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INITIAL / DETENTION

DETENTION HEARING CHECKLIST: CHILD'S ATTORNEY

BEFORE

- Review petition and supporting paperwork for sufficiency of petition, bases for detention, reasonable efforts/services, jurisdictional issues (other states or countries), efforts to place with relatives.
- Analyze for existing or potential conflicts.
- Begin discussions/negotiation with opposing counsel.
- Introduce self to client; explain role as counsel and advocate, confidentiality, privileges. (§ 317(f).)
- Interview client in private in age-appropriate manner regarding relevant issues (i.e., allegations, placement preferences, siblings, health issues, school of origin, early intervention services, special education services, pending exams, pending disciplinary actions, advanced placement status, extracurricular activities, graduation status, any pending delinquency matters, immigration status, Native American ancestry and possible Indian Child Welfare Act (ICWA) status, treatment in current placement, access to phone calls, and visits with parents and other important people).
- Interview relatives and interested persons present regarding allegations, visitation, placement options, Native American ancestry and possible ICWA status, Adoption and Safe Families Act (ASFA) restrictions, willingness to make educational decisions. Get relevant information on home environment, criminal background, need for funding. Assist with referral for CLETS (California Law Enforcement and Telecommunications System) and LiveScan.
- Formulate position on whether child should be detained, whether parent's right to make educational decisions should be limited, sufficiency of petition, whether reasonable efforts (or in the case of a possible Indian child, active efforts) were made to prevent detention/placement.
- Evaluate need for testimony or mandatory one-day continuance. (§ 322.)

DURING

- Be aware of the law and applicable burdens of proof.
- Did the agency¹ meet its burdens (prima facie, reasonable efforts, nexus between allegations and risk to child, etc.)?
- In the case of a possible Indian child when detention is recommended, has the agency met the “emergency removal requirements” or, alternatively, the “foster care placement” requirements of ICWA?
- Select relevant case law to cite.
- Request appropriate orders, such as those needed to facilitate
 - Placement with relative or nonrelative extended family member.
 - Visitation with parents, relatives, and other appropriate persons.
 - Services for entire family.
 - Restraining orders. (§ 213.5.)
 - Crisis counseling (e.g., grief).
 - Necessary medical treatment.
 - Assessments (psychological, physical, educational, regional center).
- School-related issues: parent’s right to make educational decisions, placement near school of origin (Ed. Code, § 48853.5(e)), transportation to school of origin, tutoring, extracurricular activities (*id.*, § 48850(a)(1)), 24-hour notice of placement change that affects school placement (Cal. Rules of Court, rule 5.651(e)), notice of disciplinary actions, and referral for assessments for early intervention and/or special education services. (Ed. Code, §§ 48850(a)(1), 48853.5(e); Cal. Rules of Court, rule 5.651(e).)
- Transportation funds (to facilitate visitation, school attendance, counseling).
- Special services (i.e., pregnancy/parenting, gay/lesbian/bisexual/transsexual youth).

¹ Throughout this guide, “agency” is a catchall term used to refer to all human services agencies/departments.

- Special funding (Victim of Crimes, section 370, emergency needs of caretakers).
- Ensure court addresses
 - Placement.
 - Services for family (reunification if removed, maintenance if not).
 - Parentage.
 - Indian heritage (ICWA).
 - Education rights. (§ 319(g); Cal. Rules of Court, rules 5.650–5.651.)
 - Visitation with parents, siblings, and other appropriate persons.
 - Any other specifically requested orders.
 - Setting next hearing.

AFTER

- Consult with child to explain court rulings and answer questions.
- Send letter to caregiver with contact information and summary of court orders.
- File necessary forms/motions if pursuing rehearing, demurrer, or writ of mandate.
- Follow up with caregiver to ensure child is attending school of origin or enrolled in new school.
- In the case of an Indian child when there has been an “emergency removal and placement,” consider whether a change in circumstances may have ended the emergency circumstances.

