

Child Protection Services Pro Se Help Kit

Video Series

#8 – EPC Hearing Through Disposition

Family Preservation Foundation, Inc.

EPC HEARING THROUGH DISPOSITION



- Hello, I'm Dwight Mitchell the founder of Family Preservation Foundation. Welcome to our Child Protection Services Pro Se Help Kit video series.
- I hope you enjoy the content and it allows you to better understand your rights and options while involved with CPS.

- After a 22-month battle, I successfully defeated Dakota County Social Services in Minnesota State court and had my children returned. Although filled with anguish, it was an education to say the least, and I will be passing on the benefit of my knowledge, and “Lessons Learned”, while cross referencing Minnesota State Statutes, and case law which is readily available on Google Scholar.

EPC HEARING THROUGH DISPOSITION



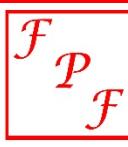
■ I would like to advise you that I am not an attorney, licensed to practice law, nor am I providing legal services. I recommend you obtain your own attorney if possible and review my video in this series titled “Working with your Attorney”. This is a very important unit in our series, and will assist you in not being misguide like I was, by my attorney’s legal strategy, incompetence and/or greed.

EPC HEARING THROUGH DISPOSITION



- This video series is for education purposes only. I will go over the beginning, middle and the end of the CPS process and what you can do in your defense and fight against CPS! This will be hard work for you, and a lot of reading, but nothing worthwhile in life is free. The Minnesota templates I provide are examples only and must not be used as is.

EPC HEARING THROUGH DISPOSITION



- You must create your own court filings while acting in a Pro Se capacity. I do not have examples of everything, but ask other group members, because they may be able to help you. **BUT REMEMBER**, you are not allowed to stand in court and say that someone helped you, or told you to do it a certain way. You are doing this for yourself. You must read, review and submit court filings for yourself.

Overview of Emergency Protective Care (EPC) Hearing Through Disposition

NOTICE OF REMOVAL



- If a child is taken into custody, the parent, guardian, or custodian of the child shall be notified as soon as possible. Unless there is reason to believe that the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, or other suitable relative.

Minn. Stat. 260C.176, subd. 1

- There is no guarantee that the child will be immediately released to the custody of a parent, guardian, or other suitable relative.

NOTICE OF REMOVAL



- When a child is taken into custody by a peace officer under section 260C.175, subdivision 1, clause (2), item (ii), release from detention may be authorized by the detaining officer, the detaining officer's supervisor, the county attorney, **or the social services agency, provided that the agency has conducted an assessment and with the family has developed and implemented a safety plan for the child, if needed.**

Minn. Stat. 260C.176, subd. 1

Pre-Hearing Detention



- In all of the families I have been involved with, or FPF group members that I have spoken to, the child has never been immediately released or a safety plan implemented. The reason is simple, the child must be found CHIPS at the very first hearing for the Title IV funding to become effective.
- *Please see the FPF training unit of Title IV funding.*

EMERGENCY PROTECTIVE CARE (EPC) HEARING



- If a child was taken into custody, the court shall hold a hearing within 72 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, to determine whether the child should continue in custody.

Minn. Stat. 260C.178, subd. 1(a)

Initial Prima Facie Showing (“at first look” or “on its face”)

- The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that:
 - a juvenile protection matter exists, and
 - the child is the subject of that matter.

Juv. Prot. R. 30.08, subd. 1(a)

Endangerment

- The court shall determine whether the petition makes a *prima facie* showing that:
- the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or
- the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

Juv. Prot. R. 30.08, subd. 1(b)(1)

Endangerment

- If the court finds that endangerment exists, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to ensure the safety of the child or others.
- If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

Juv. Prot. R. 30.08, subd. 1(b)(2)

JUDICIAL DETERMINATIONS (CONT'D)



Release

- Unless there is reason to believe the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release.

Minn. Stat. 260C.178, subd. 1(b)

It is my opinion, that if you are in court, and CPS has filed a petition against you, the child will not be released. (Never Happens)

Contrary to the Welfare

- The court may not order or continue the foster care placement of the child unless the court makes explicit, individualized findings that continued custody of the child by the parent or legal custodian is contrary to the welfare of the child.

Minn. Stat. 260C.178, subd. 1(f)

The Judge always makes explicit, individualized findings that continued custody of the child by the parent or legal custodian is contrary to the welfare of the child. This related to the State receiving Federal TITLE IV funding. The Judge must rule this way!

Indian Child Welfare Act

- If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child.
- Upon receipt of information from the tribe, the court shall make a finding about whether the ICWA does or does not apply.

