

# FLORIDA'S DEPENDENCY BENCHBOOK

## BENCHCARD: ADJUDICATORY HEARING

Items in **bold font** are required by Florida Statutes.

### Introductory remarks.

- Explain purpose of the hearing. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

### Representation and appointment of counsel.

- **If parents do not have counsel, advise parents of right to legal counsel. The offer of counsel must be renewed at every hearing. §§ 39.013(9).**
- **Ascertain whether the right to counsel is understood. § 39.013(9)(a).**
- If counsel is waived, it must be on the record. Rule 8.320(b)(2). **Determine if waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigency. **If indigent per affidavit and the parents request it, appoint counsel for parents. § 39.013(9)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently, and voluntarily waive appointed counsel, ask if the parents want to proceed pro se or hire a private attorney. Explain “pro se” if necessary.
- **If parents request a continuance to consult with counsel, if the child is in shelter care, the court must follow the requirements of § 39.402(14) in determining whether to grant the continuance. (*See Continuances, Section 8*)**
- Follow the circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

### Parties and notices.

- **Have all parties identify themselves for the record with full name and permanent address. § 39.0131. See also §§ 39.402(8)(g) & 39.506(4).** Advise parties that the court will use the address for notice purposes until notified otherwise in writing. (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- **If child, parents, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. Rule 8.305(b)(1); §§ 39.301(14)(b), 39.402(5)(a), 39.402(8)(h)(9), 39.502(19).** The Fostering Connections Act requires DCF to use due diligence to identify and notify all relatives within 30 days of removal. Verify that DCF used due diligence to notify all relatives within 30 days of removal. (*See Fostering Connections Act and Service, Section 7*)

- Conduct a paternity inquiry if still in dispute. If a parent has not legally established paternity, DNA testing should be ordered after proper inquiry, applying *Privette* principles as appropriate. If necessary, examine birth certificate or inquire as to marriage status. (See *Paternity in Dependency Cases, Section 3*)
- **Appoint Guardian ad Litem Program to represent the best interests of the child if it has not yet been appointed. § 39.402(8)(c), Rule 8.215.** (See *Guardian ad Litem, Section 4*)
- If the child is eligible for membership in a federally recognized tribe, confirm that DCF/CBC notified the tribe pursuant to the Indian Child Welfare Act. (See *Indian Child Welfare Act, Section 7*)
- Ask the parents if they are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases other than those previously disclosed. (See *Dependency in the Context of Unified Family Court, Section 2*)
- Verify timely compliance with all ICPC requirements. (See *Interstate Compact on the Placement of Children, Section 7*)

If parents request a chance to change their plea.

- Verify that the parents understand that by entering their plea, they are giving up their rights:
  - To a trial;
  - To compel the attendance of witnesses;
  - To cross examine all witnesses; and
  - To require DCF to prove the allegations in the petition.
- Ask if anyone promised the parents anything or threatened him/her in any way to enter this plea.
- Ask if the parents are currently under the influence of any alcohol, medication, or drugs. (If yes, then what type, when, and how much was last taken.) (See *Service and Treatment Considerations for Parents, Section 5*)
- Ask if either parent suffers from mental illness. (See *Service and Treatment Considerations for Parents, Section 5*)
- If a plea form is used, ask if the parents went over the form with their attorneys and signed it.

If the parents change their plea.

- Find that the plea is being freely and voluntarily made and that the parents: (One of the below)
  - Consented to the finding of dependency; or
  - Admitted the allegations in the petition; or

- Failed to appear after being ordered to appear, which is a consent for failure to appear. It is also sometimes erroneously referred to as a “consent by default.”

If there is no change of plea, allow DCF to proceed with the presentation of evidence in support of the petition. Determine whether a prima facie case is presented by DCF. A child may be adjudicated dependent if the child has been:

- Abandoned, abused, or neglected by a parent or legal custodian;
- Surrendered to DCF or a child-placing agency for adoption;
- Voluntarily placed with DCF, a relative or licensed agency and the case plan expired or parents failed to substantially comply with its requirements;
- Voluntarily placed for adoption and parents have signed consents;
- Found to have no parent or legal custodian capable of providing supervision or care;
- Found to be at substantial risk of imminent abuse, abandonment or neglect by a parent or legal custodian, OR
- Found to have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. § 39.01(15).

If DCF presents a prima facie case, consider any evidence offered by the other parties.

Determine whether dependency was proven by a preponderance of the evidence or clear and convincing evidence. § 39.507(1)(b); Rule 8.330(a).

If dependency is not proven, dismiss the case. § 39.507(4); Rule 8.330(f).

If dependency is proven, decide whether to withhold adjudication or adjudicate the child dependent. § 39.507(5).

