

# Dependency Hearing Descriptions

Parents have a fundamental right to parent their children. This right is protected by the U.S. Constitution. Due to the constitutional implications of being denied your fundamental right to parent, you are entitled to an attorney to represent you in these matters, if you are indigent. Majority of our clients are not employed and do not have any funds so we are routinely appointed. Although clients can hire private counsel if they want and can afford to do so. Sometimes the court also appoints us and requires parents to pay something towards the attorneys' fees if the parent has income sufficient to do so. This happens on a case by case and judge by judge basis.

Child Protective Services ("CPS") through the Department of Economic Security ("DES" or "department") is invested by the state with the power to investigate allegations of abuse and neglect against children. If CPS removes a child from a parent, a Temporary Custody Notice ("TCN") is served upon the parent. Once removed the department has a Team Decision making meeting ("TDM") to discuss, with the parents and other family members, the options available. If the department must either return the child within 72 hours of their removal or file a dependency petition alleging that the child is dependent.

A dependent child is a child who does not have a parent willing or able to provide proper and effective parental care and control, a child who has not been provided with the basic necessities of life, such as food, clothing, and shelter, or a child whose home is unfit due to abuse or neglect. Abuse can include physical, sexual, or emotional abuse. Neglect means failing to provide for the child's basic needs to such a degree that there is a risk of harm to the child as a result.

The majority of the Dependency Petitions are filed by the Department. However, in Arizona any interested party may file a petition. We refer to these petitions as private petitions.

Guardian Ad Litem are attorneys who are appointed to represent the best interests of the children. They do not advocate for what the child wants but rather what they believe to be in the child's best interests. In cases with children over 12 years of age, the court may appoint an attorney for the child who advocates for the child's wishes.

The Indian Child Welfare Act (ICWA) is a federal law which requires that different procedures and standards be utilized if the child is an enrolled member of an Indian tribe or is eligible for enrollment.

The Interstate Compact on the Placement of Children (ICPC) is a law which requires states to cooperate with each other in cases where children will be placed in another state.

Preliminary Protective Conference- Conference held outside presence of the judge with attorneys, parents, CPS case manager, and court facilitator. Purpose is to attempt to reach agreements and discuss services, etc. [sometimes not set in private petitions]

Preliminary Protective Hearing- TM calls this a Review of Temporary Custody hearing- Immediately held after conference concludes. Judge advises parents of rights in case and provides copy of Form 1 which explains their rights. These include the right to counsel if they are indigent, right to trial on the allegations in the dependency petition, the right to cross-examine witnesses, and the right to compel witnesses to testify for them through the use of the subpoena power. Form 1 also includes the warning about being present at all hearings and possible default if not present. Also includes warning that parents need to do services if they are offered or their parental rights may be terminated or a guardian appointed. Parent enters their position regarding the dependency petition. The parent may stipulate (agree) to the dependency based on a specific reason, may deny the allegations and proceed towards a trial, or may “deny and submit,” meaning that the parent denies the allegations but allows the court to make the decision based only on evidence from CPS.

Initial Dependency Hearing- Normally only occurs if one or both parents do not appear at the PPC/RTC. Same basic procedure as PPH/RTC hearing above. Advised of rights etc. Sometimes continued hearing (CIDH) set if department does not have service on client or if ICWA applies and tribe needs to be notified.

5 day Temporary Custody Hearing- Law requires that if a parent is contesting the denial of temporary custody of his or her child, the court must set a hearing within 5 days to determine if probable cause exists to believe that the child would be subject to physical or emotional harm if in the parent’s custody. This is a very low standard. Sometimes this hearing may also be set if parent does not agree with the initial placement of the child, although this is not technically the purpose of such hearings.

Dependency Mediation- Meeting held outside presence of judge with attorneys, parents, and court mediator. Usually to discuss allegations, services, etc. and see if any agreements can be reached.

Dependency Pretrial Conference- Hearing to tell court whether any agreements were reached at mediation and set trial dates. If parent decides to deny and submit or stipulate at mediation then PTC is usually vacated.

Dependency Trial- Trial where CPS presents witnesses and evidence to prove allegations in dependency petition. Parents present evidence to refute or disprove the allegations.

Disposition Hearing- Does not occur until dependency finding is made. Usually conducted at same time the court makes dependency finding, such as at the PPH/RTC or IDH rather than as a separate hearing. CPS tells court what the case plan for the family will be and what services will be offered to parents and children. Sometimes this hearing may be a contested matter with evidence and witnesses if the department wishes to not offer services and proceed straight to severance.

