

**Family Court Case General Progress of an Article Ten Child Protective Proceeding**

**REPORT FILED with S.C.R. (Standard: Reasonable Cause to Suspect)** <sup>within 24 hours</sup> → **Investigation by C.P.S.** —

**POSSIBLE REMOVAL of Child or decision made that need Court Intervention**

without consent: *forthwith (Next court day at latest) 24 hours/* \3 ct days: with consent (1021) -or- 1022 Pre-Petit. Removal Order

**FILE ARTICLE TEN PETITION & REQUEST REMAND ORDER/or supervision order/or (Order of Protection)**

Statute: § 1012: Allegations of Aggravated Abuse. Abuse and/or Neglect as to each child and each Respondent

**1027 PRELIMINARY HEARING AFTER PETITION FILED**

Petition Filed/ Removal or Remand (placement) Order/or Supervision order/Order of Protection?

**“Release” or grant Article 6 custody/guardianship (temporary) to non-respondent parent who filed for Art. Six, Article Six custody/guardianship (temporary) or relative or suitable person. Submit to Jurisdiction of court required**

Issues/ Standard: *Is the Child in Imminent Danger? Would "Reasonable Efforts" Prevent Removal?*

*Would return home be “Contrary to the Well Being” or the child? Would Order of Protection be sufficient?*

**Evidence** (FCA § 1046): *Material & Relevant (hearsay admissible)*

Court Orders Personal Service on Respondents returnable in

If Abuse Petition or if child on Remand: 3 Court Days / <sup>-service</sup> 7 Court Days: Neglect and no removal

Service of summons needed if Respondents were NOT at the 1027 hearing)

**First Court Appearances by Respondent “ INITIAL APPEARANCE” AND “RETURN OF SERVICE”**

Gather parties and assign lawyer(s), if eligible, and read charges(waivable) --(Inquire/warn if aggravated abuse alleged)

**1028 HEARING (demand for return of child or challenge an Order of Protection)(OPTIONAL)**

(Respondent or AFC must request or else not held; Resp. may request at any time during pendency of proceedings)

Request for the Child's Return. Hearing must be held within 3 Court days of the demand

Issue/ Standard: *Imminent Danger/ Reasonable Efforts/Order of Protection?*

**Evidence: Material & Relevant**

**CONFERENCES!** Engage in settlement negotiations and pre fact finding discovery with Law Assistant

**FACT FINDING HEARING**

**(separate resolution as to each respondent and each child)**

**(aggravated)abuse or neglect proven by trial or admission(settlement) ?)**

**A.C.D.**

**FACT FINDING TRIAL**

**WITHDRAWAL**

**ADMISSION**

On Consent of All Parties

|Standard: *Preponderance of the Evidence/ or (aggravated) Clear & Convincing evidence*

Specific “FCA 1051(a)” “consent admission”

- Conditions attached

**Evidence: Material, Relevant & Competent**

Issue: *Is the child Abused/ Neglected as Defined by FCA § 1012(1051(a))*

Inquest held if Respondent does not appear. (a/k/a Default)

(Can be different outcomes as to each respondent and each child)

**DISMISSAL**

**FINDING OF (AGGRAVATED.) ABUSE OR NEGLECT**

Per § FCA1112 \*24 hour automatic stay (to 5 p.m. next business day) Mental Health Study (MHS/ FET) and I&R may be ordered?

-IF- due to dismissal child will be returned home (The stay is waivable) (Ask for extra time)

**DISPOSITIONAL HEARING (as to each respondent and each child)**

**(What disposition would be in child's best interests?)**

**(Ct can hear dispo along with a relative or suitable person filed Article 6 custody or Guardianship case)**

Issue/ Standard: *Best Interest of the child / Reasonable Efforts to Reunify or Prevent Placement/OR on motion Excuse*

*Reasonable efforts and hearing*

**Evidence: Material & Relevant** (prior TPR or aggravated abuse finding)

**PERMANENCY. Hearing within 30 days if No Reasonable Efforts motion granted**

**Progress Report (90 Day Report) Due: 90 Days after disposition**

Advise Court if Respondent(s) complying with orders; what's happened with child.

CW files after ACD and disposition

**PERMANENCY HEARING within 8 MONTHS of**

**when child in out of home foster care or in direct placement (1017)**

IF intend to send child home 10 Day notice to AFC and Court.

