

# Judicial Expectations for Court Appointed Special Advocates

Honorable Judge Erika Sanders  
Illinois Fourth Circuit Juvenile Court



# Overview of a JA case



# Think like a parent

- Think like a parent within the confines of the law and the constitution!
- Speak in plain terms – so that parents and kids can understand what you're saying.



# The Petition for Adjudication of Wardship

Can be filed by anyone but must be prosecuted by the State's Attorney.

Anyone can request the filing of the Petition, but it's usually DCFS, an intact worker or a police officer that has the evidence to support the request.

Must contain enough information to allow the parent (i.e. parent's attorney) to know and understand the allegations (civil pleading rules)

Statute and case law define what constitutes abuse/neglect/dependency.

# Two paths to Permanency - CUS

Petition is filed when the children remain in the home – continuance under supervision.

Abuse and neglect does not rise to a level requiring removal from the home.

Order for intact assessment, unless intact is already in the home.

CUS order should contain a provision that parents comply with intact and intact service plan

CUS order should contain a provision that DCFS provide intact services

Review at least every 90 days.

# Two paths to Permanency: Shelter Care

There must be a temporary custody hearing within 48-business hours of shelter care.

Emergency hearing.

Hearsay admissible, but there must be live testimony from DCFS/intact/law enforcement.

Guardian ad Litem must be appointed and provided with information necessary to make a recommendation. GAL must be active participant: opportunity to cross examine and call witness and provide recommendation.

Parents should have opportunity to be cross examine, testify, call witness and otherwise be heard.

No due process violation to not appoint attorneys at TC, but it is best practice.

Court decides whether there is probable cause that minors were neglected/abused and that there is an immediate and urgent necessity that the minor be placed in the temporary custody and guardianship of DCFS.



# Temporary Custody Court Findings

Court decides whether there is probable cause that minors were neglected/abused and that there is an immediate and urgent necessity that the minor be placed in the temporary custody and guardianship of DCFS.

Court must determine whether reasonable efforts have been made to avoid removing the children from the home or if no efforts could be made to alleviate the risk to the child.

# Time period between Temporary Custody and Adjudicatory Hearing

Parents meet with their lawyers

The Investigator “hands off” the case within 7 days to the caseworker.

The parent/child visitation plan and sibling visitation plan (if necessary) is filed within 10 days.

A pre-adjudication report is filed using the template prior to the next court date.

Local CASA Program may be appointed, Local Program assigns a Volunteer Advocate.



# Pre-Adjudication Report

Most important time period in the life of the case and in the child's life. Is child safe? How has child adjusted?

Opportunity for DCFS to document reasonable efforts and compliance with court orders

Lessons courtroom time and the necessity of questioning DCFS about placement

Have referrals been made to services?

Have foster parents been provided necessary information?

Have parents been contacted by caseworker and are they willing to engage in services?

Hearing must be held within 90 days of TC or service of last parent, whichever is later.

I don't wait on service of a father who has not been in the child's life

This is the hearing where the State must prove the allegations in the petition "by a preponderance of the evidence."

The issue is whether the child has been abuse/neglected. The State does not have to prove who, or which parent abused or neglected the child (i.e., shaken baby case)

## Adjudication

# Continuance of the Adjudication Hearing

Hearing may be continued for 30 days after a written motion has been filed in advance of the hearing. Court must make written findings that good cause exists for the continuance.

If the hearing is not held within statutory time limits, a parent's attorney can file a Motion to Dismiss. The Statute mandates dismissal without prejudice.

State can begin the hearing and then ask that the hearing adjourn until another date.

# Dispositional Hearing timing/purpose and reports:

- Must be held within 30 days of adjudication, unless good cause exists to set later.
- Must not be held more than six months post temporary custody order.
- To determine what future actions are in the best interest of the child – 705 ILCS 405/2-27.
- Should the child be a ward of the Court?
- All evidence that is useful in determining dispositional issues.
- Hearsay is admissible to the extent that its probative value
- Dispositional report prepared by DCFS/private agency or CASA.

# Dispositional Report

- Must include information concerning the child's physical and mental health, family situation and background (economic status, education employment, personal history, prior court involvement)
- Any other information helpful to the Court.
- Specific information about referrals to services and engagement – parents and children.
- What information would you want to know about your children if they were in foster care?
- **CASA Report**
- Reports from counselors and evaluators
- Reports from foster parents
- Case Aid Notes

# Ward of the Court

- Only after having been made a ward of the Court may the Court issue an order which affects the future conduct of parents, to include whether they have custody and guardianship of the child.

# Dispositional Orders: 2-23

- Minor must be made a ward of the court in order to enter a dispo order.
- A dispo order is intended to serve the best interests of the child and to give parents fair notice of what they must do to retain their rights to their child.
- Court is limited by the choices outlined in the Juvenile Court Act.



