Independent Investigation & Advocacy

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Independent Investigation & Advocacy

- The Objectives for Today
  - Why do We do an Independent Investigation?
  - Defining the Independent Investigation
    - What is required under the CJD?
    - Strategies for specific parts of the investigation
  - How can you tie your Independent Investigation into Effective Advocacy

Why do We Do An Independent Investigation?

- Legislative Declaration – C.R.S. § 19-1-102
  - Secure care and guidance for each child, preferably in his own home
  - Preserve and strengthen family ties whenever possible, including improvement of the home
  - To remove children only when his welfare and safety require
  - Speedy legal determination that serves the child's best interest
  - To secure for any child removed from his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of society, to be guaranteed a placement in a secure and stable environment and to not be indiscriminately moved from foster home to foster home and to have assurance of long-term permanency planning
  - For EPP cases to adopt expedited placement procedures

Why do We do An Independent Investigation?

- The legislature decided children have a special need for representation of their interests in this process and requires a GAL be appointed in D&N cases
  - Why not the parents?
    - Their actions or omissions are why we are here, they weren't acting in their child's best interest to end up in this position
  - Why not the Department?
    - The Department is the prosecutor
    - The Department is the service provider
    - The Department serves the whole family
    - The Department has financial considerations

What is required under the CJD for the Independent Investigation?

- GAL shall attend all Court Hearings or have court approved, appropriate coverage
  - The GAL's appearance IS required
  - Coverage issues
- The GAL or qualified appointee shall complete the following:
    - Personally observing with and observing the child's interaction with the parents or proposed custodian
    - Personally meeting with and observing child at home in each placement
        - Initial visit in 30 days of appointment
        - placement moves within 30 days
    - Personally interviewing the child

What is required under the CJD for the Independent Investigation?

- The GAL or qualified appointee shall complete the following (Cont'd)
  - Reviewing court files and relevant records, reports and documents
  - Interviewing (with consent of counsel) the Respondent Parents
  - When appropriate, visiting the home from which the child was removed
  - Confirming that the county department's investigation has included a search for any prospective kinship placement and/or adoption or potential tribal affiliation
  - Interviewing other people in the child's life necessary to assess and serve the child's best interest
    - NOTE – interviewing/contact with Therapist & LAN issues

Home Visits

- TIME REQUIREMENTS
  - Visiting the Child in their placement within 30 days of appointment is REQUIRED by the GAL
  - Visiting the Child in a subsequent placement within 30 days of the move is REQUIRED by the GAL (Note – there is a qualified appointee exception to allow more time)
  - **Develop a tracking System for Visits**
    - Use CARES 30 day report

Home Visits – What are You Looking For?

- Home Visits in Out of Home Placement:
  - Can be foster care, relative or kin homes
  - Opportunity to meet with child to see them in their home environment to get a better idea of what the child needs, wants and likes to develop rapport
  - Meet with child to ascertain what they want, in an age appropriate manner
  - Assess for whether it is an appropriate short term or long term placement
  - Assess any safety issues
    - What factors impact whether there are safety concerns

Home Visits – What are You Looking For?

- Home Visits where Children are at home
  - Assess whether the concerns that brought the Petition are still present
  - Assess compliance with safety plans if one is in place
  - View the home for safety issues
    - What happens if you discover safety issues?
  - Meet and observe the child in the home and
  - Meet with child to ascertain his/her wishes in an age appropriate manner

Group Trivia Question 1

- You were appointed GAL for the child, Maxwell, about 15 days ago. You know that you need to see Max in his placement but you are about to go on a two week cruise. You have a very qualified social worker that you and another GAL use in your cases, to comply with the CJD you should:
  - A) See Max when you get back, 30 days is a “guideline”
  - B) Send the social worker, she can see him in 30 days and then you can visit him within a reasonable time
  - C) contact the placement and set a visit before you leave
  - D) Call OCR and ask them to grant you an extension

Review Court Files, Relevant Records, Reports and Documents

- Court files, records and the DHS records
  - Know your Department's practice for reviewing and obtaining their file
  - Review Colorado Data Access for any related APR, Delinquency, Paternity or Truancy Cases
  - Prior DHS cases, know what your Department will request or receive, you may need to use an SDT
- Obtain and Review School Records if applicable
- Obtain Mental Health Records if applicable
- Obtain and Review Medical Records if Applicable

Meeting and Interviewing Parents

- Meeting with the parents can provide valuable information about the child
- This is an opportunity to engage parents in the process. If you give them the opportunity to meet with you and discuss the case and their progress, they are often better able to hear your concerns about them in Court or meeting settings
- Parents are a resource for relative options Meeting with the parents helps assess the best case planning for the child
- You should also be talking to their treatment providers and requesting the parent to sign a release for that to happen
- Note- Their counsel needs to consent to you meeting with them without counsel, know your local practice around this

Group Trivia Question 2

- You have learned of some concerns about Max's parents and their compliance with their drug treatment and UA's, in order to complete an independent investigation
  - A) You should disregard what the caseworker tells you and only get information from the treatment provider
  - B) You should only talk to the parent about their compliance and not talk to the caseworker or treatment providers
  - C) You should talk with the caseworker, treatment providers and parents
  - D) None of the above, the parents compliance is really not relevant to the GAL's role, that is a department issue

Interviewing others in the child's life

- Caregivers
- Neighbors
- CASA
- Teachers
- Other school personnel
- Therapists **L.A.N**
- Caseworkers
- Parenting Time Workers
- Relatives
  - Siblings
  - Grandparents
  - Extended Family
  - Close family friends that the child identifies as family
  - God parents