First one by end of 8th month then every 6 months with the Petitioning

agency filing a “sworn report” \*\*Can continue extensions 18/ 21 with child's consent

Issues: *Best Interest of Child/ Reasonable Efforts to Reunify or other plan/*

Reasonable Efforts review, Perm (Service.pl) Goal Review/ Present Fitness of Parent/Direct file TPR or other. Order specific diligent efforts, Court can grant final Article 6 custody/guardianship at Disposition and/or Perm Hearing and that ends

## BASIC ARTICLE TEN HEARINGS

### **PRE-PETITION FCA §1022 HEARING (CHILD PROTECTIVE)** **SEEKING EITHER A COURT ORDERED REMOVAL OR OTHER COURT ORDER**

When there is not enough time to seek a post petition removal order and the parent did not consent in writing to a “consent removal” under FCA 1021. If you have filed a petition skip to the 1027 hearing.

If a petition has not yet been filed and you do not have enough time to do so, you may ask for a court order of removal pursuant to FCA §1022. (NOTE: If there is time and the child’s safety would not be jeopardized, the law requires court ordered removals on notice to the parent rather than your exercising the Commissioner’s emergency removal powers. However, if there is not enough time to make an application to the court without compromising the safety of the child and you have assessed imminent danger to the child, it may be necessary to remove a child prior to going to court. Since the Family Court is in session approximately 30 hours out of a 168-hour week, applying for a court order may not be feasible. The law requires the safety of the child to be paramount.

**Evidence Admissibility Standard: Material and Relevant.** (Hearsay is admissible but court can give it diminished weight)

#### Main Issues:

1. Would the child be in **IMMINENT DANGER** to life and/or health if returned to (or allowed to remain with) the parent (s) or other person legally responsible or allowed to remain with) the parent (s) or other person legally responsible

2. The continuation in the child(ren)'s home would be **CONTRARY TO THE WELFARE AND BEST INTERESTS of** the child(ren). Specify the reasons for this assessment.

IMPORTANT: Federal funding (“IV E eligibility concerns; If the court does not make this finding on the first occasion where the child is removed or sanctions the removal from the home, the child entire stay in foster care will not be eligible for Federal Financial Participation Under Federal ASFA Regulations, the Judge must reference some factual basis for the finding.

3. If appropriate, were **REASONABLE EFFORTS** (i.e. through the provision of services or offering or services) made to prevent or eliminate the need for a removal from the home? .

IMPORTANT: IV E Concerns; If the court does not make this finding on the first occasion where the child is removed or sanction the removal from the home, the child entire stay in foster care will not be eligible for Federal Financial Participation. Under Federal ASFA Regulations, The court order must contain a specific judicial determination stating that reasonable efforts were made to prevent or eliminate the need for removal or that the lack of such efforts were reasonable or that reasonable efforts were not required. Federal Regulations allow this determination to be made within 60 days of the removal while NY law says it should be confronted within this hearing.

4. Would the issuance of an Order of Protection which could include directing the removal of a person or persons from the child’s residence eliminate risk to the child and prevent or eliminate the need for removal ? (See section FCA §§ 1029 and 1056 for parameters of the court order)

5. Were the parents advised that the court application would be made?

This hearing may also be utilized to obtain an order for emergency medical care for a child in need where the parent will not consent or for an order for a purely investigative physical examination of the child or investigatory x-rays under **Tenenbaum v. Williams** case. The family court, before the filing of a petition under this article, may enter an order authorizing the provision of services or assistance, including authorizing a physician or hospital to provide emergency medical or

surgical procedures, if (i) such procedures are necessary to safeguard the life or health of the child; and (ii) there is not enough time to file a petition and hold a preliminary hearing under section 1027.

**If the child is removed/remanded by court order, the court must set a “date certain” for the first Permanency Hearing which can be scheduled no later than eight months from this date.**

**The “1027” or “REMOVAL” HEARING**  
**THE ABUSE/NEGLECT PETITION HAS BEEN FILED IN COURT**

A petition alleging abuse shall contain a notice in conspicuous print that a fact finding that a child is severely or repeatedly abused as defined by SSL§ 384-b by “clear and convincing” evidence could constitute a basis to terminate parental rights under SSL §384-b. This ordinarily is the first court appearance on a case.

