



OKLAHOMA

Family Representation and Advocacy Program

Understanding Juvenile Deprived Court

The information contained in this presentation is for educational purposes only.

This is not legal advice.



Introduction

- ▶ Family Representation and Advocacy Program (FRAP)
 - ▶ Ensuring uniform and high quality legal representation for children and indigent parents, legal guardians, and Indian custodians in deprived child actions brought by the state pursuant to Oklahoma's Children Code.
- ▶ Gwendolyn L. Clegg
 - ▶ Director, FRAP
- ▶ Timothy Michaels-Johnson
 - ▶ Region 5 Managing Attorney for Child Representation, FRAP



Child Welfare

- ▶ A strange merger of law and social work

Non-Lawyers

- Investigators
- Case workers
- Social workers
- Therapists
- Teachers
- Etc.

Lawyers

- District Attorney
- Attorney for Child(ren)
- Attorney for Parent/Legal Guardian/Indian Custodian
- Attorney for Tribe



Understanding Roles

- ▶ District Attorney
 - ▶ Client: State of Oklahoma (not Oklahoma Human Services)
 - ▶ Interest: Responsibility to protect a child under eighteen years
 - ▶ Role: Prepare and prosecute hearings within Title 10A to assure the best interests of the child are met
- ▶ Attorney for Tribe
 - ▶ Client: Sovereign Nation of their Tribe
 - ▶ Interest: Right of the tribe to stability and security
 - ▶ Role: Advocate for Tribe's Expressed Interests



Understanding Roles

- ▶ Attorney for Parent/Legal Guardian/Indian Custodian
 - ▶ Client: Parent, Legal Guardian, Indian Custodian
 - ▶ Interest: Right to custody and control of a child
 - ▶ Role: Advocate for Client's Expressed Interests
- ▶ Attorney for Child(ren)
 - ▶ Client: Child(ren)
 - ▶ Interest: Right to a wholesome place to live, free from abuse and neglect
 - ▶ Role: Advocate for Child's Interests (Expressed v. Substituted)



Understanding Roles

- ▶ Expressed Interest Representation
 - ▶ Advocate for the child's expressed interests (regardless of best interest)
 - ▶ Default method of representation
 - ▶ No minimum age for expressed interest
 - ▶ Attorney's responsibility to maintain as normal a client-lawyer relationship with the client as possible.
- ▶ Substituted Judgment
 - ▶ "To the extent that a child is unable to express an interest, the attorney shall substitute his or her judgment for that of the child and formulate and present a position which serves the best interests of the child."
 - ▶ Use objective criteria rather than solely the life experience or instinct of the attorney
 - ▶ This is not Best Interest representation
 - ▶ Best Interest: Reasonable Person standard
 - ▶ Substituted Judgment: My Client standard

Child Welfare

- ▶ Referrals

- ▶ Everyone is a mandatory reporter
- ▶ This is an individual responsibility and there is no exception for privilege



OKLAHOMA
Human Services

1-800-522-3511



Child Welfare

- ▶ Emergency Custody hearing
 - ▶ Held within two judicial days of a child being taken into emergency custody.
 - ▶ Rules of Evidence do not apply – hearsay allowed
 - ▶ District Attorney has the burden to show a “reasonable suspicion” that the
 - ▶ Child is in need of immediate protection due to abuse or neglect; or
 - ▶ Continuation of the child in the child’s home would present an imminent danger to the child.
 - ▶ Attorney for the Parent/Legal Guardian/Indian Custodian may present evidence to rebut the State’s position
 - ▶ Witnesses
 - ▶ Documentation
 - ▶ Attorney for the Child may advocate for their client’s position (if known)
 - ▶ Court determines custody of the child pending the filing of the State’s position
 - ▶ OHS, Parent, Family Member



Child Welfare

► Adjudication

- Parent may stipulate, nonjury stipulate, or request a nonjury trial as to the allegations of the state's petition
- Nonjury Trials are held before the Judge and the Rule of Evidence apply
 - District Attorney has the burden to prove by a preponderance of the evidence that the parent has abused or neglected the child.
 - Attorney for the Parent/Legal Guardian/Indian Custodian advocates for their client's position and may present evidence to rebut the State's position
 - Witnesses
 - Documentation
 - Attorney for the Child advocates for their client's expressed interest or substituted judgment and may present evidence to support or rebut the State's position.
- Court determines if the child is a deprived child and identifies the conditions which need to be corrected. ie. substance abuse, domestic violence, mental health, neglect, physical abuse, etc.
- Emergency Custody become Temporary Custody.