Juv. Pro. R. 30.08, subd. 2;

Minn. Stat. 260C.178, subd. 1(e)

Reasonable/Active Efforts

- The court shall enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:
 - (1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

Minn. Stat. 260C.178, subd. 1(e)

It is my opinion, that if you are in court, and CPS has filed a petition against you, the child will not be released. (Never Happens)

Reasonable/Active Efforts

- The court shall determine whether reasonable efforts, or active efforts for and Indian child, were made to prevent placement or whether reasonable efforts to prevent placement are not required.

Minn. Stat. 260C.178, subd. 1(e)

The Judge always makes explicit, individualized findings that reasonable efforts, or active efforts for and Indian child, were made to prevent placement or whether reasonable efforts to prevent placement are not required. This related to the State receiving Federal TITLE IV funding. The Judge must rule this way!

Reasonable/Active Efforts

- The court shall enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:
- (1) that it has actually provided services or made efforts in an attempt to prevent the child's removal but that such services or efforts have not proven sufficient to permit the child to safely remain in the home; or

Minn. Stat. 260C.178, subd. 1(e)

Reasonable/Active Efforts

- (2) that there are no services or other efforts that could be made at the time of the hearing that could safely permit the child to remain home or to return home.

Minn. Stat. 260C.178, subd. 1(e)

It is my opinion, that if you are in court, and CPS has filed a petition against you, the child will not be released. (Never Happens)

Reasonable/Active Efforts

- If the court finds the social services agency's preventive or reunification efforts have not been reasonable but further preventive or reunification efforts could not permit the child to safely remain at home, the court may nevertheless authorize or continue the removal of the child.

Minn. Stat. 260C.178, subd. 1(e)

“By-Pass” Cases

- At the emergency protective care hearing, upon notice and request of the county attorney, the court shall determine whether a petition has been filed stating a *prima facie* case that any of the following exist so as to permit bypassing CHIPS reasonable/active efforts requirements and going directly to permanency:
 - the parent has subjected a child to egregious harm (e.g., murder, manslaughter, felony malicious punishment, solicitation, etc.)
 - the parental rights of the parent to another child have been involuntarily terminated

“By-Pass” Cases (Cont’d)

- the parents' custodial rights to another child have been involuntarily transferred to a relative
- the child is an abandoned infant
- the parent has committed sexual abuse against the child or another child of the parent
- the parent has committed an offense that requires registration as a predatory offender
- the provision of services or further services for the purpose of reunification is futile and therefore unreasonable

Minn. Stat. 260C.178, subd. 1(g)

“By-Pass” Cases (Cont’d)

- If the court makes a determination that the petition establishes a *prima facie* showing that one of the above circumstances exists, the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency by scheduling a permanent placement determination hearing (Admit/Deny Hearing on permanency petition) within 30 days.

Juv. Prot. R. 30.08, subd. 3(b)

PARENTAL VISITATION



- The plan for parental visitation must be developed and implemented by the agency and the child's parents as soon as possible after the court's order placing the child in foster care.

Minn. Stat. 260C.178, subd. 3(b)

Exception: Endangerment

- The court is not required to order parental visitation if the court finds that visitation would endanger the child's physical or emotional well-being.

Minn. Stat. 260C.178, subd. 3(a)

Exception: Limited Contact

- When a parent has had no or only limited visitation or contact with the child prior to the order for the child to continue in foster care, the court may order a visitation plan developed and implemented while the agency conducts the assessment of the parent's ability to provide day-to-day care for the child.

Minn. Stat. 260C.178, subd. 3(c)

Exception: Putative Father

- When it is in the best interests of the child, the agency may ask the court to defer its duty to develop a visitation plan between a putative father and the child until the paternity status of the child's father is adjudicated or until there is a positive paternity test result.

Minn. Stat. 260C.178, subd. 3(b)

Timing

- The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent.
- The county agency shall consider placement with a relative under this section without delay and whenever the child must move from or be returned to foster care

Minn. Stat. 260C.221(a)

This is a false pretense, especially if the relatives are out of state. They perform background checks, home visits, and other validation that takes months. Meanwhile the child is in foster care. (Title IV)

Refusal to Identify Father or Relatives

- If the child's parent refuses to give information to the social services agency regarding the child's father or relatives, the court may order the parent to disclose the names, addresses, telephone numbers, and other identifying.

Minn. Stat. 260C.178, subd. 1(j)

PARENTAL EVALUATIONS



- When the court has ordered the child into foster care or into the home of a noncustodial parent, the court may order a chemical dependency evaluation, mental health evaluation, medical examination, and parenting assessment for the parent as necessary to support the development of a plan for reunification required under subdivision 7 and section 260C.212, subdivision 1, or the child protective services plan under section 626.556, subdivision 10, and Minnesota Rules, part 9560.0228

Minn. Stat. 260C.178, subd. 1(l)

Important: You are not required to do any of this until after your trial in 60-days and the court makes a CHIPS determination.