Evidence Admissibility Standard: Material and Relevant (hearsay acceptable)

**Main Issues of the 1027 Hearing:**

1. Would the child(ren) be in **IMMINENT DANGER** to life and/or health if returned to (or allowed to remain with) the parent (s) or other person legally responsible and that continuation in the child(ren)'s home (would) (would not) be **CONTRARY TO THE WELFARE AND BEST INTERESTS of** the child(ren). Specify the reasons for this assessment. (Under Federal ASFA Regulations, the Judge must reference some factual basis for the finding relevant to the specific case in court.)
2. If appropriate, were **REASONABLE EFFORTS** (i.e. through the provision of services or offering or services), made to prevent or eliminate the need for child's removal? . (Under Federal ASFA Regulations, the Judge must reference some factual basis for the finding or that under the circumstances no reasonable efforts were possible, or appropriate. Under Federal Law as interpreted by federal regulations, this determination must be made within 60 days of the child's removal or else the child IS **INELIGIBLE** for foster care maintenance payments for that stay. 45 CFR 1356.21(b)(1) New York State requires “reasonable efforts” issues to be addressed at §§ 1022/1027/1028 hearings.
3. Would the issuance of an Order of Protection, including directing the removal of a person or persons from the child's residence eliminate risk to the child and prevent or eliminate the need for removal?
4. Also, if no appearance by the parents or other necessary parties, were parents advised that the court would be asked for this order (application) and what court process should issue? (Summons, Warrant, Notice of Pendency, etc.,)

At a minimum, the caseworker should be prepared to do the following in court:

1. State the reasons the agency believes each child would (or would not) be in imminent danger if returned or allowed to remain home. If recommending child remain at home, be prepared explain reasoning and recommended appropriate safeguards.
  2. Relate facts supporting the agency's position. (If the agency's position is based on a medical or psychiatric opinion, it is best to have a written version of that opinion from the expert. (letter/abstract/email/text message ) If none is available the caseworker should be able to quote the opinion )
  3. Explain what “reasonable efforts” were made which did not or could not prevent the need for removal.
  4. Explain what the agency's immediate services plan would be if the child were remanded. Explain what it would be if the child were paroled.(released or remain in parental custody.)
  5. Notify the court that the removal notice(§ 1028 rights notice was given to the parent(s). (or, explain why it was not given and what effort will be made to give it.)
- . Inform the court of the child's whereabouts and of what placement resources are being explored. Inform the court of the existence of relatives and their potential as caretakers. If the children are residing in separate foster homes, explain to the court the reasons for the separation.
7. Inform the court of the parents' whereabouts. (If the parents' whereabouts are unknown, inform the court of what avenues are open to notify and/or serve process.)
  8. Consider whether there are any relative or suitable person who is interested in providing care for the child if the CPS' position is that the parent(s) can not do so adequately. Under FCA § 1017, the Judge is required to direct looking for a non-respondent parent, and , (if a remand or removal )a relative including all grandparents, relatives and suitable person and telling them of the consequences of child being in foster care and that they may seek to provide the child with an alternative to foster care or be considered a foster parent if eligible.

There is a written notice which the Office of Court Administration created which specifies the content of such notice and is available on the Office of Court Administration Family Court forms web site. There exists separate forms for the non-respondent parent and for relatives and suitable persons.

**9. If the child is removed/remanded/placed by court order, the court must set a “date certain” for the first Permanency Hearing which can be scheduled no later than eight months from this date.**

10. Under FCA 1017, the court may grant a temporary order of custody or guardianship to a non-respondent parent, relative, or suitable person pursuant to an Article Six petition which has been filed.

11. The court may temporarily RELEASE the child directly to a non-respondent parent or temporarily “Place” the child with a relative or suitable person under FCA 1017 during the pendency of the proceeding or until further order of the court. Likely the court ordered an investigation into those possible resources or the agency investigated previously. Also, the court is to review the sex offender registry, the Order of Protection registry, related court decisions, and warrants issued under the FCA. It would make sense for the court to review any previous and relevant criminal convictions and any pending criminal and family court cases. As per the App Div 2<sup>nd</sup> Dept case of Sapphire W. the Family Court cannot place a Non Respondent parent under supervision unless they consent. Arguably that only pertains to cases where the children have never left that parent’s home.

NOTE:

IF THE MATTER IS ADJOURNED FOR A FACT-FINDING HEARING, THE COURT MAY SET THE MATTER DOWN FOR A PRETRIAL CONFERENCE TO DISCUSS A POSSIBLE SETTLEMENT, TO RESOLVE PRE TRIAL DISCOVERY ISSUES, AND EXCHANGE A WITNESS LIST. THE CONFERENCE IS LIKELY JUST WITH ATTORNEYS AND THE JUDGE’S LAW ASSISTANT. YOUR ATTORNEY WILL LIKELY WANT TO KNOW FROM YOU AND YOUR SUPERVISOR THE PARAMETERS OF POSSIBLE SETTLEMENTS.