DETENTION HEARING CHECKLIST: PARENT'S ATTORNEY

BEFORE

- Review petition and supporting paperwork for
 - Legal sufficiency of the allegations.
 - Timeliness of filing.
 - Notice. (§ 290.1.)
 - Reasonable efforts—or, if there is reason to believe the case involves an Indian child, active efforts—made to prevent/eliminate need for removal.
 - Potential jurisdictional issues.
 - Efforts to place with relatives.
- Analyze for existing or potential conflicts.
- Anticipate whether education issues will be present and how to maximize your client's participation in the child's education.
- Begin discussion/negotiation with opposing counsel.
- Introduce self to client; explain role as counsel and the focus of a detention hearing.
- Obtain basic information (contact addresses and numbers, parentage, relatives, tribal members).
- Encourage system buy-in when appropriate and address client's concerns.
- Impress upon the client the significance of these proceedings.
- Ask client about Native American ancestry and possible ICWA status. If applicable, explain the consequences and benefits of ICWA.
- Interview relatives and interested persons present regarding allegations, visitation, placement options, Native American ancestry and possible ICWA status, ASFA restrictions. Get relevant information on home environment, criminal background, need for funding. Assist with referral for CLETS and LiveScan.

- Formulate position on whether child should be detained, sufficiency of petition, whether reasonable efforts—or, if there is reason to know the child may be an Indian child, active efforts—were made to prevent detention/placement.
- If there is reason to know the child may be an Indian child, evaluate whether the agency has met the requirements for emergency removal of an Indian child.
- Evaluate need for testimony or mandatory one-day continuance. (§ 322.)

DURING

- Be aware of the law and applicable burdens of proof.
- Did the agency meet its burdens (prima facie, reasonable efforts, nexus between allegations and risk to the child, etc.)?
- If there is reason to know the case involves an Indian child, review the requirements for detention of an Indian child and ensure that the agency has met its burden either to justify the emergency removal or to comply with ICWA's foster care placement requirements.
- Select relevant case law to cite.
- Request appropriate orders, such as those needed to facilitate
 - Placement with a relative or nonrelative extended family member (NREFM).
 - Visitation with client, relatives, and other appropriate persons.
 - Services for entire family.
 - Restraining orders. (§ 213.5.)
- Ensure that court addresses
 - Placement.
 - Services for family (reunification if removed, maintenance if not).
 - Parentage.
 - Indian heritage (ICWA).
 - Visitation with parents, siblings, and other appropriate persons.

- Educational decision-making authority (ask the court to affirm your client's rights). (Cal. Rules of Court, rule 5.651(b)(1).)
- Any other specifically requested orders.
- Setting next hearings (including need for special interim hearings).
- Time waivers.

AFTER

- Consult with client to explain court rulings and reinforce client's ability to "fix the problems."
- Establish an action plan for client (e.g., get into services, get restraining order, clean up house).
- Provide contact information and next court date, and explain role of social worker.
- If there is reason to know the case involves an Indian child and the child has been removed from parental custody on an emergency basis (i.e., without full compliance with ICWA's foster care placement requirements: active efforts, qualified expert witness testimony, etc.), consider seeking return if circumstances change and the emergency that justified removal is resolved.
- File necessary forms/motions if pursuing rehearing, demurrer, or writ of mandate.

JURISDICTION

JURISDICTION HEARING CHECKLIST: CHILD'S ATTORNEY

BEFORE

- Conduct independent investigation.
 - Conduct discovery—make informal requests and motion to compel if necessary. (Cal. Rules of Court, rule 5.546.)
 - Review documents—social services agency and police reports, social worker's notes, medical records.
 - Interview potential witnesses.
- Interview client in age-appropriate manner regarding
 - Accuracy and completeness of information in report.
 - Position as to truth of allegations.
 - Desired outcomes and wishes regarding direction of litigation.
- Counsel client in age-appropriate manner on alternative strategies and probable outcomes.
- Assess and formulate position on
 - Strength of social services agency's evidence supporting each allegation, especially whether there is a nexus between the alleged behavior and risk to the child.
 - Current situation and risk of harm to the child.
 - Need for contested adjudication.
 - Need for child's testimony, and if it should be in chambers. (§ 350(b).)
- If adjudication is to be contested,
 - Evaluate need for expert testimony.
 - Issue subpoenas.
 - Prep witnesses, including child client.
 - Exchange witness lists with other counsel.
 - File joint statement of issues, motions in limine, or trial briefs as required.

- If there is reason to know the child is an Indian child, communicate with the tribal ICWA representative to determine the tribe's position on the case.

DURING

- Be aware of law and applicable burdens of proof.
- If adjudication is contested,
 - Make appropriate objections on the record to preserve issues for appeal.
 - If the case involves an Indian child, be sure to preserve ICWA issues for appeal.
 - Consider motion to dismiss at conclusion of social services agency's case. (§ 350(c).)

