

The Judicial Process

© 2019 OFCA - Ohio Family Care Association

Ohio's Judicial Process

Resource families involved in child welfare are also involved in the Ohio court system. Understanding the many processes in the court that the resource family is involved in cuts down on the “mystery” of what’s happening in the decision making process for children in care.



TITLES AND ROLES



It helps to know the titles and roles of the people and agencies involved in court proceedings related to a child or teen in your care. Here are some of the people who may be involved in your child or teen’s case and the roles that they play:

Judge or Magistrate

These are public officials who are elected or appointed to decide cases in a court of law. In Ohio, juvenile court judges are elected in each county. Magistrates are appointed to help judges with court cases. Both juvenile court judges and magistrates make decisions in cases involving children and teens who are in foster care or involved with children services agencies. Probate court judges and magistrates make decisions in

adoption cases. Magistrates conduct proceedings as a judge would, but certain decisions of the magistrate are not final until they are reviewed and adopted by a judge.

Party

In a court proceeding, a party is someone who has an independent legal interest in the proceeding. For example, parents in child abuse, neglect and dependency cases are parties because they have parental rights and interests. This means that they are guaranteed to notice, representation, to be present and to offer testimony in court hearings. In Ohio, children also are parties in these cases, but foster parents are not. Ohio law requires foster and kinship caregivers to be notified of each court hearing and given the opportunity to provide input into the process although they are not legally a party to the case. In some situations, proceedings by a foster parent for legal custody, a foster parent may file in the court to be made a party to the case. You can find a toolkit to assist you as a foster parent in being heard in the court at [Right to be Heard Toolkit](#) (click [here](#))

Agency Attorney/County Prosecutor

In some counties, agency attorneys represent PCSAs in child abuse, neglect and dependency proceedings. In other counties, county prosecutors represent the agency. These cases typically begin when the PCSA receives a report of child maltreatment, which the agency is required by law to investigate or assess the report. The results of the investigation or assessment are forwarded, when appropriate, to the prosecutor or the agency attorney for evaluation, and a decision is made whether to file a complaint.

Guardian Ad Litem (GAL)/Court Appointed Special Advocate (CASA)

A GAL is an officer of the Court appointed to act as a neutral third party whose duty it is to represent the best interests of a child who is the subject of an abuse, neglect, or dependency case or a contested adoption to the Court. Many GALs are attorneys; attorney GALs may also represent a child's wishes under certain circumstances. GALs are required to complete educational requirements set by the Supreme Court of Ohio complete an application process established by local courts.

All CASAs work on a volunteer basis. A CASA may be an attorney, but a legal degree is not required. CASAs are community members who have been trained to advocate in court for the best interest of an abused or neglected child. CASA volunteers are assigned to a child for the duration of a case.

Both GALs and CASAs are expected to conduct independent investigations. This means they interview children (if age-appropriate) and other parties to provide the court with accurate information and informed recommendations.

Defense Counsel

In some cases, attorneys who are hired by the parties or appointed by the court may represent biological or legal parents, children, or other parties. These attorneys advocate for their clients' wishes in the proceedings.

TYPES OF HEARINGS

A child who is the subject of an abuse, neglect or dependency allegation will have many court hearings. Some are held before or shortly after the child is removed from home. Others happen while a child is in the custody of the PCSA and under the care of a resource caregiver. Here are some types of court hearings:

Shelter Care Hearing

This hearing is held within 72 hours after a child or teen is removed from home. At this hearing, the judge will decide if there is reason to believe the child is in danger and should be placed in care. If the judge believes that the child's home is not safe, the judge will ask whether another family member can care for the child. If no appropriate family member is available, the judge may place the child with another adult who has a close connection with the child or with a foster caregiver. This is called shelter care. Parents are notified of the shelter hearing and of any case plan that is entered for the child. Parents are also notified of the consequences of not following the case plan and are informed of their right to be represented by counsel.

Adjudicatory Hearing

This hearing must be held no later than 30 days after the case first comes to court, unless there is a good reason to delay it. In this hearing, the judge makes a ruling, also called adjudication, as to whether the child is abused, neglected or dependent. If the child is found to be abused, neglected or dependent, based on clear and convincing evidence, the judge will decide whether the child should remain in care until a disposition hearing is held to determine the plan for the child. If the child is found not to be abused, neglected or dependent, he or she will return home. The judge also is required to determine whether reasonable efforts were made to avoid removing the child from home, or whether such efforts were not required based on the circumstances of the case. A GAL may be appointed for the child at the adjudication hearing.

Dispositional Hearing

This hearing must be held no later than 30 days after the adjudicatory hearing and no more than 90 days after the complaint was filed. It may even happen the same day as the adjudicatory hearing. At this hearing, the judge will decide which plan, also called a disposition, is in the child's best interest. The judge must issue a dispositional order within seven days after the dispositional hearing. Here are some possible dispositions:



- Reunification with the biological parent, which means the child returns home. The court also may order a person or persons to stay away from the child.
- Commitment to temporary custody of a PCSA with continued placement in substitute care with a relative, kin or foster caregiver while efforts are made to reunify the child with the parent(s).
- Placement with parents under protective supervision by the PCSA.
- Legal custody to a person other than the parent, such as a relative or another person who has a close connection to the child.
- Permanent custody to the state. This typically means the child remains in foster care until he or she is adopted.
- A planned permanent living arrangement, sometimes called a PPLA. This plan is used only in limited situations and may not be considered for children younger than 16.

Review Hearings

A judge who issued a dispositional order can schedule a review of the case at any time, but the judge must conduct a review within one year of either the date the complaint was filed or the date the child was first placed in shelter care, whichever occurred first. The judge also must review every 12 months thereafter.



Hearings on Motions

Any party to the case may make motions to the court for different reasons. Two common motions are:

- **Extension of Temporary Custody:** The children services agency may ask the court to extend its order of temporary custody. This motion must be made 30 days before the temporary custody order expires. Only two six-month extensions may be given.
- **Permanent Custody:** The children services agency may ask the court for permanent custody of the child, which, if granted, would terminate the child's parents' rights. To grant this motion, the judge must determine by clear and convincing evidence that permanent custody is in the child's best interest, that reasonable efforts to reunite the child with the parent were unsuccessful or not needed for specific reasons, and that one of the following apply:
 - The child has been in the temporary custody of the agency for 12 of 22 consecutive months; or
 - The child has been abandoned or orphaned; or
 - The child cannot, or should not, be placed with parents within a reasonable time.