## **(RETURN OF SERVICE / “INITIAL APPEARANCE”**

(If the respondent has already appeared without being formally served with a summons, this issues at the “initial appearance” will be covered at the § 1027 hearing)

Evidence Admissibility Standard: Material and Relevant ( hearsay admissible)

### **ASFA Issue:**

**If the case has been brought alleging “aggravated circumstances” abuse, the Court shall inquire if CPS intends to prove that the child is a “severely” or “repeatedly abused” child as defined in the Social Services Law by “clear and convincing” evidence? (FCA § 1033-b)**

(Please note that if the parents appear at the date of the filing, these issues will also be addressed at the 1027 hearing with the exception of service of summons issues)

### **Issues:**

1. Are all the respondents (parent or other “persons legally responsible”) present?
2. If not, has proper service of process(summons and petition) been made on all respondents?
3. If proper service has not been made, what method of service should now be ordered?
4. Are all respondents who are present represented by counsel? If they do not have counsel assign counsel
5. (Maybe a public defender, and/or “18b” if eligible or grant adjournment to engage counsel).
5. Petition allegations are read to the respondent or R’s attorney will “waive the reading.”
6. If the child has been removed does respondent seek a hearing pursuant FCA§ 1028 to contest the removal and/or remand of the child? The Attorney for the Child may also demand a 1028 hearing.

The caseworker should be prepared to inform the court of the following:

1. The whereabouts of all respondents, if known. If unknown, where they are likely to be found or attempts made to find out. (“diligent search” possibility)? Also the existence of the fathers for each child.
2. Whether the caseworker personally informed the respondent(s) of the need to appear in court that day?
3. The location and condition of the children?
4. Whether CPS has implemented any prior orders the court may have made; and if not, why not?
5. Results of any efforts to locate relatives as resources if child is on remand status?
6. If no 1028 hearing demanded, a convenient date for the fact-finding hearing (or pre trial conferencing).

( When setting a date be aware of the limited ASFA timeframe because if the children are in foster care, the clock towards the 15 month “must file a Termination” is running from day one. The services should be offered immediately. Whether the parents wish to partake the services pre fact finding is an issue for them and their attorney to decide. However, the agency mandate is clear.)

### **NOTE:**

IF THE MATTER IS ADJOURNED FOR A FACT-FINDING HEARING, THE COURT MAY SET THE MATTER DOWN FOR A PRETRIAL CONFERENCE TO DISCUSS A POSSIBLE SETTLEMENT, TO RESOLVE PRE-TRIAL DISCOVERY ISSUES, AND EXCHANGE A WITNESS LIST. THE CONFERENCE IS LIKELY JUST WITH ATTORNEYS AND THE JUDGE’S LAW ASSISTANT. YOUR ATTORNEY WILL LIKELY WANT TO KNOW FROM YOU AND YOUR SUPERVISOR THE PARAMETERS OF POSSIBLE SETTLEMENTS.

**THE “1028” HEARING: (optional hearing)**  
**DEMAND FOR RETURN OF CHILD PREVIOUSLY REMOVED**  
**Or TO CHALLENGE THE NEED FOR A STAY AWAY ORDER OF PROTECTION**

Evidence Admissibility Standard: Material and Relevant (hearsay is admissible)

Issues:

Would the child be in **IMMINENT DANGER** to life and/or health if returned to the parent?

Would return of the child(ren) to the home be **CONTRARY TO THE CHILD(REN)'S WELFARE AND BEST INTERESTS**; . **(Under Federal Regulations, the Judge must reference some factual basis for the finding)**

Were **REASONABLE EFFORTS** (through the offer and/or provision of services), if appropriate, made to prevent or eliminate the need for removal? . **(Under Federal Regulations, the Judge must reference some factual basis for the finding or that under the circumstances no reasonable efforts were possible, or appropriate. Under Fed Regs this determination must be made within 60 days of the child’s removal or else the child in ineligible for foster care maintenance payments for that stay. 45 CFR 1356.21(b)(1) New York State requires this to be addressed at 1022/1027/1028)**

Would the issuance of a temporary Order of Protection, including directing the removal of a person or persons from the child’s residence, eliminate imminent risk to the child?

