

The First 90-days of a Child Welfare Case

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Overview

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Detention Hearing

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Issues

Legal Options

Standards of Proof

Framework

- There may be practical, procedural, or systemic reasons why some practice tips we will share with you today may not work for you in your current jurisdiction.
- Utilize what you can, getting creative where possible, and create goals to work towards for those things that are not possible immediately.
- Child Welfare is a dynamic area of practice that is constantly growing based on the evolving research and priorities of the communities we serve.
- As an attorney, your role is both to advocate for your client's legal position, while also provide sound advice and counsel so your clients understand the options and consequences of each choice when they make it.

Presumptions

Children grow up best with their parents

Most children want to be with their parent;
Most parents want to raise their children

If a child cannot be safely maintained with a parent, we should begin planning for reunification immediately

“We are looking for passing grades here, not straight A’s”

David B. v Superior Court (2004) 123 Cal. App. 4th 768, 790

Pre-Detention Hearing: CRC 5.670; WIC 319

Minor's Counsel

- Establishing Rapport
- Explaining Your Role
- Establishing Client's Position
- Explaining Your Client's Rights
- Setting Realistic Expectations
- Asking About Relatives/NREFM

Parent's Counsel

- Voluntary Contract? Or Petition?
- Explaining Your Role
- Establishing Client's Position
- Explaining Your Client's Rights
- Setting Realistic Expectations
- Asking About Relatives/NREFM

Covid-19 and Unique Challenges During a Global Pandemic

<https://www.naccchildlaw.org/page/CoronavirusCOVID-19>

https://www.americanbar.org/content/dam/aba/administrative/child_law/conducting-remote-hearings.pdf

Communicating with a Minor Client: WIC 317

1

Each child is unique;
Pay attention to age
and developmental
development

2

Find the best meeting
milieu available. In
person meetings are
the best: find a
private, quiet space
that doesn't feel too
closed in for the
child; if meeting on
the phone or video
call be mindful that
establishing rapport
may be more difficult

3

Explain your role in
age appropriate
language

4

Listen to what they
want and why

Validate their feelings

5

Be realistic and
honest about what
you're capable of and
what your do/do not
know

6

Emphasize that the
Judge makes the
decisions to remove
this burden from
them

Detention Hearing Issues: WIC 350 and...

- ICWA: Title 24 USC 1901 et. seq.; WIC 224.2(a)
- Parentage: FC 7611, 7540
- Temporary Placement
 - Parent? WIC 318(f)
 - Relative?
 - NREFM?
- Visitation/Parenting Time for any parent not receiving temporary placement
- Sibling Contact if not placed together
- School of Origin
- Voluntary Services: Early engagement & participation is important
- Allegations: willful, neglectful harm or failure to protect?

Detention Hearing Issues Con't: WIC 355.1, CRC 5.680

- Standard of Proof: Prima Facie Evidence
 - Burden is on the Dept but this is the lowest standard of proof in a legal proceeding.
 - (a) *Where the Court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent who has the care or custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300.*
- Does the language state a cause of action under WIC 300?
- Did the Dept meet their obligation for Reasonable Efforts? WIC 319(f)(1)
- Pros and Cons of having a contested detention hearing

Collaboration

- Minor's Counsel: What does the child need to happen to be safe in the care of a parent?
- Parent's Counsel: What steps can be taken immediately to mitigate the risk?
- All Counsel - talk to each other. Brainstorm options to mitigate the risk to the child being with the parent. What happened? Are there things that can be done right away? Removal, even from a dysfunctional, unhealthy, abusive, or neglectful situation is traumatic - can we reduce that trauma?
- Ask what has been tried already - what went wrong? Is there something else available to try?
- Who is available in the family's support network to help?