- State factual basis for decision on the record. §§ 39.507(5) & (6).
- Determine placement pending disposition. Rule 8.335.

Review the child’s placement. (See Placement Stability Considerations, Section 4)

- Ask what changes, if any, have been made in the child’s living arrangement and/or placement since the last hearing. If there has been a change, ask if the change was necessary to achieve the child’s permanency goal or meet the child’s service needs.
- Review/update the availability of relative placements for the child, including out of state relatives and parents of previously adopted siblings. **If no fit parent is willing or available to assume care and custody of the child, place the child in the temporary legal custody of an adult relative, the adoptive parent of the child’s sibling, or another adult approved by the court who is willing to care for the child, under the protective supervision of the department. § 39.521(3)(c).**

- **Advise the parents that they have a continuing duty to inform DCF of any relative who should be considered for placement of the child.**  
**§§ 39.402(17), 39.507(7)(c).**
- When parents provide relative information, order immediate commencement of adoptive home studies on all placement possibilities, particularly in ICPC cases. Require that the ICPC packet be sent to the ICPC central office within 5 working days of the order of compliance being signed. Order the case worker to submit all adoption documents. (*See Interstate Compact on the Placement of Children, Section 7*)
- Determine if the safety concerns have been ameliorated so that the child may be safely reunited with the parent. (*See American Bar Association Safety Guide, Section 6*)
- Verify that the caregiver is willing and able to meet the needs of the child.
- Order the caseworker to file a written notification before the child changes placement, when possible. If it is impossible to provide notification before a placement change, the caseworker should file notification promptly following the change. The court should verify that the GAL is involved with the decision. (*See Placement Stability Considerations, Section 4*)
- Inquire of the child, caregiver, GAL, and caseworker of any issues with the current placement.
- Determine if concurrent planning is appropriate based on the facts of the case. (*See Concurrent Case Planning Model, Section 4*) If adoption is a permanency option, verify that all adoption home studies have been completed. Also, verify that the caseworker has produced all necessary adoption documents.
- **Order a person who has or is requesting custody to submit to a mental health or substance abuse disorder assessment or evaluation. § 39.507(10), 39.521(1)(b)1; See also § 39.407(16).**
- If the case involves domestic violence, review safety provisions, practices, and safety plan compliance. (*See Domestic Violence and the Effects on Children, Section 3*)
- If siblings are not placed together, determine why not and ask about efforts made (when appropriate) to keep them together. Order continuing contact between/among siblings (when appropriate) when they are not placed together.
- If the child has a master trust, require the caseworker to report the balance in the master trust account. The master trust quarterly accounting reports should be filed with the court as attachments to the case plan. If the child is old enough, verify that the child understands how the master trust works. (*See Master Trusts, Section 8*)

Considerations in determining placement:

- Inquire of DCF: What home study and records checks have been done?
- Inquire of parents: What placement do they suggest other than DCF?
- Has DCF done a home study on that placement?

➤ Ordering placement is a very traumatic time for the child. For out-of-home placement, focus on emotional needs and age of child. See § 39.521(3)(b), for placement requirements at disposition.

➤ Require placement of pregnant teens in a foster home that will also accept the baby.

Review family time (visitation). (See *Family Time Protocols, Section 4 and Co-Parenting, Section 4*)

➤ **If child has been removed, order visitation unless it is not in the best interests of the child. § 39.402(9)(a).**

➤ Consider recommendations of DCF regarding family time (visitation).

➤ Enter order that clearly defines visitation schedule: who, where, and when.

➤ Reassess the type, frequency, duration, and quality of visitation. At a minimum, several hours a week of visitation is needed for the purposes of bonding. Get input from all parties/participants including child and caregiver.

➤ Inquire if transportation has been an issue and determine who has been present and participated in the visits.

➤ Ensure that there is ongoing supporting documentation regarding the frequency, quality, and progress of the visitation.

➤ Verify that the family time (visitation) is consistent to meet the developmental, emotional, and mental needs of the child.

➤ **If siblings are unable to be placed together, verify sibling visitation is occurring. § 39.4085(15). DCF must make reasonable efforts to provide frequent sibling visitation, even with previously adopted siblings.**

➤ If visitation is not possible because of the distance of the parent, the court should specify what alternative forms of contact are permitted (such as phone, email, webcam, or video conferencing).

➤ If the case involves domestic violence, ensure visitation practices are adequate to protect the child. (See *Domestic Violence and the Effects on Children, Section 3*)

Order child support, if not already ordered. If already ordered, review compliance.

(See *Child Support in Dependency Cases, Section 3*)

**Parents disclose relative placements. § 39.507(7)(c).**

➤ **If the child is adjudicated dependent and is in out-of-home care, inquire of the parents whether they have relatives who might be considered as a placement for the child. § 39.507(7)(c).**

➤ **The parents shall provide to the court and all parties identification and location information of the relatives. § 39.507(7)(c).**

Address the needs of the child.