Note: The child has the right to present evidence in support of the petition before the court rules on a section 350(c) motion. (*Allen M. v. Superior Court* (1992) 6 Cal.App.4th 1069.)

- At close of evidence consider request to amend petition to conform to proof. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027.)
- Advocate identified position in keeping with any additional evidence received.
- Request appropriate interim orders pending disposition.
 - Placement (e.g., release to parent, to relative, with siblings).
 - Services for child and/or family to ameliorate problems or facilitate return.
- Ensure court addresses setting next hearing—disposition must be within 60 days (never more than six months) of detention hearing. (§ 352(b).)

AFTER

- Consult with child to explain court rulings and answer questions.
- File necessary forms/motions if pursuing rehearing or extraordinary writ.

JURISDICTION HEARING CHECKLIST: PARENT'S ATTORNEY

BEFORE

- Conduct independent investigation.
 - Conduct discovery—make informal requests and motions to compel if necessary. (Cal. Rules of Court, rule 5.546.)
 - Subpoena records, including police reports and medical records if necessary.
 - Review all documents, including social worker's notes.
 - Interview potential witnesses.
- If client in custody, ensure that a transportation order is issued.
- Anticipate client's reaction and interview regarding
 - Accuracy and completeness of information in report.
 - Position as to truth of allegations.
 - Desired outcomes and wishes as to direction of litigation.
- Counsel client on alternative strategies and probable outcomes.
- Assess and formulate position on
 - Strength of social services agency's evidence supporting each allegation, especially whether there is a nexus between the alleged behavior and risk to the child.
 - Current situation and risk of harm to the child.
 - Whether any presumptions apply under section 355.1.
 - Need for contested adjudication.
 - Need for child's testimony (§ 350(b)) and client's wishes regarding this issue.
 - Whether child is an Indian child, and who may have further information.
- Negotiate with opposing counsel (are there combined jurisdiction and disposition issues?).
- If adjudication is to be contested,

- Evaluate need for expert testimony and physical evidence.
- Issue subpoenas.
- Prep all witnesses, including your client, for direct or cross-examination.
- Exchange witness lists with other counsel.
- File joint statement of issues, motions in limine, applicable section 355 objections.
- File trial brief.
- Use pretrial hearing as opportunity to get input on your case from bench.
- Evaluate need to request a continuance. (§§ 352, 355(b)(2).)

DURING

- Be aware of law and applicable burdens of proof.
- Make appropriate objections on the record to preserve issues for appeal, including any ICWA issues, if applicable..
- Consider motion to dismiss after social services agency's and children's case. (§ 350(c).)
- At close of evidence, consider request to amend petition to conform to proof. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027.)
- Request appropriate interim orders pending disposition (i.e., placement and services).
- Ensure court addresses setting next hearing—disposition must be within 60 days (never more than six months) of detention hearing. (§ 352(b).)

Note: Continuances may be granted only for good cause and never if contrary to the interests of the minor. (§ 350(a).)

AFTER

- Consult with client to explain court rulings and answer questions.
- File necessary forms/motions if pursuing rehearing or extraordinary writ.
- Set tentative deadlines with client for events to occur (begin services, increase visits).

DISPOSITION

DISPOSITION HEARING CHECKLIST: CHILD'S ATTORNEY

BEFORE

- Interview client again about desires and position on
 - County social services agency's recommendation.
 - Placement (with parent, previously noncustodial parent, relative, current caregiver).
 - Need for services (e.g., counseling, tutoring).
 - Visitation with parents, siblings, grandparents, and others.
- If the child is an Indian child, contact tribal representative to determine tribe's position on key issues such as placement.
- Assess and formulate position on
 - Current risk of substantial danger to child if in custody of one or both parents, i.e., need for removal from custody of parent(s).
 - Services and resources necessary to maintain child safely in parent's custody.
 - Preferred placement if removal is necessary.
 - Need for continued jurisdiction if child in custody of previously noncustodial parent.
 - Provision of family reunification services to one or both parents.
 - Education rights of the parents.
 - Whether child has full access to educational services, including any special education services.
 - Case plan and individualized services needed for family and child.

DURING

- Inform court of child's wishes—however, per section 317(e), must not advocate for return if return conflicts with the child's safety and protection.