Out-of-Home Detention:

Discretions

Most jurisdictions allow for “discretionary orders” giving the Dept the ability release the child to a parent (sometimes with consent of minor's counsel or notice to counsel as a prerequisite to the Dept exercising this discretion); release to an approved relative, allow unsupervised visits, overnight visits, and/or weekend visits without having to return to Court for an additional order

Visitation

Request as much visitation as possible.

Request that relatives and nrefm be evaluated as visitation supervisors (if unsupervised visits are not approved at detention) to allow for as much visitation as possible

Safety Plan/CFT

Ask that the Dept work with the family to develop a safety plan that could help mitigate the risk factors

If not standard practice in your jurisdiction, ask that a Child and Family Team Meeting (CFT) be held to discuss the current risks and try to develop a plan to address them

Between Detention and Juris

Explain next steps and what the client should be focused on; Make Lists

Communicate with Counsel regarding status of the case and what is still needed

- Ask about CFTs and Provider Referrals.

Meet with your client outside of court, after they have had time to process what's happening

Investigate Client's Position; Gather available evidence

Placement: WIC 319(g)

- **Statutory Preferences:**
 - 1: Custodial Parent
 - 2: Non-Custodial Parent
 - 3: Approved Relative (Given preference 319(h)(2))
 - 4: Approved NREFM
 - 5: Resource Family (aka Licensed Foster Home)
 - 6: Congregate Care (aka emergency shelter, homelessness prevention shelter, STRTP*)
- *Note: STRTP has additional requirements before placement can be ordered
- “Approved” means the relative/nrefm has successfully completed the RFA process.
- If placement is to #5 or #6 above, preserve the issue to continue to look at relative/nrefm options for the child until they can reunify with a parent

Visitation: WIC 362.1(a)(1)

- The power to regulate visitation between the parent(s) and the child rests with the juvenile court (In re D.P. (2020) 44 Cal App 5th 1058, 1070).
- Visitation must be as frequent as possible, consistent with the well-being of the child
- Ask for a copy of the visitation schedule so that you can answer your client's questions about when, where, how (in person, virtual, includes phone calls or doesn't, etc).
- Get creative about contact to allow for as much as can safely be done. E.g., school activites?, family events?, extra-curricular activities? Medical/dental appointments?

Services: 361.5(a)

- The juvenile court is required to order the dept to provide reunification services to the family.
- Services should be tailored to the families needs
- Staggering services so as not to overwhelm the family
- Participation in these services is voluntary but should be encouraged
 - Caveat: Drug testing may or may not be helpful to the parent's case; Consider requesting an order that results may not be used for jurisdiction if drug testing is requested

Jurisdiction: WIC 355

- Truth of the Allegations in the petition or any amended petition
- All parties have an independent trial right
- All counsel have a duty to inform the client (regardless of age) of their trial rights and the option to set a trial, submit the matter to the court without additional affirmative evidence, or admit the allegations (rarely a good idea)
- Other considerations at the Juris hearing include:
 - ICWA
 - UCCJEA
 - Any unresolved parentage questions

Disposition: WIC 360, WIC 361

- Declaring the child a dependent child
- Where will the child be placed?
- Will the parents be offered services to reunify?
 - If not, why? WIC 361.5(b)(1-17)
- What services will be ordered?
 - Parents
 - Minors
- Do educational rights need to be limited? Ed Code 56050; WIC 361(a)(4)(A)
 - Who will hold them?

David B. v Superior Court

- *The parents who come through the dependency system are more in need of help than most. If we are lucky, they are parents who can learn to overcome the problems which landed their children in the system, and who can demonstrate the dedication and ability to provide for their children's needs in an appropriate manner. They will not turn into superstars, they will not win the lottery and move into a beachfront condo two blocks from a perfect school. ... There are times when we must take a step back and make sure that we are not losing sight of our mandate. We are looking for passing grades here, not straight A's*

Thank you! For more information and resources please reference: Seiser & Kumli California Juvenile Courts Practice and Procedure. Published by Lexis/Nexis and updated annually.

QUESTIONS??