# Kinds of dispo orders

- Restored to custody of parents 2-21(1)(a)(3).
- Court must order parents to cooperate with DCFS and comply with terms of an aftercare plan or risk loss of custody and possible termination of rights.
- The Court shall not return home an abused, neglected or dependent minor to the parent that caused the abuse/neglect until the court conducts a hearing and determines that the parent is fit to care for the minor and will not endanger the minor's health or safety and that return home is in the minor's best interest. 2-23(1)(a) and (b)
- Court may split custody and guardianship – i.e. custody to parents, guardianship to DCFS.
- 2-23(2) Unless expressly provided in dispo order, it does not operate to close the case, but is subject to modification until final closing and discharge of the case under section 2-31.

# Visitation

- Court has authority to enter any orders, including visitation orders, “necessary to fulfill the service plan.” 2-23(3) (iii). Court may decide whether visitation should be supervised. Court may require a hearing before DCFS grants supervised visits. Court may permit former foster parents to visit with child who is still a ward of the Court if the Court determines that it is in the best interest of the child. In re Ashley . 212 Ill.App.3d 849 (1<sup>st</sup> Dist. 1991).
- Court may modify or suspend visitation at any time. In re A.A., 315 Ill.App.3d 950 (4<sup>th</sup> Dist. 2000). Court may suspend visits between child and a parent for an indefinite period of time. 1-3(8)(b); 2-23(3)(iii)

# Regarding Placements, Services and Service Providers

- **Court cannot:** order specific placements, specific services or specific service providers. Court may only order a specific placement if a parent/guardian makes a motion for restoration of a child to their custody and the foster parents are allowed to intervene for the purpose of the asking that the child remain in their care. 1-5(2)(b).

# Regarding Placements, Services and Service Providers

- **Court may:** order DCFS to develop and implement a new service plan or to implement changes to the current plan.
- If after receiving evidence, the court determines that the services in the plan are not reasonably calculated to facilitate achievement of the permanency goal, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. Court shall order DCFS to develop and implement a new service plan or to implement changes to the current plan consistent with court's findings. The new plan shall be filed and served on the parties within 45 days of the order. The matter shall be continued until a new service plan is filed.
- **Court Should** Consider child's preference. -- where appropriate 705 ILCS 405/2-27(1.5).

# Regarding Placements, Services and Service Providers

- **Court shall:**
  - \* Enter any other order necessary to fulfill the service plan, including but not limited to:
  - orders requiring parties to cooperate with services; restraining orders controlling the conduct of any party likely to frustrate the achievement of the goal; and visitation orders.
  - \* review the “Sibling Contact Support Plan” developed per 7.4(f) of the Child and Family Services Act. 2-23(3)
  - \* Admonish Parents:
    - “Cooperate with DCFS, comply with service plan, correct the conditions that led to the child’s removal or risk termination of parental rights.” 2-22(6) or 2-23(1)(c) This admonishment should still be given when guardianship is granted to the fit parent because the dispo order is still modifiable. 2-23(1)(c). In re Austin W., 214 Ill.2d 31 (2005).
  - \* set the first permanency hearing - At conclusion of the dispo hearing, Court must set the first permanency hearing. The first permanency hearing must be held within 12 months of the date temp custody was taken; or within 30 days of the date the rights of both parents were terminated at the first dispo hearing per 2-21(5)
  - \* Enter findings and basis for findings in writing.

# Regarding Foster or Relative Placement:

- \* 2-23(3.5) Court can find that current or planned placement is not necessary or appropriate. Court shall make put in writing factual basis for the finding. Court may order DCFS to remove a child from a specific foster home and to select an alternative (non-specific) placement.
- \* If court makes finding that current or planned placement is not necessary or appropriate, court may order DCFS to implement a recommendation of the minor's counselor or a clinician contracted by DCFS to evaluate the minor or a recommendation of the DCFS.
- \* DCFS has the authority to remove the minor if a change in circumstances necessitates the removal to protect the minor's health, safety and best interest. DCFS must notify the parties of the planned placement change no later than 10 days prior to the change unless placement change must be done immediately. In that case, DCFS must notify parties of the decision in writing immediately following placement change.
- "The Department shall notify others of the decision to change the minor's placement as required by Department rule."