- Advocate positions identified above in keeping with any additional evidence received.
- Request appropriate orders, such as
 - Limitation of parent's education rights and appointment of responsible adult to make education decisions. (§ 361; Ed. Code, § 56055; Cal. Rules of Court, rules 5.649-5.651.)
 - Case plan specific to the family and child. (§ 16501.1.)
 - Special services (e.g., regional center referral, necessary educational assessments or support to participate in extracurricular activities, counseling for sexual abuse victims).
 - Specific versus general placement order. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479; *In re Robert A.* (1992) 4 Cal.App.4th 174.)
- Ensure that court addresses
 - Placement.
 - Education rights.
 - Services for family (reunification if removed, maintenance if not).
 - Visitation with parents, siblings, grandparents, and other appropriate persons. (§§ 362.1, 362.2(h).)
 - Whether the social services agency has made reasonable efforts to prevent or eliminate the need for removal.
 - Setting the next hearing. (§§ 364, 366.21(e), 366.26.)

AFTER

- Develop timeline of important dates and calendar reminders.
- Consult with child to explain court rulings and answer questions.
- Send letter to caregiver with contact information and summary of court orders.
- Follow up on assessments, special education services, enrollment in extracurricular activities.
- File necessary forms/motions if pursuing rehearing, appeal, or writ.

DISPOSITION HEARING CHECKLIST: PARENT'S ATTORNEY

BEFORE

- Review disposition report. Does it address items listed in section 358.1?
- Interview client again and strategize regarding desires and position on
 - County social services agency's recommendation.
 - Placement (with client, previously noncustodial parent, relative, current caregiver).
 - Need for services, and whether they are reasonably tailored to client's needs.
 - Ability to substantially comply with case plan within allotted time.
 - Ability to participate in education decisions and needs.
 - Visitation with client, siblings, grandparents, and others.
- If case involves an Indian child,
 - Contact tribal representative to determine tribe's position on key issues, such as need for continued removal and appropriate placement.
 - Evaluate whether agency has met its burdens under ICWA, including providing active efforts.
 - Evaluate whether proposed qualified expert witness testimony is sufficient under ICWA standards.
- Assess and formulate position on
 - Current risk of substantial danger to child if in custody of one or both parents, i.e., need for removal from custody of parent(s).
 - What can be done to prevent/eliminate need for removal (services, change in living arrangement, etc.).
 - Alternatives short of removal. (§§ 301, 360(b).)
 - Need for continued jurisdiction if child in custody of previously noncustodial parent.
 - Case plan/individualized services needed for family and children.
 - Need for interim hearings.

- Is there a possibility of no services/bypass? (§ 361.5(b) or (e).)

If so,

- Learn position of other counsel.
- Exercise right to 30-day continuance? (§ 358(a)(1).)
- Prepare to address best interest exception. (§ 361.5(c).)
- Review need for expert testimony.

DURING

- Advocate positions identified above in keeping with any additional evidence received.
- Be sure to make appropriate objections to preserve issues for appeal.
- If case involves an Indian child, be particularly mindful of preserving ICWA issues for appeal.
- Request appropriate orders, such as
 - Case plan specific to the family and children. (§ 16501.1.)
 - Special services (e.g., foreign language, geographical concerns).
 - Specific versus general placement order. (*In re Cynthia C.*, *supra*, 58 Cal.App.4th at p. 1479; *In re Robert A.*, *supra*, 4 Cal.App.4th at p. 174.)
- Ensure court addresses
 - Placement.
 - Services for family (reunification if removed, maintenance if not).
 - Visitation with client, siblings, grandparents, and other appropriate persons. (§§ 362.1, 362.2(h).)
 - Whether the social services agency has made reasonable efforts to prevent or eliminate the need for removal.
 - Education rights (that is, affirms that your client retains them unless limitation is necessary).
 - Setting the next hearing. (§§ 364, 366.21(e), 366.26.)

AFTER

- Develop timeline of important dates and calendar reminders.
- Consult with client to explain court rulings and answer questions.
- Discuss interim objectives with client (when should services have begun, when should visitation increase, etc.), and instruct client to contact you when appropriate.
- File necessary forms/motions if pursuing rehearing, appeal, or writ.

