# STAGES OF D&N PROCEEDINGS and LITIGATION

Anna Ulrich ~ Attorney at Law
Alison Bettenberg ~ Managing Partner, BSM

# TEMPORARY CUSTODY HEARING

- Various Names
- Appointment of Counsel
- Timing
- ICWA issues
- Notice
- Jurisdiction
- Venue
- Parties
- Advisement
- Relative Affidavit

# Temporary Custody Hearing: Burden and Elements

- Burden of Proof: Preponderance of Evidence
- Any Relevant Information Comes In
- Child's Safety and Welfare Paramount
- Best Interest
- Reasonable Efforts
- Purposes of Children's Code

# Temporary Custody Hearing: Possible Outcomes

{

- Remain in home
- Legal Custody of DHS/Foster care
- Legal Custody of DHS/Kinship
- Legal/Physical Custody of Kin
- Visitation
- Sibling Issues

# Indian Child Welfare Act, 25 USC §1901 *et seq.*

{ Special Issues particularly at removal hearing (and termination of parental rights)

# Pre-Adjudication Reviews/Hearings

- Various Hearings between First Appearance/Temporary Custody Hearing and Adjudication Hearing
- Local Practice
- Notice
- Potpourri

Information Presented and Outcomes:

- Advisement or Admission/Denial
- Pre-Trial Conferences
- Settlement Conference
- Motions Hearings

# Pre-Adjudication Reviews/Hearings

# Adjudication

- Purpose
- Timeframes
- Notice

Non-Trial Resolution of Adjudication

- Default Adjudication
- Summary Judgment
- Dismissal of Petition
- Continued/Deferred Adjudication

# Adjudication

- **Parent Admits**
  - Voluntary, Understand Rights and Effect of Admission
  - Admission by one parent not necessarily dispositive of adjudication as to other parent
  - If one parent admits, and other is successful at trial, court no longer has jurisdiction

- **Parent Denies**
  - Trial to Jury or Judge
  - Jury of 6
  - Voir Dire: 3 preemptory challenges each side
  - Jury Instructions
  - Special Verdicts/ Interrogatories
  - Motions for Directed Verdicts/ Motion for Judgement Notwithstanding the Verdict

*Adjudication Order final and appealable UPON DISPOSITION*

# Adjudication: Burden and Elements

- Preponderance of the Evidence
- Definition of Dependent and Neglected Child, C.R.S. § 19-3-102
  - Abandonment; Abuse or Mistreatment; Lack of Proper Parental Care; Injurious Environment; Neglect; No-fault; Beyond Control of Parents; Testing Positive at Birth; Habitual Abuse
- *Interest of J.G.*, 2014 COA 182
  - Requirement for fault and fitness

*Pre-trial motions
*Amendments to Petition
*Made "As To" the Child [*J.G.* ?]
*Prospective Harm ok
*No exclusionary rule
{ *No privilege against self-incrimination

**ADJUDICATION**:

Information/Evidence Presented

Litigation Strategies

# Disposition/Adoption of Treatment Plan

- Burden of Proof: Preponderance of the Evidence
- Treatment Plan Components-Reasonably Likely to Render Parent Fit in Reasonable Period of Time
- Final, Appealable Order

Timeframes

Notice

Goals:

What disposition serves best interest of child and public? What treatment plan components are appropriate to meet needs of child and family?

# Disposition/Adoption of Treatment Plan

**No Appropriate Treatment Plan** (proceed to termination)

- Abandonment
- Emotional/Mental Illness/Mental Deficiency-Severe and Sustained
- Serious Bodily Injury or Disfigurement
- Extended Incarceration
- Sibling Injury, Death
- Habitual abuse
- Pattern Sexual Abuse
- Torture or Cruelty

**Adoption of Treatment Plan** (reunification possible)

- Appropriateness
- Specific to Family
- Culturally Competent
- Consider Reports
- Services for Children
- Include Special Respondents
- May be Amended Later

# Reviews: Treatment Plan Compliance/ Placement Reviews

{ Hold parties accountable for the timely completion of their responsibilities under treatment plan and address barriers to completion

- Timing
- Notice
- Overlap with Administrative Reviews and Permanency Planning Hearings
- Issues to Address:
  - Continue Out of Home Placement; Reasonable Efforts; Procedural Safeguards; Safety; Plans towards Permanency; Treatment Plan Compliance; Return Home Date; Sibling Issues; ICWA Compliance; EPP Deadlines; Visitation; Independent Living or Emancipation Plan; Family Finding/Diligent Efforts

# Post-Adjudication Reviews

# Permanency Hearings

- Timing
  - In EPP cases hearing within 90 days of dispo
  - Non-Epp – as soon as possible but not to exceed 12 months after placement out of the home (Check Local Practice)
- Notice
  - Notice required including to placement
- Considerations
  - Child's positions and participation
  - Reasonable Efforts to finalize Perm Plan?

# Permanency Goals

- Return home
  - Usually is one or the primary goal at the 1st Permanency Hearing
- Adoption
  - Relative or non-relative
- Allocation of Parental Responsibilities or Guardianship
- Other Planned Permanent Living Arrangement (OOPLA)

- Resources
- Burdens of Proof/Standards
- Termination Criteria

# Termination of Parental Rights Hearing

- Can occur while parental rights are intact or post termination
- Relatives and kin investigations
  - Note Request for Placement by Relative must be received by the Court 20 days after motion for termination is filed - C.R.S. § 19-3-605
- Sibling presumption
- Best interest of child is standard, preponderance of the evidence is burden
- Know ICWA placement preferences if ICWA case
- What is the child's position, do they want to be present at the hearing?

# Placement Hearings

# Placement Hearings

- Notice requirements when combined with a permanency hearing or if an ICWA case
- See findings in GRID H139
- Consider whether case is compliant with Permanent Home Finding under C.R.S. § 19-3-703, my require a Permanent Home Hearing
- If the order does not change temporary legal custody of the child it is not a final appealable order
- If entered by the Magistrate, you can review

## Allocation of Parental Responsibilities

- APR entered and certified into a DR case for later review or modification
- What Should be in an APR Order?
- Child Support
- Pro's and Con's

## Guardianship

- Can be entered in D&N
  - Child over 12 can propose their guardian
- Reporting requirements
- Financial Responsibilities
  - Subsidized options?
- Modification issues

# Less Drastic Alternatives

# Adoption

- Celebrate the Forever Family!
- DHS may assist in paperwork process
- GAL may be involved in the Adoption Assistance portion (previously known as a subsidy negotiation)
- Ensure the necessary findings can be made (this should occur during D&N case)

- Contact Information:
  - Anna Ulrich
    ulrichanna@gmail.com
    (719) 849-8976
  - Alison Bettenberg
    abettenberg@bsmlawfirm.us
    (303) 952-4949

# Questions?