



**O V E R V I E W   O F  
C H I L D  
W E L F A R E  
P R O C E E D I N G**



# Methods of Advocacy

- Trial Advocacy (Youth Court)
- Appellate Advocacy
- Policy Advocacy





# Structure and Jurisdiction

- County Court, Chancery Court, Municipal
- Civil Court
- Abuse and Neglect: Youth Court has exclusive jurisdiction over abuse and neglect (43-21-151) Exception-allegation arises in course of custody action and no notice of allegation prior to Chancery Proceeding.
- Termination of Parental Rights for children in custody (93-15-115 and 93-15-117)
- Delinquency and CHINS (not our focus today)
- Appeals Directly to the Mississippi Supreme Court (Rule 37 and 43-21-651)





# The Players

- Judge or Designee or Referee (43-21-113, 43-21-111)
- Prosecutor (43-21-117)
- Guardian Ad Litem –Must be appointed in every case where an abuse and/or neglect allegation results in a judicial proceeding (Rule 13 and 43-21-121 and Child Abuse and Treatment Act).
- Parent Rep Attorney or Private Counsel for Parent



# ○ Procedural Overview for Abuse and Neglect

- Report Received (Central Intake 1-800-222-8000)
- Removal with and without an order
- Intake (Rule 8 and 43-21-357(1))
- Shelter Hearing
- Adjudication Hearing
- Review Hearing
- Permanency Hearing
- TPR (“the Death Penalty for Families”, *In re Smith* (1991), 77 Ohio App.3d 1,16, 601 N.E.2d 45, 54)





# Shelter Hearing

- 43-21-309 and Rule 16(b)
- Notice Requirement: Reasonable oral or written notice
- Required to be on the record
- Burden of Proof: Probable Cause
- How the Court takes jurisdiction
- Hearsay is Admissible
- Potential Outcomes
  - \*\*\*\*Determination for jurisdiction and removal are different\*\*\*\*





# Shelter Hearing

- Analysis for Jurisdiction
- Analysis for Removal
  - Identifying Relative Placements
  - Reasonable Efforts
  - Fictive Kin/Resource Payment Waivers
- Client Goals
  - Proactive Steps for Reunification
    - Service Agreement/Working with CPS





# CONFIDENTIALITY

- Rule 5: Confidentiality
  - Records of Child Protection Proceedings are Confidential
  - Court may order Disclosure in accordance with 43-21-261
  - Unauthorized disclosure punishable as a misdemeanor
- Rule 6 sets out procedure for obtaining records for another court





# CONFIDENTIALITY

## Who Can Inspect

- 43-21-261
- Parent, Guardian, Custodian or Attorney for Parent, Guardian, Custodian or Child.
- Reporter Withheld





# Adjudication

- Jurisdictional Issues
- BURDEN OF PROOF: Preponderance of the Evidence (43-21-561)
- CPS Recommendation
- Service Agreement Compliance
- Evidentiary Issues – Rules of Evidence Apply
- Must be on the Record



# ○ Adjudication-Common Evidentiary Issues

- The common hearsay exceptions the state will use:
- Tender Years Doctrine 803 (25)
- Medical Diagnosis and Treatment 803(4)
- Business Records Exception 803(6)





# ADJUDICATION / DISPOSITION

- Should be Separate from Adjudication
- Dismissed
- Adjudicated and Reunified
- Adjudicated and remain in CPS custody, but placed in home for 90 day trial home placement
- Adjudicated and remain in CPS custody in foster care





# Motion Practice

- Motion for Reunification
- Motion for Return of Child(ren)
- Motion for Visitation





# Permanency Hearings

## ■ Time of Hearing

- When reasonable efforts to maintain child within the home are NOT required
  - Within thirty (30) days of such finding (Disposition)
- When reasonable efforts to maintain child within the home ARE required
  - For any child who has been placed with CPS or any other person/agency other than the child's parent, guardian or custodian, within six (4) months after the earlier of:
    - An adjudication that the child has been adjudicated or neglected; OR
    - The date of the child's removal from the allegedly abusive or neglectful parent. The court MAY extend the period of time to conduct the hearing for an additional six (6) months UPON finding extraordinary and compelling reasons for extending the time period in the best interest of the child.

## ■ Notice

### ■ Summons

- Child, persons who have custody or control of the child, the parents/guardian, foster parents, child agency, any other person whom the court deems necessary. The clerk does NOT need to issue summons to any person who has already received sufficient notice of the time, date, place and PURPOSE of the permanency hearing.
- Served no less than three (3) days before the hearing.





# Permanency Hearings

- Hearing
  - Court SHALL require a written report and may require information or statements from CPS, parent, guardian for an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan is in the best interest of the child.
  - SHALL determine whether the child should be:
    - Returned to the parent(s);
    - Placed with suitable relatives;
    - Referred for TPR;
    - Establish durable legal custody; or
    - Continue in foster care on a permanent or long-term basis





# TPR

- Voluntary
- Involuntary
  - BOP: Clear and Convincing Evidence. See Miss.Code Ann. § 93-15-109 (Supp 2003).





# TPR

- Voluntary Release (93-15-111)
  - Signed under oath and dated at least seventy-two (72) hours after birth;
  - Parent's full name, relationship of the parent to the child, parent's address;
  - Child's full name, date of birth, time of birth, if known, place of birth from birth certificate;
  - Governmental agency or home to which the child has been surrendered, if any;
  - Parent's consent to adoption of the child and waiver of service to future adoption;
  - Acknowledges that TPR and adoption of the child "may" significantly affect, or even eliminate, the parent's right to inherit from the child;
  - Release entered into knowingly, intelligently and voluntarily; AND
  - Acknowledges that the parent is entitled to consult an attorney regarding parental rights;
- Court has to accept





# TPR

- 93-15-113
- At the beginning of the involuntary termination of parental rights hearing, the court shall determine whether all necessary parties are present and identify all persons participating in the hearing; determine whether the notice requirements have been complied with and, if not, determine whether the affected parties intelligently waived compliance with the notice requirements; explain to the parent the purpose of the hearing, the standard of proof required for terminating parental rights, and the consequences if the parent's parental rights are terminated. The court shall also explain to the parent:
  - (i) The right to counsel;
  - (ii) The right to remain silent;
  - (iii) The right to subpoena witnesses;
  - (iv) The right to confront and cross-examine witnesses; and
  - (v) The right to appeal, including the right to a transcript of the proceedings.
- (b) The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.





# TPR

- Reasonable Efforts Required
- Reasonable Efforts Not Required
- 93-15-119 and 93-15-121 Grounds





# CONTACT INFO

Kelly G. Williams

[kelly@kellywilliamslaw.com](mailto:kelly@kellywilliamslaw.com)

601.982.1111

Chad King

[chad@thompsonaddison.com](mailto:chad@thompsonaddison.com)

601.850.8000