JUDICIAL REVIEW
OF PLACEMENT
WITH PARENT

JUDICIAL REVIEW OF PLACEMENT WITH PARENT CHECKLIST (§ 364): CHILD'S ATTORNEY

BEFORE

- Ensure that social worker's report was provided 10 days before hearing. (§ 364(b).)
- Contact child to discuss in private child's
 - Progress in programs such as counseling and how things are going at home.
 - School progress and issues (grades, discipline, programs and activities).
 - Position on the social services agency's recommendation.
 - Needs and wishes regarding programs and services if jurisdiction continues.
 - Desires regarding custody and visitation if jurisdiction is terminated.
- Contact parent (after obtaining permission to do so from parent's counsel) regarding
 - Child's progress in programs.
 - Child's performance in school.
 - Any perceived need for continued services.
- Contact service providers such as teachers and therapists regarding
 - Opinions on child's well-being.
 - Need for continued court supervision and/or services.
- If case involves an Indian child, contact tribal representative regarding key issues such as services, placement, and permanency planning.
- Formulate position on
 - Need for continued jurisdiction.

- Custody issues, e.g., legal/physical custody, visitation, restraining orders.
- Whether to request a contested hearing.

DURING

- Inform the court of the child's desires as to custody and visitation.
- If advocating for continued jurisdiction,
 - Request additional counseling for child and/or family.
 - Ensure needed educational supports and rights are in place.
 - Request family preservation or stabilization services and/or funding.
 - Is contested hearing necessary?
- If advocating for termination of jurisdiction,
 - Request any appropriate custody orders.
 - Ensure visitation/no contact/restraining orders continue.
- Ensure the court
 - Terminates jurisdiction unless conditions exist that would justify original assumption of jurisdiction or are likely to exist without continued supervision.
 - Orders additional services if jurisdiction continues.
 - Enters family law orders regarding custody and visitation.

AFTER

- Consult with child to explain court orders and rulings and answer questions.
- Ensure that the child knows what to do if problems arise in the future.
- File necessary forms/motions if pursuing an appeal or emergency writ.

JUDICIAL REVIEW OF PLACEMENT WITH PARENT CHECKLIST (§ 364): PARENT'S ATTORNEY

BEFORE

- Ascertain that social worker's report is provided 10 days before hearing. (§ 364(b).)
- Request and review delivered service logs/chronological notes.
- Ensure all court-ordered programs and services were provided in a timely fashion.
- If the case involves an Indian child, ensure that services provided are culturally appropriate and affirmative in accordance with active-efforts requirements.
- Contact client to formulate hearing position and discuss his or her
 - Progress in programs such as counseling and how things are going.
 - Position on the social services agency's recommendation.
 - Needs and wishes regarding programs and services if jurisdiction continues.
 - Desires regarding custody and visitation if jurisdiction is terminated.
- Contact opposing counsel regarding their position on recommendations and follow up as necessary.
- Contact service providers such as teachers, therapists, etc., regarding
 - Opinions on family's progress.
 - Need for continued court supervision and/or services.
- If case involves an Indian child, contact tribal representative to discuss any issues and determine tribe's position on key issues such as need for continued removal, whether active-efforts requirement has been met, whether placement conforms to ICWA preferences, and permanency planning.
- Formulate argument regarding
 - Need for continued jurisdiction.

- Custody issues, e.g., legal/physical custody, visitation, restraining orders.
- Whether mediation is necessary.
- Whether education rights need to be restored or otherwise addressed.
- Whether to request a contested hearing.
- Whether existing service referrals will continue even if dependency is terminated.

DURING

- Inform the court of the positives and negatives.
- If advocating termination of jurisdiction,
 - Request any appropriate custody orders.
 - Ensure visitation/no contact/restraining orders continue.
- Ensure the court
 - Terminates jurisdiction, unless conditions exist that would justify original assumption of jurisdiction or are likely to exist without continued supervision.
 - Orders additional services if jurisdiction continues.
 - Enters family law orders regarding custody and visitation.

AFTER

- Consult with client to explain court orders and rulings and answer questions.
- File necessary forms/motions if pursuing an appeal or emergency writ.
- Ensure client has access to services if needed.

STATUS REVIEWS

STATUS REVIEWS CHECKLIST: CHILD'S ATTORNEY

BEFORE

- Ensure social worker's report was provided 10 days before hearing. (§ 366.21(c).)
- Ensure all court-ordered programs and services were timely provided.
- If case involves an Indian child, check for culturally appropriate services and active efforts.
- Check for efforts to place siblings together.
- Contact child to discuss in private his or her position on
 - Social services agency's recommendation.
 - Visitation during period of supervision (e.g., frequency, quality).
 - Feelings about placement (relationship with those in home, methods of discipline, house rules, ability to participate in age-appropriate activities, attitude of caregiver toward parent and caregiver's cooperation with visitation and family phone calls).
 - Progress in counseling or other programs.
 - Progress in school (e.g., grades, need for tutoring, extracurricular activities).
 - Health (generally, and any specific medical problems).
- Contact caregiver to discuss
 - Child's behavior at home and in school, reactions to parent's visits/phone calls.
 - Provision of services by the social services agency (funding, transportation, etc.).
- If case involves an Indian child, contact tribal representative to discuss position on key issues such as active efforts, placement, and permanency planning.