NOTE: A respondent parent removed from the home or restricting contact by an Order of Protection may also challenge the order at a 1028 hearing

The caseworker is often the primary witness at a § 1028 hearing, and, therefore, must be thoroughly familiar with the case. In addition, the caseworker should be prepared to meet aggressive cross-examination by opposing counsel. (To best achieve this, the caseworker should be advised to schedule a pre-hearing meeting with the DCA on the case.) At a 1028 hearing, the caseworker may be expected to:

1. State the reasons the agency believes the child(ren) would be in danger.
2. Relate all the facts that led to this conclusion.
3. Explain what “reasonable efforts” were/are being made and why they have not resulted in the return of the child. Alternatively, why are such efforts inappropriate based upon the facts known.
4. Explain why services would/would not eliminate the imminent danger.
5. Explain why the issuance of an Order of Protection would not eliminate the imminent danger.
6. Discuss the immediate service plan for the family.
7. Inform the court of the provisions made for the child and of the child’s condition.

Additional Issues:

Are there any relatives available to take care of the children directly or as foster parents?

Have the relatives been checked out and are they viable resources?

Are the children placed together? If not, why not? Do they need services?

NOTE:

IF THE MATTER IS ADJOURNED FOR A FACT-FINDING HEARING, THE COURT MAY SET THE MATTER DOWN FOR A PRETRIAL CONFERENCE TO DISCUSS A POSSIBLE SETTLEMENT, TO RESOLVE PRE TRIAL DISCOVERY ISSUES, AND EXCHANGE A WITNESS LIST. THE CONFERENCE IS LIKELY JUST WITH ATTORNEYS AND THE JUDGE’S LAW ASSISTANT. YOUR ATTORNEY WILL LIKELY WANT TO KNOW FROM YOU AND YOUR SUPERVISOR THE PARAMETERS OF THE POSSIBLE SETTLEMENT.

## FACT FINDING HEARING: (The “trial”)

Evidence Admissibility Standard: Material, Relevant and **COMPETENT (mostly non hearsay)**

### Issue:

Are some or all of the allegations in the (Severe)Child Abuse or Neglect petition true as to each respondent by a preponderance of the evidence and does that such legally constitute child abuse or neglect as defined in § 1012 of the Family Court Act? If not, the case could be dismissed against specific respondents and as to specific children. Additionally, specific allegations could be proved and others dismissed.

### NOTE

If “aggravated/Severe abuse” is alleged, has the case been proven by “Clear and Convincing” evidence? If so, the fact finding order shall state that the determination was based upon clear and convincing evidence. Such finding may be used as a basis for the court to excuse the providing of “reasonable efforts” as well as serving as a basis to terminate parental rights in a separate proceeding

While many cases are settled without a trial through “plea negotiations” if the case is to be litigated (a trial) the caseworker should be prepared to testify at the fact-finding hearing. The caseworker’s testimony will likely be limited to those areas about which the caseworker has personal knowledge. Since, as a general rule, hearsay testimony is inadmissible at the fact-finding hearing, the caseworker will most likely be called upon to testify about:

1. Events, conditions and acts actually witnessed by the caseworker.(example: bruises observed, behavior observed, condition of a household.)
2. Acts done by the caseworker.
3. Foundation for the Report of abuse or maltreatment(2221/ORT/Intake Report)
4. Statements made to the caseworker that fall under an exception to the rule against hearsay (i.e. relevant statements of the child and/or the respondents including statements made by caseworker to the respondent and/or child.).
5. The record-keeping practices of CPS (to allow for the admissibility of all or part of the case record, or other document under the “business record” hearsay exception.)
6. Photographs of visible areas of trauma which caseworker could vouch for as being a “fair and accurate representations” of what the caseworker observed.

The caseworker can expect to be rigorously cross-examined each respondents counsel and the Attorney for the Child. As such, a complete familiarity with the case and the case record is essential.

(Caseworkers should assume that opposing counsel would be thoroughly familiar with the CPS case record since the records are usually “discoverable” as part of the court process.)

Finally, the caseworker should be prepared to discuss settlement of the case. The caseworker should be able to articulate which settlement conditions are acceptable to the agency and which are not - and the explain why. If the caseworker is unclear about the nature of an acceptable settlement, the caseworker should discuss the matter with a supervisor BEFORE going to court. Caseworkers should have a position (i.e. know what CPS wants, what would be acceptable and what would be unacceptable as a negotiated settlement).



## **POSSIBLE RESOLUTION OF ARTICLE TEN ALLEGATIONS**

IMPORTANT: Separate determinations and findings should be made as to each respondent and as to each child.