- Verify that the child's mental, physical, and dental health care needs have been addressed. Get input from all parties/participants, including the child and caregiver. (*See Health Considerations, Section 5*)
- Verify that the parents are participating in the child's medical and educational appointments. (*See Family Time Protocols, Section 4 and Co-Parenting, Section 4*)
- Ask the child if there are any other individuals who should be present at this hearing or future hearings.
- Review individual appropriate school records including any individualized education plan. If an educational surrogate parent has been appointed, the surrogate should report to the court as appropriate. (*See Educational Considerations, Section 5*)
- Verify that the child is attending the same school as when he/she first entered care. If not, ask what has been done to ease the transition.
- Verify that the child is attending school on a regular basis and has adequate transportation.

If the child is in an out of home placement, inquire regarding the caregiver.

- Ensure that the caregiver understands the dependency court process, his/her role as a placement resource for the child, the specific needs of the child, and how to obtain necessary referrals and appointments for the child.
- Verify that caregiver is willing and able to meet the needs of the child.
- Ask if an assessment of the caregiver's needs has been conducted, and if so, if the identified needs and services have been provided. Ask what services the caregiver needs that he/she is currently not receiving.
- Inform the caregiver that he/she has the right to attend all subsequent hearings, submit reports to the court, and speak to the court regarding the child if he/she so desires.
- Verify that the caregiver has a long-term commitment to the care of the child in the event that reunification is no longer the preferred permanency goal.
- If a relative, ask if he/she is getting relative caregiver funds. If no, instruct the caseworker to coordinate with the relative regarding relative caregiver funds.
- Ask if the caseworker is regularly visiting the home, including visits alone with the child, and addressing any issues with the placement.
- Ask the caregiver to request a meeting of key parties to discuss any issues that arise with the placement.
- If caregiver is not in court, order that the caregiver be provided notice to appear at the next hearing.

**Advise the parents that if they fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may**

**become permanent.**

**§ 39.507(7)(c).**

**Advise parents of their right to appeal and appellate counsel.** *(See Appeals, Section 8)*

- Inform the parents that they have 30 days from the entry of the disposition order to file an appeal in their case and if they cannot afford an attorney, one will be appointed to represent them.

**Set the next hearing.**

- **Disposition hearing must occur within 30 days of the last day of the adjudicatory hearing. § 39.507(8).**
- **If at the disposition hearing the court does not approve the case plan the court must set a hearing within 30 days after the disposition hearing to review and approve the case plan. § 39.521(1)(a).**
- **The court must schedule the initial judicial review no later than 90 days after the date of the disposition hearing or case plan approval hearing, whichever comes earlier, but in no event later than 6 months after the child's removal from the home. § 39.521(1)(c).**
- **When setting non-TPR hearings, be cognizant of counsels' TPR hearings that are scheduled before other judges and defer to those TPR hearings.**
- **Provide written notices of the next hearing at the conclusion of every hearing and make sure that parties not present at the hearing are noticed. §§ 39.502(18), 39.506(9).**
- **Order the Children's Legal Services attorneys to provide notice to caregivers of the next court hearing if caregivers are not in court. § 39.502(19). See also §§ 39.301(14)(b) & 39.502(17).**
- **Ask if the child had difficulty attending the hearing. Facilitate telephonic or video conferencing, if necessary.**

**Complete a written order.**

## ADJUDICATORY HEARING SUPPLEMENT

### ➤ **Generally.**

Rules of evidence in use in civil cases apply at the adjudicatory hearing. § 39.507(1)(b); Rule 8.330(a).

### ➤ **Representation and appointment of counsel.**

What do I need to do with regard to representation and/or appointment of counsel? See section in shelter hearing supplement titled, “Representation and appointment of counsel.”

What should I do after swearing in the parties? The court shall advise parents of the right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent. §§ 39.013(9), 39.013(9)(a).

### ➤ **Parties and notices.**

What should I know about identifying parties and ensuring proper notice was accomplished? See “Parties and notices” sections in shelter hearing benchcard and supplement.

Determine whether parties were properly served.

All parents must be notified of the adjudicatory hearing as provided in § 39.502. Rule 8.225(5).

Service should be made pursuant to Rule 8.225(f)(5). (*See Service, Section 8*)

Additional notice is not required if notice of the adjudicatory hearing was provided to the parties by the court in writing or contained in a prior court order that was provided to the participant or party. § 39.502(6).

What should I do if an identified parent is absent?

- As to any identified absent parent, determine whether a diligent search was completed by DCF.
- As to any absent parent whose location is unknown, determine whether it is in the child’s best interest to proceed to disposition without notice to that parent. § 39.503(5).