- Contact service providers such as teachers and therapists to discuss
 - Opinions on child's well-being and progress.
 - Risk of detriment if child is returned, recommended timelines if not.
- Formulate position on
 - Return to the custody of the parent.
 - Continued provision of family reunification services if child is not returned.
 - Whether reasonable services were provided (to the child as well as the parent).
 - Termination of jurisdiction for child placed with previously noncustodial parent.
 - Whether parent's right to make education decisions should be restored or limited.
 - Whether child needs additional educational support.
 - Whether to request a contested hearing.

DURING

- Be aware of the law and applicable burdens of proof.
- Inform court of child's wishes—however, per section 317(e), must not advocate for return if it conflicts with the child's safety and protection.
- Inform court of independent investigation results and request appropriate orders.
- Request contested hearing (if appropriate or necessary).
- Ensure court addresses
 - Return (must unless doing so creates a substantial risk of detriment).
 - Whether reasonable services were provided.
 - Whether to continue services if not returning child.
 - Who is holding education rights.
 - Whether the child's educational needs are being met.
 - If terminating services, whether to set a .26 permanency hearing.

AFTER

- Consult with child to explain court orders and rulings and answer questions.
- Send letter to caregiver (or parent—with counsel’s permission—if child returned) with contact information and update.
- File necessary forms/motions if pursuing an appeal, writ, rehearing, or emergency writ.

STATUS REVIEWS CHECKLIST: PARENT'S ATTORNEY

BEFORE

- Ensure social worker's report was provided 10 days before hearing. (§ 366.21(c).)
- Request and review delivered service logs/chronological notes.
- Ensure all court-ordered programs and services were provided in a timely fashion.
- Review case plan ordered at last hearing.
- If case involves an Indian child, ensure that services meet ICWA active-efforts requirements.
- Check for efforts to place siblings together.
- If case involves an Indian child, check for efforts to meet ICWA placement preferences.
- Contact client to discuss possible outcomes and position on
 - Social services agency's recommendation.
 - Frequency and quality of visitation.
 - Feelings about current caregiver.
 - Progress in services: Can client articulate what has been learned?
 - Any educational issues with children.
 - Contact with social worker.
- Contact caregiver, if appropriate, to discuss reunification and any other issues.
- Contact service providers to discuss
 - Opinions on client's well-being and progress.
 - Any risk of detriment if child is returned or recommended timelines.
- If case involves an Indian child, contact the tribe for positions on key issues such as active efforts, placement, and permanency planning.

- Formulate position on
 - Return.
 - Continued provision of family reunification services if child is not returned (be sure to check the dates of the referrals).
 - If limited, whether education rights should be restored.
 - Whether reasonable services were provided (to the child as well as the parent).
 - Termination of jurisdiction for child placed with previously noncustodial parent.
 - Whether to request a contested hearing.
- If return will not occur, is placement with relative or NREFM possible?
- Are there grounds to terminate services? If so, be prepared to address or set for contest.
- Contact opposing counsel to discuss position and remove as much mystery from hearing as possible.

DURING

- Be aware of applicable law and burdens (“shall return” standard, regular participation and substantive progress, substantial probability of return, 366.21(g) criteria).
- Be sure to make necessary objections to preserve issues for appeal, including ICWA issues.
- Inform court of client’s wishes.
- Acknowledge positives and update court on client’s situation and progress in services.
- Request contested hearing (if appropriate or necessary).
- Ensure court addresses
 - Return (must unless doing so creates a substantial risk of detriment).
 - Whether reasonable services were provided.
 - Whether to continue services if not returning child.

- Education rights.
- If setting a 366.26 hearing, request for bonding/attachment assessment.
- If terminating services, request continued visitation.

AFTER

- Consult with client to explain court orders and rulings and answer questions.
- File necessary forms/motions if pursuing an appeal, writ, rehearing or emergency writ.
- Set tentative deadlines for next steps (i.e., unsupervised visits in six weeks, meeting in four weeks, possible 388, etc.).