Group Trivia Question 3

- You are looking into whether the department has done due diligence to locate appropriate family, to comply with your independent investigation into family you should
  - A) Locate and obtain a copy of the relative affidavit
  - B) Contact the caseworker and obtain any other names, addresses of relatives they have investigated
  - C) Talk to the child about any placement options
  - D) Spend some time looking on social media for names you have received
  - E) All of the above

Family Finding Efforts

- Basic Tools
  - Relative Affidavit
  - Relatives the parents provide or propose for placement
  - Relatives who appear at meetings or court
  - Genograms
  - The child
- Advanced Tools
  - Social Media Searches
  - Internet searches
  - Contacting relatives from those searches
  - Letters, instant messages or other electronic contact with any relatives discovered
  - Cooperation & Sharing of information with dedicated family finding workers at DHS

Continuing Independent Investigation

- The obligations continue throughout the duration of the case
- Most D&N's are far from straightforward
- Placement decisions and issues come up at various intervals requiring continued investigation
- Child's needs and wants are ongoing

Group Trivia Question 4

- You have represented Maxwell for the last nine months, a motion to terminate has been filed at today's hearing. Aunt Sally appeared and expressed her interest in being a placement, the court advised her that she needed to file a written request with the court which she did after the hearing. During the first three months you and the department worked very hard to find relatives and even contacted Aunt Sally at what was apparently an old number and had not heard from her until now when Mom called her and told her the state was "taking her baby for good."

Group Trivia Question 4

- A) You should tell her too little too late, we have found a permanent home for her with a foster family
- B) You should talk to Aunt Sally and get a better understanding why she didn't come forward earlier
- C) You should investigate her for a placement option, run the background checks you can and ask the Department to run TRAILS and fingerprints and conduct a home visit as soon as possible
- D) You should consult with the Department to more clearly ascertain what they did to reach Aunt Sally
- E) B,C and D

TURNING YOUR INDEPENDENT INVESTIGATION INTO ADVOCACY

Advocacy

- Out of Court Advocacy
  - Your independent investigation should enable you to accomplish things outside of court
    - Being independently informed of what is occurring in placement, school, therapy allows for you to advocate for things that the Department may not agree to for various reasons or that they were unaware of
  - Communication about what information you learn from your investigation allows the Department to have the opportunity to consider whether they are going to follow your recommendations or agree to what they purpose
    - If you have information that would damage the Department's position you probably should share it rather than surprise them in a hearing.
  - If you have a proposal for something related to the parents ensure you are communicating with their counsel

Advocacy

- Out of Court Advocacy Continued…
  - Being aware of who the chain of command is at the Department and other service providers if you need to make requests to higher up people
    - NOTE – don’t just jump to the top, follow their chain of command
  - Attempting to resolve this out of Court is preferred but there is a judge for a reason, if you need to seek Court intervention be respectful.
  - Include the County or City Attorney and RPC in discussions if you are intending to request orders, etc. at the hearing (avoid having them hear this the first time on the record)

Group Trivia Question 5

- After talking with the parents treatment providers, you learn they have made more intensive treatment recommendations for the parents. The parents also tell you they need this level of treatment and would participate. The caseworker advises that it is the department's policy to have a parent try a lower level of treatment first and fail before moving to more intensive treatment so they will not agree to the funding at this time. You are concerned about how this will increase the length of time the parents would need to reunify with Max. You tell the caseworker you would like to have a hearing on this, the caseworker will likely:

Group Trivia Question 5

- A) Perceive your request for a hearing as a threat.
- B) Exhibit confusion as to why you are second guessing the services the department is approving
- C) Get a supervisor or administrator to confirm that this is the department policy
- D) Assume that her position will be followed at a hearing
- E) All of the above

Advocacy

- Reporting to the Court
  - Things to Consider
    - What is the local practice for what the judge wants to hear and what order do parties address the court?
    - What objectives do you have to address
    - Do you have issues with what the Department is asking for?
  - What GAL Record Should Include
    - Most Recent Face to Face Contact
    - Any concerns or issues with placement or if child is doing well
    - What the child wants and why, and address why they are not present if they are not there

Advocacy Continued

- The GAL record in Court Continued..
  - Address any investigation into relatives that you have completed and your conclusion or recommendations
  - Address any concerns with the parent’s progress in relation to the time in the case and suggestions for any services that might better serve the parents needs and the possibility of reunification
  - Agreement/disagreement with recommendations, permanency plans or information in report

Advocacy Continued

- Investigation may be basis for various motions
  - Placement Motions
  - Motion to Terminate Parental Rights
  - Motion for Allocation of Parental Responsibilities
  - Reasonable Efforts Motions
    - Review Group Trivia Question 3….is there a reasonable efforts issue?

Group Trivia Question 6

- You have now decided that Aunt Sally is an appropriate placement and that the reason she was not involved related to the fact that the caseworker only actually called once and the number she gave you was incorrect but the caseworker also had Aunt Sally's daughter's number but didn't provide that to you or call her to see if Aunt Sally or her daughter were an option. You are concerned that little Maxwell will struggle with a move so you don't know what to do

Group Trivia Question 6

- A) You should contact OCR and determine if you could obtain expert witness fees to hire an attachment expert to see whether a move would be in Maxwell's best interest
- B) You should explain to Sally that unfortunately because the caseworker didn't do her job that we are late in the case so there is nothing we can do
- C) You should explore doing some visits with Maxwell and Aunt Sally
- D) You should see whether the Department has done an investigation into Sally and whether they are also considering her for placement
- E) A, C, D

Objectives Re-Visited

- Why do we do an Independent Investigation?
- What is required in that investigation under the CJD?
- How do you use your investigation in advocacy?