# “Non-Offending” parent

- If at the dispositional hearing, the court grants custody and guardianship of the minor to the parent that did not have custody or control of the child at the time that the abuse and neglect occurred, before making said decision, the Court must:
  - 1. The Court must hear evidence on the issue of what disposition will best serve the “health, safety and interests of the minor and the public;
  - 2. Find that it is in the best interest of the Minor that he/she is made a ward of the court (this confers dispositional powers on the court per the Act: Section 2-23(1) and 2-27);
  - 3. find the parent is fit, willing and able to parent the child; and
  - 4. The Court must also make a best interest finding
- If the Court does not make the child a ward of the Court, the Court cannot grant custody and guardianship to anyone, to include a “non-offending” parent.
- If the court finds that only one parent was responsible for the circumstances that resulted in the finding of abuse and neglect, the child’s other parent is entitled to be awarded custody over the interests of a third party, provided the non-abusive parent is otherwise fit, able and willing to care for, protect, train and discipline the minor. In re S.S., 313 Ill.App.3d 121 (2<sup>nd</sup> Dist.) See In re X.S., 2012 IL App (4<sup>th</sup>) 120369



# Lawyers' duties

Compare the services that are recommended in the service plan and the recommended services in the Integrated Assessment (IA) with services and assistance that parent is receiving?

- Is parent getting a sufficient amount of treatment?
- Does parent have trouble getting transportation?
- Has parent been referred to MAT?
- Is parent getting to visit with the child
- Is child getting needed services?

# Permanency Hearings

- Must be held every six months
- Status hearing should be scheduled in between permanency hearings (three months) or more often to address a specific problem
- Report and service plan must be filed 14 days prior to the permanency hearing
- CASA Report

# Judge's Responsibilities and Obligations in Courts



Judges have a responsibility to use the information provided to them in court, through reports and testimony, to make an informed decision about the future of a child.

This is why CASA and GAL reports are so important, and the information in them is so useful to courts.

# How CASA Reports are Helpful to Judges

- Helps determine the mental and physical health of the child by gathering information from medical and mental health providers and obtain copies of all relevant medical and hospital records;
- Offers information regarding the child's behavior in school and interaction with parents. Review and obtain copies of the child's school records;
- Insight to the living conditions of each parent and the child's sleeping arrangements when volunteers share facts in report;
- Shared communication with your local Children Services agency and other direct care providers. Confirm when child has been removed from the home and ascertain how the child is adjusting to current placement;
- Confirmation of names, addresses and telephone numbers of parents and care providers;

# Duties that Court Appointed Special Advocates shall perform

Become informed about the facts of the case and contact all relevant persons;

Observe the child with each parent, foster parent, guardian or physical custodian;

Speak with the child, if age and developmentally appropriate, where no parent, foster parent, guardian or physical custodian is present;

Visit the child every thirty days;

Ascertain the wishes and concerns of the child;

Meet or call parties, foster parents, guardians, physical custodian and other significant individuals who may have relevant knowledge regarding the issues of the case.

# Duties that Court Appointed Special Advocates shall perform

- Meet or call relevant school personnel, medical and mental health providers, child protective services workers, and court personnel and obtain copies of relevant records;
- Obtain and review relevant, criminal, civil, educational, mental health, medical and administrative records pertaining to the child and, if appropriate, the family of the child or other parties in the case;
- Request that the Court order psychological evaluations, mental health or substance abuse assessments, or other evaluations or tests of the parties as the you deem necessary or helpful to the court;
- Review any necessary information and interview other persons as necessary to make an informed recommendation regarding the best interest of the child;
- Make reasonable efforts to become informed about the facts of the case and to contact all parties;
- Determine what services are being provided to parent/family, the length of services, cooperation and completion;
- Ask the care providers for their perceptions of the child's adjustment;
- Assess the child's developmental level;

# Duties that Court Appointed Special Advocates shall perform

- Maintain a log documenting all work performed, all contact with the child, parties, witnesses, etc., and all telephone calls;
- Make sustained, independent observations and contact with the child and all relevant parties. Base recommendations on your own experience in the case not the testimony given at a hearing;
- Communicate with every child, who can do so, no less than thirty days before every court hearing;
- Submit a comprehensive record of contacts to the court at each hearing you have made during your information gathering including but not limited to children, parties, foster parents, school personnel, medical and mental health providers, Children Services caseworkers and any individuals with significant and relevant knowledge regarding issues in the case;
- Ascertain the interests of every child taking into account the child's age and maturity, the need to provide the child with a safe home and the need for family preservation and permanency planning;



# Hearsay and CASA reports



When do statements made by others such as biological parents, foster parents, medical personnel, law enforcement and counselors come into evidence?

Can you rely on these statements when preparing your report?

# Testifying in Court

Take your time. Your response is not being timed. It's ok to take a pause;

Speak honestly, with confidence.

If you don't know the answer to a question it is ok to say "I don't know," "I can't answer your question," or "May I refresh my memory and review my report?";

If you are asked rapid fire, difficult questions, answer them to the best of your ability.

You've worked hard and care about the child in your case.

Let that show.



# Contents of CASA Reports for Permanent Custody Hearings

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child including:

- whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period

or

- the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period in another state;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

# Real Life Questions and Answers