SELECTION AND IMPLEMENTATION

SELECTION AND IMPLEMENTATION CHECKLIST

(§ 366.26): CHILD’S ATTORNEY

BEFORE

- Ensure social worker’s report is provided 10 days before the hearing. (Cal. Rules of Court, rule 5.725(c).)
- Interview child regarding
 - Desires as to placement and permanency plan.
 - Continued contact with parents, siblings, other relatives.
 - Position on social services agency’s recommendation.
 - Child’s wishes to be present or not at the hearing. (§ 366.26(h)(2).)
- Discuss permanency options with caregiver including guardianship, open adoption, and postadoption sibling contact. (§ 366.29.)
- If case involves an Indian child, discuss permanency options with tribe.
- Assess and formulate position on
 - Appropriate permanent plan.
 - Whether to set contested hearing on
 - Adoptability.
 - Difficulty in placing child.
 - Parental or sibling bond.
 - Appropriateness of guardianship.
 - Whether jurisdiction should terminate if plan is guardianship (Kin-GAP).
- If contesting, prepare and proceed as for jurisdictional hearing.
Note: Section 355(b) does not apply.

DURING

- Inform court of the child's wishes. (§ 366.26(h)(1).)
- Advocate positions identified above in keeping with any additional evidence received.

Note: The proponent of a section 366.26(c)(1) exception carries the burden to prove the detrimental circumstances constituting a compelling reason not to terminate.

- Request court to make appropriate findings and orders for referrals (i.e., Special Immigrant Juvenile Status (SIJS) visa, regional center, IEP, etc.).
- Where appropriate, request that caregivers be designated as “prospective adoptive parents.” (§ 366.26(n).)
- If parental rights terminated and not previously ordered, request court to place education rights with caregivers or prospective adoptive parents.
- If legal guardianship is entered, request appropriate orders as to
 - Visitation with parents.
 - Termination of dependency jurisdiction. (§ 366.3.)

AFTER

- Consult with child to explain court rulings and answer questions.
- Send letter to caregiver with contact information and summary of court orders.
- File necessary forms/motions if pursuing rehearing, appeal, or writ.

SELECTION AND IMPLEMENTATION CHECKLIST

(§ 366.26): PARENT'S ATTORNEY

BEFORE

- Ensure social worker's report is provided 10 days before the hearing. (Cal. Rules of Court, rule 5:725(c).)
- Consider discussing permanency options with caregiver if appropriate. (§ 366.29.)
- If case involves an Indian child, consider discussing permanency options with tribe and consider whether transfer to tribal court is an appropriate possibility.
- Ensure client's presence if in custody.
- Was notice proper?
- Interview client regarding
 - Possibility of filing a section 388.
 - Continued contact with child.
 - Position on social services agency's recommendation.
 - Possible outcomes and posthearing remedies (e.g., future section 388, appeal, etc.).
 - Whether to set contested hearing.
- If contesting (section 355(b) does not apply),
 - Is further investigation regarding adoptability necessary?
 - Obtain delivered service logs and incident reports.
 - If case involves an Indian child, consider whether
 - Evidence justifies finding of active efforts.
 - Tribe was consulted in formulation of permanent plan, including discussion of whether tribal customary adoption would be an appropriate plan.
 - Proposed permanent plan complies with ICWA placement preferences.
 - If child is specifically adoptable, obtain information on suitability of caregiver.

- Who can testify re one of the section 366.26(c)(1) exceptions?
- Is an expert necessary to testify or assist with preparing cross-examination?
- Negotiate/discuss hearing strategy with opposing counsel.
- If ICWA applies, is there an expert report? (Remember that the beyond-a-reasonable-doubt standard applies.) Review the report in detail. Remember that the qualified expert witness must testify in person unless all parties stipulate in writing to a written report in lieu of testimony, and the court must make a specific finding that the stipulation was voluntary, knowing, and intelligent. (§ 224.6(e))

DURING

- Inform court of the client's wishes.
- Advocate positions identified above in keeping with any additional evidence received.

Note: The proponent of a section 366.26(c)(1) exception carries the burden to prove the detrimental circumstances constituting a compelling reason not to terminate.
- Request mediation to address postadoption contact.
- Enter all specific and general objections to preserve record. If case involves an Indian child, make a specific note of any ICWA objections such as to sufficiency of qualified expert witness testimony, showing of active efforts, and compliance with placement preferences.
- If a legal guardianship or a planned permanent living arrangement is entered, request appropriate orders as to
 - Visitation.
 - Termination of dependency jurisdiction. (§ 366.3.)
 - Continued services for child (parents may be able to avail themselves of these).