◆ **JUDICIAL ADMISSION TO ALLEGATIONS CONSTITUTING SEVERE OR REPEATED ABUSE (AGGRAVATED CIRCUMSTANCES ABUSE).** (If the court find clear and convincing severe or repeated abuse, such finding is admissible in a proceeding to Terminate Parental Rights based upon Severe or Repeated Abuse Social Services Law 384-b (4) (e) and that issue is decided for the purposes of the TPR fact finding)

○ **AFTER TRIAL, ALLEGATIONS OF SEVERE OR REPEATED ABUSE (AGGRAVATED CIRCUMSTANCES ABUSE) PROVEN BY "CLEAR AND CONVINCING" EVIDENCE .** (If the court finds "clear and convincing" severe or repeated abuse, such finding is admissible in a proceeding to Terminate Parental Rights based upon Severe or Repeated Abuse Social Services Law 384-b (4) (e).

◆ **JUDICIAL ADMISSION TO SOME SPECIFIC ALLEGATIONS OF ORDINARY ABUSE.<sup>1</sup>**

○ **AFTER TRIAL, ALLEGATIONS OF ORDINARY ABUSE PROVEN BY A PREPONDERANCE OF THE EVIDENCE**

◆ **JUDICIAL ADMISSION TO SOME SPECIFIC ALLEGATIONS AS NEGLECT. (a/k/a "Partial Admission")** (or an admission to orally amended, less severe, allegations "in full satisfaction" of the petition.)

○ **AFTER TRIAL, COURT FINDS ALL ALLEGATIONS OF NEGLECT PROVEN OR FINDS ONLY NEGLECT WHEN ABUSE WAS ALLEGED.**

○ **AFTER TRIAL, COURT FINDS SOME ALLEGATIONS OF NEGLECT PROVEN.**

◆ **FCA §1051 (a) ADMISSION** (also called a "Consent" finding with a proper 1051(f) allocation including warning that if the child remains in foster care 15 of the most recent 22 months, the agency may be required to file a petition to terminate parental rights.

◆ **ADJOURNMENT IN CONTEMPLATION OF DISMISSAL POST FACT FINDING ORDER**

◆ **ADJOURNMENT IN CONTEMPLATION OF DISMISSAL PRE FACT FINDING ORDER**

◆ **WITHDRAWAL OF PETITION "WITHOUT PREJUDICE".**

○ **DISMISSAL BY COURT ON THE BASIS THAT ITS AID IS NOT NECESSARY BASED UPON THE RECORD BEFORE IT PURSUANT TO FCA § 1051(c).**(alleged Neglect cases only)

○ **DISMISSAL FOR FAILURE TO PROSECUTE.**

○ **DISMISSAL ON THE MERITS AFTER TRIAL.** (appeal to Appellate Division possible)

### **NOTES:**

\*While this list is in order of strongest result to Petitioner to the least, the respondent's defense counsel's preferences are roughly the reverse. The AFC has their own priorities depending on their position on a given case.

**Be aware that there are times a motion for summary judgment is appropriate based upon a prior criminal conviction or similar circumstances.**

**Cases will be negotiated up to the moment of the trial and even during the trial itself. During the trial itself often the court will ask to see all the lawyers at a sidebar conversation or in another room to continue to press for a settlement. As of 2022, owing to changes in the law, findings or dismissals as to each respondent and each child impacts on the indication or unfounding of allegations at the State Central Register. This includes negotiated settlements and trial findings or lack thereof.**

---

<sup>1</sup> FCA §1051(f) requires that the court to advise the respondent(s) of minimum specific rights and elements before a valid admission or consent finding may be accepted . The law requires that upon motion the finding be vacated for such admissions or consent findings which did not comply with the allocation law. However, many Judges will correctly do a more detailed allocation than the minimum the law requires. Please note that while §1051(f) addresses State Central Register "expungement" rights, after February 12, 1996("Elisa's Law), "unfounded" reports are no longer expunged but rather are "sealed" and are accessible on a limited basis. The Judge has to give a warning about a possible required TPR petition when the child remains in foster care 15 of the last 22 months.