Timing

- When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within 10 days of the date of the EPC hearing.
- When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than 5 days and no later than 20 days after the filing of the petition.

Juv. Prot. R. 34.02, subd. 1(a)

Timing: ICWA Case

- If the child is an Indian child, the parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days from receipt of the notice to prepare for the admit/deny hearing.

Juv. Prot. R. 34.02, subd. 1(d)(1)

Timing: Combined with EPC Hearing

- Upon agreement of the parties, an admit/deny hearing may be combined with an EPC hearing.

Juv. Prot. R. 34.02, subd. 1(a)

NEVER COMBINE YOUR ADMIT/DENY HEARING WITH YOUR EPC.

You must file your appeal prior to the admit / deny hearing

Who Admits or Denies

- A parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent.
- If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

Juv. Prot. R. 35.01, subd. 1(a)

**ALWAYS DENY EVERYTHING. THE JUDGE WILL SCHEDULE.
MAKE CPS PROVE THE ALLEGATIONS AT YOUR 60-DAY TRIAL.**

Who Admits or Denies

- Except as noted below, the child shall not admit or deny the petition.
- In matters where the sole allegation is that the child's behavior is the basis for the petition, only the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Juv. Prot. R. 35.01, subd. 2

**ALWAYS DENY EVERYTHING. THE JUDGE WILL SCHEDULE.
MAKE CPS PROVE THE ALLEGATIONS AT YOUR 60-DAY TRIAL.**

Denial

- A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.
- When a denial by any party is entered, the court shall schedule a pre-trial and trial.

Juv. Prot. R. 35.02

SCHEDULING ORDER



- The court shall issue a scheduling order at the admit/deny hearing or within 15 days of the admit/deny hearing.

- The Order shall include date or deadline for:
 - Pre-trial and trial
 - Permanency progress review hearing
 - Date for filing permanency petition
 - Date of admit/deny hearing on permanency petition

Juv. Prot. R. 6

Timing

- If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:
 - (a) adjudicate the child as in need of protection or services and proceed to disposition; or
 - (b) withhold adjudication of the child pursuant

Juv. Prot. R. 40.01

Withholding Hearing:

- At a hearing, which shall be held within 90 days following the court's withholding of adjudication, the court shall either:
 - (a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or
 - (b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance.
- If the court enters an adjudication, the court shall proceed to disposition.

Juv. Prot. R. 40.02

OUT OF HOME PLACEMENT PLAN



Timing:

- An out-of-home placement plan shall be filed with the court within 30 days of the filing of the CHIPS petition.

Minn. Stat. 260C.178, subd. 7(a)

OUT OF HOME PLACEMENT PLAN (CONT'D)



Developed Jointly with Parents:

- An out-of-home placement plan means a written document prepared by the responsible social services agency jointly with the parents or guardians of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the foster care facility, and, where appropriate, the child.

Minn. Stat. 260C.178, subd. 7(a)

I did not participate in the development of my plan because, (1) this happens before your trial, and (2); I plead not guilty, I didn't need a plan.

OUT OF HOME PLACEMENT PLAN (CONT'D)

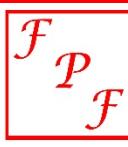


Right to Counsel When Developing OPHH:

- The parents or guardians and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child.
- The parents may also receive assistance from any person or social services agency in preparation of the case plan.

Minn. Stat. 260C.212, subd. 1(d)

OUT OF HOME PLACEMENT PLAN (CONT'D)



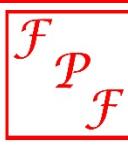
Statement Regarding Participation:

- The out of home placement plan shall include a statement about whether the child and parent or legal custodian participated in the preparation of the plan.

Juv. Prot. R. 37.02, subd. 3(a)

If you participate in the development of your OOHP make sure the statement of participation is on the document and everyone signs to abide by the agreement. This is a legally binding agreement!!! Take legal counsel if you can. Understand what you are agreeing to. Do not agree to undesired services that are beyond the scope of the case.

OUT OF HOME PLACEMENT PLAN (CONT'D)



In Closing, If Out of Home Placement is required:

- a) I recommend you schedule visitation ASAP.
- b) I recommend you do not sign any forms unless they are for visitation
- c) I recommend not to comply with anything until after your 60-day trial.
- d) I recommend not to take any drug tests. (Even if you are clean or even if they say you must take a test for visitation. **This is not the law.**)
- e) You cannot talk your way out of this.
- f) You cannot comply with their services and get out of this.
- g) You cannot engage in settlement negotiations. **Everything comes with an admission that you did something wrong.**
- h) Obtain all necessary documents, including copies of all pleadings and relevant notices by other parties, and information from the caseworker and providers.
- i) You can only fight your way out of this. Prepare and make all appropriate motions.