AFTER

- Evaluate client's state of mind. Is assistance needed?
- Consult with client to explain court rulings and answer questions.
- File notice of appeal within 60 days after rendition of the judgment.
- If rights are not terminated, set timelines and future goals for client.

REVIEW OF
PERMANENT PLAN

REVIEW OF PERMANENT PLAN CHECKLIST (§ 366.3): CHILD’S ATTORNEY

BEFORE

- Review social worker’s report to ensure that social services agency is
 - Providing all court-ordered services.
 - Facilitating visitation orders.
 - Making all efforts to ensure child placed in a safe and permanent home.
 - Taking action to identify and maintain relationships with persons important to children 10 or older who have been in a group home for six months or more.
 - Ensuring educational needs are being addressed and met (placement, achievement, etc.).
- Contact child to discuss in private
 - Progress in school, counseling, or other programs.
 - Feelings about placement and any particular concerns or problems.
 - Feelings about permanent plan and/or emancipation.
 - Visitation/contact with parent, siblings, and others.
- Contact caregiver regarding
 - Any impediments to adoption or guardianship.
 - Provision of services to the child by the social services agency to meet any special needs.
 - Child’s progress in school, counseling, and other programs.
- Consider termination of jurisdiction—is it in the child’s best interest?
- Consider return to home of parent or reinstatement of reunification/parental rights.

DURING

- Inform court of the child's wishes and any identified needs.
- Object to termination of jurisdiction if not in child's best interest (e.g., if child is pursuing legalization through Special Immigrant Juvenile Status [SIJS], or Kin-GAP funding is not yet available).
- Request any appropriate orders (e.g., limitation of parent's education rights).
- Consider asking for hearing if it appears agency arbitrarily moved child.
- Ensure court addresses
 - Whether reasonable efforts were made to finalize permanent plan.
 - Child's particular educational, developmental, and mental health needs.
 - For children in planned permanent living arrangement/ foster care with a permanent plan,
 - Appropriateness of all permanent plans, including return to parent.
 - Reinstatement of reunification. (§ 366.3(e)(10).)
 - Continuing necessity and appropriateness of placement.
 - Adequacy of services provided to the child.
 - Sufficiency of efforts made to place siblings together and facilitate contact.
 - Adequacy of efforts to identify and facilitate relationships with individuals important to children 10 or older. (§ 366.3(e)(3).)
 - Provision of services for transition to independent living for children 16 years of age or older. (§ 366.3(e)(10).)
 - Whether to limit the parent's right to make education decisions.
 - Whether setting a .26 hearing is in the child's best interest.

AFTER

- Consult with child to explain court orders and rulings and answer questions.
- Send letter to caregiver with contact information and update on orders and rulings.
- If in client's interest, file a 388 motion seeking change/modification of orders.
- File necessary forms/motions if pursuing appeal, writ, or emergency writ.

REVIEW OF PERMANENT PLAN CHECKLIST (§ 366.3): PARENT'S ATTORNEY

BEFORE

- Contact client to discuss
 - Current situation and progress in any programs or services.
 - Possibility of filing a 388 motion.
 - Visitation and contact, including sibling contact. (§ 16002(e).)
 - Updated contact information.
 - Appropriateness of current placement.
- Review social worker's report to ensure that social services agency is
 - Continuing contact with client and visitation as ordered.
 - Continuing contact with relatives and important people.
 - Making efforts to locate a permanent home.
 - Providing necessary services to the child (including independent living skills for a child 16 and older).
 - Noticing parent: Service no earlier than 30 days nor later than 15 days before hearing. (§ 295.)
- Contact caregiver, if appropriate, to discuss
 - Current contact with client and siblings and willingness to continue if jurisdiction terminated.
 - Whether guardianship is appropriate.

DURING

- Inform court of the client's wishes.
- Request whether client can avail self of any orders relating to the child's services (e.g., family therapy).
- Ensure court addresses
 - Continued contact and reunification possibilities. (§ 366.3(e).)
 - Whether reasonable efforts have been made to finalize permanent placement.

- Exit orders if terminating jurisdiction prior to emancipation.
- Section 391 requirements (if child has reached age of majority).

AFTER

- Consult with client to explain court orders and rulings and answer questions.
- Set timelines and future goals for client.
- File necessary forms/motions if pursuing an appeal or emergency writ.