## **DISPOSITIONAL HEARING**

While the court can hold a dispositional hearing immediately after a Fact Finding determination, frequently the court will order an I and R (Investigation and Report/Recommendation) and/or a Mental Health Study (MHS or F.E.T.) and then conduct a separate Dispositional Hearing (Comments: If the children have already been in out of home care for a substantial period of time, it may be wise to make the first Dispositional Hearing the first Permanency Hearing since the outer limit to conduct the first Permanency Hearing is 8 months after the initial placement period. To make it a Permanency hearing, the foster parents have to be formally notified of their right to be heard and participate as per FCA §§1040 and 1089)

Evidence Admissibility Standard: Material and Relevant (hearsay admissible)

### **Prime Issues:**

**Should the child be:**

**Placed or continued in placement with the Commissioner or in Direct Placement until the first permanency hearing which "date certain" was previously set when the child was placed or remanded (for kinship foster care, or other)?**

**Placed directly or continued in placement with a relative or suitable person until the first permanency hearing "date certain" which was previously set?**

**Released to the respondent parent(s) or one parent with(1057) or without supervision on specified terms and conditions for up to a year from the date of the order?**

**Released to a Non-Respondent Parent under certain terms and conditions.**

**Placed in open ended Article Six custody/guardianship to a respondent, non respondent, relative or suitable person. There should be a consolidated Article Ten and Article Six hearing (This ends all supervision and all Permanency hearing reports. Judge legally CANNOT order supervision)**

**Or should there be a Suspended Judgment on terms and conditions for up to one year?**

**Or should the parent be placed under supervision under terms and conditions for a year where they do not have the child returned?**

**Or should the court issue a Final Order of Protection to coincide with another order?**

**Or should the court Adjourn the Case of Contemplation of Dismissal post fact finding?**

**Or should a case be dismissed if the court determines its intervention is not needed? (neglect only)**

**NOTE:** If a relative or suitable person filed for Article Six Custody or Guardianship, the court can hold a consolidated Dispositional hearing with the Article Six and if the court decides to grant custody or guardianship, the child has achieved permanency and there will be no more supervision, or permanency hearings and the Article Ten case is over. Court may order an Article Six custody or guardianship order which has conditions. Lawyers may call this a "loaded six" which may include the requirement to inform the court, AFC, DSS of a changes of circumstances

### **Hearing Issues:**

- 1. Is/Are the parent(s) PRESENTLY FIT to care for the child(ren)? Under Federal Regs, the Judge must reference some factual basis for the finding)**
- 2. What dispositional order(s) is(are) in the child(ren)'s BEST INTERESTS? (Under Federal Regulations, the Judge must reference some factual basis for the finding or that under the circumstances no REASONABLE EFFORTS were possible, or appropriate. The best practice is to have the court make this finding even if the child was previously placed or on remand.) (If there was a previous finding on No Reasonable efforts and**

return is not the current goal, then the court must find THAT REASONABLE EFFORTS HAVE BEEN MADE TO ACHIEVE THE ALTERNATIVE PERMANENCY GOAL.)

3. (Unless previously excused by Court Order after a FCA 1039 b motion("no reasonable efforts required determination"), were REASONABLE EFFORTS, if appropriate, made to prevent or eliminate the need for placement since the legal proceeding commenced ?
4. Whether CONTINUATION IN THE CHILD'S HOME WOULD BE CONTRARY TO THE **BEST INTERESTS OF THE CHILD**
5. Would the issuance of an ORDER OF PROTECTION, directing the removal of a person or persons from the child(ren)'s residence, eliminate the need for placement out of the home?
6. What services are needed to reunite the family? (Or, as the case may be, to prepare an older child for independent living?) (Or, as the case may be, to address the family's problems?)

The caseworker should be prepared to respond to questions regarding "present fitness", "best interests of the child", "reasonable efforts", and current service needs. The caseworker should be able to relate to the court:

1. The location and condition of each child; and the reasons for any separation of siblings.
  2. The whereabouts of the parents and all the efforts made to find a missing parent.
  3. Whether the agency is seeking placement; WHY a requested placement is needed; and/or WHY a requested release to parent under supervision or other disposition is appropriate.
  4. What, if any, services (if in place), would enable the child to remain home; why any such services were not made in the past; when any such services could be implemented; and, if services would not eliminate the need for placement, why not?
  5. Whether an Order of Protection eliminates the need for placement; and, if not, why not? **The law requires the court to consider the occurrence, if any, of domestic violence in the child's residence.**
- RULING ON any outstanding FCA 1039-B MOTION NO REASONABLE EFFORTS MADE.**

### **INITIAL PLACEMENT REQUIREMENTS**

**Such order of placement or extension of placement** shall include at the least:

- (a) a description of the VISITATION PLAN;
- (b) a direction that the respondent or respondents shall be notified of the PLANNING CONFERENCE (Service Plan Reviews) or conferences..., of their right to attend the conference, and of their right to have counsel or other representative or companion with them. These conferences are to be held after 72 hours, 30 days, 90 and 210 days after removal and every 6 months thereafter

**COPY OF THE COURT'S ORDER AND THE SERVICE PLAN** shall be given to the respondent.

### **NOTICE REQUIREMENT**

The order shall also contain a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

## **SSL §384-b LEGAL BASIS TO INVOLUNTARILY TERMINATE PARENTAL RIGHTS IN N.Y. STATE**

(Parent(s) will not sign "surrender" for child or you believe such "surrender" is not appropriate and you believe it would be in the best interests of the child to be freed for adoption.

