want to write the specific findings and orders yourself so you can include sufficient details regarding the evidence presented and credibility findings from the hearing. **This is very important for purposes of any appeal**. If you do rule from the bench and require DHS' attorney (or the attorney *ad litem* if the petitioner) to prepare the order, you will want to be very specific in your findings and orders for the same reasons I have previously indicated.
7. Remember, the statute requires the order to be filed and distributed to the parties **within thirty (30) days** of the date of the termination of parental rights hearing or prior to the

next hearing, whichever is sooner.

8. **At the conclusion of the hearing**, set the time and date of the next hearing and give notice to appropriate parties. **If you granted the termination of parental rights petition**, do not give notice to any parents whose rights have just been terminated; therefore, if you did terminate any parental rights, **do not announce the next hearing date and time in court and do not include that information in an written order**. You may want to provide that information to the attorney *ad litem* and DHS' attorney in writing, after the hearing. It is often helpful to set several review dates at this time and provide notice of all those dates.

If you do not grant the termination of parental rights petition, set the time and date of the next hearing and give Orders to Appear to all parties present.