Can I hold hearings involving more than one child simultaneously? Yes. Hearings may be held simultaneously if the children involved:

- Are related, or
- Were involved in the same case. § 39.507(2).

Is a dependency trial open to the public? Yes. The trial is open to the public unless closed by special order finding the public interest or welfare of the child is best served by so doing. § 39.507(2). *See also* Natural Parents of J.B. v. DCF, 780 So. 2d 6 (Fla. 2001).

Should more than one order adjudicating the child dependent be entered? No. For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian. § 39.507(7)(a). *See also* Rule 8.332(b)(2).

Should I hold an evidentiary hearing subsequent to the adjudication of the child? Yes. The court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is held subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. With the exception of proceedings pursuant to § 39.811, the child's dependency status may not be retried or re-adjudicated. § 39.507(7)(b). *See also* Rule 8.332(b)(2).

May I examine the child and may the parents, caregivers, or legal custodians be examined separately and apart from each other? Yes. § 39.507(2).

➤ **Other considerations.**

Explain the case plan process.

Advise the parents of their right to participate in and have assistance with preparation of the case plan. § 39.6011.

If appropriate, order parties to mediation or case planning conference, setting date, time and location. § 39.4075. (*See Mediation, Section 8*)

An anonymous, uncorroborated report of abuse is an insufficient basis for adjudicating a child dependent. § 39.507(1)(b).

If a parent is ordered at arraignment to personally appear, is properly noticed, and fails to appear, the failure to appear constitutes consent. § 39.506(3).

To withhold adjudication, the court must find that no action other than supervision in the parent's home is required. § 39.507(5).

If adjudication is withheld, and parents do not comply with conditions of supervision, then after hearing to establish noncompliance, the court may adjudicate without further evidence regarding dependency. § 39.507(5).

The court must adjudicate the child dependent if the child is to remain in an out-of-home placement. § 39.507(5).

What may the court order pending disposition? The court may order any of the following pending disposition:

- Order child continued in placement.
- Designate the placement or the agency that will be responsible for the child's placement.

- Enter such other orders deemed necessary to protect the health, safety, and well-being of the child, including diagnosis, evaluation, treatment, and visitation. Rule 8.335.

What should I do if financial information is not available? The court may order parents to submit affidavits and schedule hearing to set support, possibly at disposition. § 39.521(1)(d)(7). (See *Child Support in Dependency Cases, Section 3*)

➤ **Right to appeal.**

Should I advise parents of the right to appeal and to appellate counsel? Yes.

May DCF or any party affected by an order appeal to the appropriate district court of appeal? Yes. § 39.510(1).

The adjudication of dependency may be appealed from either the order adjudicating the child or the disposition order. See A.G. v. Dept. of Children and Family Services, 731 So. 2d 1260 (Fla. 1999).

Does the taking of an appeal operate as a supersedeas in any case? The taking of an appeal does not operate as a supersedeas in any case unless pursuant to an order of the court, except that a permanent order of commitment to a licensed child-placing agency or DCF for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided. § 39.510(3).

Pursuant to Rule 9.146(d) of the Florida Rules of Appellate Procedure, the court retains jurisdiction to conduct judicial reviews and other proceedings as needed to protect the health and welfare of the child.

➤ **Notice of judicial review/citizen review panel hearing.**

Notice of a judicial review hearing/citizen review panel hearing, along with a copy of the motion for judicial review, must be served by the clerk on all of the following:

- The social service agency,
- The foster parent or legal custodian in whose home the child resides,
- The parents,
- The guardian ad litem or the Guardian ad Litem Program representative,
- The attorney for the child,
- The child, if the child is 13 years of age or older,
- Any pre-adoptive parent, and
- Such other persons as the court may direct. § 39.701(1)(f)(1)-(8).

Service of notice and the motion for judicial review is made regardless of whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced. § 39.701(1)(f).

### Requirements for written order.

- Ensure that the order clearly sets forth each specific date on which the hearing was held.
- Include findings regarding indigence and appointment or waiver of counsel. § 39.013(9)(a).
- Describe the legal basis for finding of dependency. §§ 39.506(5), (6).
- Specify findings of fact on which the dependency is based. §§ 39.506(5), (6).
  - Failure to include is reversible error. See J.C.G. v. DCF, 780 So. 2d 965 (Fla. 5th DCA 2001).
- For any identified absent parent, note whether the parent was properly served or that a diligent search was completed.
- Determine if the petitioner met the burden of proof (preponderance of evidence). If there is evidence that rises to the level of “clear and convincing,” state this in the order.
- Specify all visitation details.
- Specify child support obligations if parents were properly noticed.
- Cite the specific provision of § 39.0136 when granting continuances.
- Specify the date of the next hearing.