Report and Review Hearing- The court is required by law to have a hearing at least once every six months to inquire about the status of the children and the compliance of the parents with services. Can occur more frequently, if necessary.

Review of Hospitalization Hearing- Law requires that if a child is placed in a locked Residential Treatment Center (“RTC”), the court must have a review hearing at least once every 60 days. Usually report will be prepared by the placement rather than CPS to update court on the child’s status. Sometimes held without appearances if placement and child are stable and no one sees necessity of hearing.

Change in Physical Custody Hearing- If CPS files a Motion for Change in Physical Custody (“CPC”) and if any party objects, the court may set a hearing to hear from the parties about if the child should be placed in the proposed placement. The hearing could be oral argument or may be contested matter with witnesses and exhibits.

Permanency Planning Hearing- Held approximately 10-12 months after the child comes into CPS custody. CPS must tell court what permanent plan for child will be. If parent is complying plan may stay Family Reunification. If not, then CPS may ask for case plan to be changed to severance and adoption, APPLA, or Guardianship. Sometimes this is held as a contested hearing so that parent and department can provide witnesses and exhibits to convince court of appropriate plan.

Initial Severance Hearing- This hearing is held if the court directs department to file a severance motion and must be held within 30 days of the Permanency Planning Hearing. Court will advise client of his or her rights in the severance matter, which are included on Form 3. If service is proper and client does not appear for this hearing, they will be defaulted and his or her rights terminated after brief testimony from the department. FYI- attorneys call this type of hearing a “drive-by”. Client can contest severance and request mediation and PTC, be defaulted, or can agree to not contest the severance.

Severance Mediation- This is outside presence of the judge. Purpose is to see if an agreement can be reached regarding the severance. These can be helpful in order to speak with placements about post adopt agreements. Otherwise these are not very helpful as CPS rarely ever withdraws severance motions.

Severance Pretrial Conference- Hearing to set severance trial dates. Sometimes testimony is taken at this hearing if the client decides to no longer contest at mediation or the Pretrial Conference.

Severance Trial- Trial for CPS to prove the allegations in severance motion. Always before same judge as case unless case is assigned to Commissioners who are prohibited from hearing severance trials. Case would then be sent to a judge to conduct the trial. The transfer of the case to a judge usually occurs at the time of Initial Severance Hearing.

Initial Guardianship Hearing- This hearing is held if the court directs the department to file a Guardianship motion and must be held within 30 days of the Permanency Planning Hearing. The Court advises client of rights, which are included on Form 2. If service is proper and client does not appear for this hearing, he or she will be defaulted and guardianship granted after brief testimony. Client may agree to the guardianship, be defaulted, or contest the guardianship and a mediation and pretrial conference be set.

Guardianship Mediation- This is outside presence of the judge. Purpose is to determine if agreement can be reached about the guardianship.

Guardianship Pretrial Conference- Hearing to set guardianship trial dates. Sometimes testimony is taken at this hearing if client agreed to guardianship at the mediation or pretrial conference.

Guardianship Trial- Trial for CPS to prove the allegations in the guardianship motion. This hearing is always before the same judge or commissioner as case. If guardianship is granted either through agreement or trial, the court will set a one year review hearing to monitor the guardianship. Appearances are always waived for the one year review hearing.

Status Conference- This hearing may be set by the court for various reasons to address issues that have arisen in case.

Motion Hearing/Oral Argument- This hearing may be set by the court to hear oral argument or evidence regarding a Motion filed by one of the parties.

Evidentiary Hearing- This hearing may be set by the court to hear testimony and evidence regarding a particular contested issue before the court.

Order to Show Cause Hearing- This hearing may be set by the court for a party to appear to show cause why they did not comply with an order of the court. Very rarely occurs in these matters.

In Home PreConference- This is not a formal conference but rather the attorneys, client, and CPS arrive early to discuss the case before the initial hearing.

In Home Intervention- The Court advises the client of his or her rights through Form 1 even though the dependency matter will be stayed if the parent agrees to participate in the in home intervention with the department. Client must agree and court must approve the intervention.

In Home Report and Review or In Home Review- This hearing is conducted 3 to 6 months after initial in home intervention hearing to check on status of case and services. If client does not comply with services, children may be removed and department will file a motion to convert matter into a dependency case.

In Home Status hearing- This hearing may be set for various reasons during an in home intervention matter so court can be updated on issues in the case.