Mother Father (he may not have full "consent" rights; he may only have rights to "notice" or no rights)

### **ABANDONMENT**

- ☐ ☐ Child in care of county or agency for **six months immediately prior** to date of filing petition **and**
- ☐ ☐ Parent failed to visit child or failed to communicate with child or failed to contact agency or any such visits/communications/contacts were inconsequential(as per legal precedents) **and**
- ☐ ☐ Parent physically and financially able to visit/communicate/contact **and**
- ☐ ☐ Parent not prevented or discouraged from doing so by agency or court **and**
- ☐ ☐ Parent evinced an intent to abandon.

### **PERMANENT NEGLECT**

- ☐ ☐ Child in care with county/agency for either **at least one year** or **15** out of the most recent **22 months and**
- ☐ ☐ **Diligent/reasonable efforts** addressing problems were made to reunify the family and failed **or**
- ☐ ☐ Proof of **diligent/reasonable efforts** excused either (1) as detrimental to best interests of child **or**
- ☐ ☐ (2)Parent failed to keep agency apprised of their whereabouts for at least 6 months during the one year period **or** (3)court previously granted a "no reasonable efforts" to reunify order **and**
- ☐ ☐ Parent substantially and continuously or repeatedly failed to maintain contact with the child and not prevented from doing so by agency or court order **or**
- ☐ ☐ Parent failed to plan for future of the child **and**
- ☐ ☐ Parent had the physical and financial ability.
- ☐ ☐ BUT For incarcerated parent proof of **diligent/reasonable efforts** may be excused if (s)he failed on more than one occasion to cooperate with the agency on visitation or planning.

### **MENTAL ILLNESS OR INTELLECTUAL DISABILITY**

- ☐ ☐ Child has been in care of county/agency for the **last year** prior to filing petition **and**
- ☐ ☐ Parent is mentally ill (expert evidence needed) **or**
- ☐ ☐ Parent is intellectually disabled (expert evidence needed) **and**
- ☐ ☐ As the result of Mental Illness or intellectually disability the parent cannot now provide proper and adequate care for the child and such impairment is likely to remain in the foreseeable future.

### **SEVERE ABUSE**

- ☐ ☐ Child in care of county or agency **and**
- ☐ ☐ Child found to be severely abused .(see definition in Social Services Law §384-b 8.(a) which now includes a parent convicted of murder/manslaughter (or attempt) of the other parent **and**
- ☐ ☐ **Diligent/reasonable efforts** were made to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child or family court previously granted a FCA 1039-b "no reasonable efforts" required to reunify order **and**
- ☐ ☐ Such **diligent/reasonable efforts** have been unsuccessful and are likely to be unsuccessful in the foreseeable future.

### **REPEATEDLY ABUSED**

- ☐ ☐ Child in care of county or agency **and**
- ☐ ☐ This child has been found to be abused (case #2) [under FCA §1012 (e)(i) or (iii)] **and**
- ☐ ☐ This child and/or another child of this parent was previously adjudicated as abused(case #1) [under FCA §1012 (e)(I) or(iii) ] within **5 years** of filing abuse case #2 **and**
- ☐ ☐ **Diligent/reasonable efforts** were made to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child or family court previously granted a FCA 1039-b "no reasonable efforts" required to reunify order **and**
- ☐ ☐ Such **Diligent/reasonable efforts** have been unsuccessful and are likely to be unsuccessful in the foreseeable future.

### **PARENT(S) DECEASED AND NO GUARDIAN APPOINTED**

But see Domestic Relations Law § 113 (adoption from an authorized agency) whereby separate TPR is not needed when parent(s) deceased and child in care and custody of an authorized agency under a child protective proceeding placement order or a voluntary placement instrument.

© Gene Skarin

But see Domestic Relations Law § 113 (adoption from an authorized agency) whereby separate TPR is not needed when parent(s) deceased and child in care and custody of an authorized agency under a child protective proceeding placement order or a voluntary placement instrument.