

## **Dependency Fact Finding Hearing**

### **A. Purpose of the Dependency Hearing**

A fact-finding hearing is a trial to determine whether the State may intervene over the objections of the family and whether the child should be declared dependent. If the Court finds that that the child is dependent then the Court must ensure that services, placement and visitation are addressed.

### **B. Timeline**

A fact-finding hearing shall be held no later than 75 days after the filling of the petition unless a continuance is granted by “exceptional circumstances”.

### **C. Length of Time and Scheduling**

Understanding that all contested fact-finding hearings are not the same, most fact finding hearings, including the ruling can be completed within 2 days.

1. The first set fact-finding should remain and preferably be set 2-3 weeks prior to a contested fact-finding hearing.
2. The fact finding hearing will always start on time because there is a presumption that the parties have already tried to negotiate or settle. If the parties believe additional time may be helpful in settling the case they may request that time at the beginning of the trial.
3. The Court will do its best to ensure that overlapping trials, special sets, meetings and other commitments are not scheduled during fact finding hearings, so that trials can run continuously.
4. If the Court wants to hear about specific issues, the court will so direct counsel or the parties.
5. The hearing should focus on the current allegations in the petition, any new information obtained since the time of filing, and other closely related information regarding parental deficiencies.

### **D. Discovery**

The rules of evidence apply at the dependency fact finding hearing. The court should hold the attorneys accountable to the discovery deadlines unless good cause is found. Note: Request for discovery to DCYF should be made after the 1<sup>st</sup> set fact finding per DCYF internal policy otherwise it will be denied by the department and discovery could be delayed. The discovery deadline should be at least 2 weeks prior to the contested fact finding. If additional discovery is provided, the deadline should also be adjusted for the exhibit list.

## **E. Trial Brief**

On the issue of dependency, the court only requires a trial brief on complicated or novel issues i.e. aggravated circumstances

In addition to briefing, the parties should provide in writing their proposals on any other contested issues, including proposals for placement, services, sibling and parent visits.

Any time documents are filed, Judge's Copies should be provided to Court Administration.

## **F. Placement**

The preference for out of home placement, if ordered, is with relatives or suitable others. The Court has the authority to place a child a child without a completed background check by DCYF.

Placement shall be with the parent unless the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child and to make it possible for the child to return home, *and*: there is no parent or guardian available to care for the child; the parent, guardian, or legal custodian is not willing to take custody of the child; *or* the court finds by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

## **G. Visitation**

At the fact finding hearing the court must also inquire about the terms and conditions for parental, sibling, and family visitation. Visitation is a right of the family.

Please review RCW 13.34.136(2)(b)(ii)(A) and (B) and (C) and DCYF's policy regarding visitation.

## **H. Services**

Services should be tailored to meet each individual parent's needs in a timely manner, necessary to correct the parental deficiencies, and related to the reasons for removal.

## **I. Dispositional Hearings**

The court should encourage the parties to settle as many issues as possible by setting dispositional hearings regarding the limited issues of placement, visitation, or services.

- a. Counsel for parents can provide an offer of proof as to the parents' testimony, if any, so long as it is provided in writing.
- b. Briefs will be filed when Dependency is agreed but Disposition is contested.

## **J. Entry of Findings of Fact and Conclusions of Law**

Written Findings of Fact and Conclusions of Law shall be provided by the prevailing party no later than five (5) court days after the completion of the Fact Finding Hearing (FFH). Written Objections, if any, shall be provided three (3) court days after the proposed findings are provided and written responses, if any, shall be provided two (2) court days after the written objections are provided. The Court will either enter Findings based on the submitted written documents or set a hearing to enter orders after oral argument.

### **A. Indian Child Welfare Act (ICWA) and Washington State Indian Child Welfare Act (WSICWA) Standards**

In each dependency, Title 13 guardianship, or termination proceeding regarding an Indian child, the Department must make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. “Active Efforts” are not necessarily a more exacting requirement than reasonable efforts. It does require the Department to show that it “actively worked with the parent to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.” The BIA regulations do not define “active efforts” in comparison to “reasonable efforts.” 81 Fed. Reg 38791 (June 14, 2016); RCW 13.38.040; 25 C.F.R. § 23.2