Child Welfare

► Disposition

- Hearing held within 40 days of Adjudication
- OHS drafts a proposed Individualized Service Plan (“ISP”) for the parents (to assist in correcting conditions) and for the children (to assist in achieving permanency)
 - OHS is required by law to work with parents in developing the ISP
 - Parties may object and request a hearing on the proposed ISP.
 - Court can modify the ISP based upon objections of the parties.
 - Services should coincide with the conditions to be corrected articulated by the court at Adjudication.
 - Substance Abuse: Substance Abuse Assessment and follow treatment recommendations; Random Urinalysis.
 - Parents are required to pay for their services
 - Some services are complimentary
 - OHS or SoonerCare should cover expenses for child’s services.
- Court may change custody: OHS, Parent, Family member (different from OHS placement)
- Court determines the initial permanency plan
 - Reunification, adoption, guardianship, planned alternative placement, or a combined concurrent plan



Child Welfare

- ▶ Permanency (and Review) Hearings
 - ▶ Held at least once every 6 months after date of removal
 - ▶ OHS provides update on progress on ISPs and updates the court on the status of the child.
 - ▶ No rules of evidence
 - ▶ Court is required to make findings regarding:
 - ▶ Placement
 - ▶ Reasonable Efforts and Active Efforts
 - ▶ Correction of conditions
 - ▶ Compelling Reasons to NOT file a Motion to Terminate
 - ▶ Ongoing permanency plan.



Child Welfare

► Termination

- District Attorney and Attorney for the Child have authority to file a Motion to Terminate parental rights 90 days after the Disposition for failure to correct conditions.
- A variety of other grounds for termination are available
 - Heinous and shocking abuse or neglect
 - Time in custody based upon age of the child
 - Incarceration
 - Abandonment
- Only one ground for termination must be successfully proven to terminate parent rights.
- All parties have a right to request a trial by Jury.
 - Jury is 6 people
 - Termination requires 5/6 juror agree to terminate.
 - Parent or Child must convince at least 2 jurors to not terminate to avoid termination, but success does not mean the child will return home.



Child Welfare

► Permanent Guardianship

- District Attorney and Attorney for the Child have authority to file a Motion for Permanent Guardianship
- Grounds for a permanent guardianship are more limited than termination, but include failure to correct conditions and abandonment.
- Only one ground for guardianship must be successfully proven to achieve guardianship.
- Hearings on guardianship are held before the judge
 - Rules of Evidence do not apply
 - Parents may consent
 - Parental rights remain intact, but parents do not have authority to dissolve the guardianship



Adversarial System

- ▶ The system is adversarial by nature because representation and advocacy must be guided by client goals.
 - ▶ Does this method of representation further my client's goals?
- ▶ The attorney (whether for parent or child) is required to ensure their client's fundamental rights are protected and upheld.
- ▶ Client Representation requires:
 - ▶ Active engagement in the case from the beginning – getting to know your client, their strengths, weaknesses – building rapport, including regular communication to accurately advocate for your client's wishes both in and out of court.



Adversarial System

- ▶ Advocacy is key
 - ▶ In-Court Advocacy
 - ▶ Advocating for kinship/supportive placements
 - ▶ Identifying and arguing for appropriate services
 - ▶ Pushing for consistent and meaningful family time; and
 - ▶ Utilizing appropriate motion and litigation practice.
 - ▶ Out-of-Court Advocacy
 - ▶ Participating in out of court meetings and discussions: Family Team Meetings, Conferences, Staffings, etc;
 - ▶ Assisting in the drafting of the service plan – eliminating unnecessary and duplicative service and including services that will increase likelihood of success;
 - ▶ Advising and coaching clients on the variety of issues they will face during the course of their case;
 - ▶ Collaborating with OHS case workers, ICW workers, CASAs, Service providers, and other attorneys; and
 - ▶ Keeping accurate records and receipts.

Adversarial System

- ▶ An attorney must use all the methods they possess to represent their client in a deprived case. They must utilize all skillsets as counselor, litigator, negotiator, and advisor.

"In addition to vigorously investigating and defending allegations against clients, advocacy directed to achieving their multiple additional objectives serves them well. Achieving these objectives should be central to any family defense practice, especially when children enter foster care."

-Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders

Questions?

